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17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 WESTERN DIVISION

20 IN RE: HYUNDAI AND KIA FUEL
21 ECONOMY LTIGATION

MDL Case No. 2:13-ml-2424-GW-FFM

22 **NOTICE OF MOTION AND**
23 **MOTION FOR PRELIMINARY**
24 **APPROVAL OF CLASS**
25 **SETTLEMENT AND ORDER**
26 **DIRECTING NOTICE TO THE**
27 **CLASS**

Date: January 23, 2014

Time: 8:30 a.m.

Judge: Hon. George Wu; Courtroom: 10

1 PLEASE TAKE NOTICE that on January 23, 2014, at 8:30 a.m., or as soon
2 thereafter as the matter may be heard before the Honorable George H. Wu of the
3 United States District Court for the Central District of California, Western Division,
4 Courtroom 10, 312 North Spring Street, Los Angeles, California 90012-4701,
5 Plaintiffs will and hereby do jointly move this Court pursuant to Federal Rule of
6 Civil Procedure 23 for an order preliminarily approving the Class Settlement and
7 directing notice to the Class.

8 This Motion is based on the contemporaneously filed memorandum of points
9 and authorities in support thereof, all pleadings and other papers on file in this
10 action, any matters upon which the Court may take judicial notice, and upon such
11 oral argument as the Court may consider.

12 Respectfully submitted,

13 DATED: December 23, 2013

HAGENS BERMAN SOBOL SHAPIRO LLP

14 By /s/Robert B. Carey

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Baldeschi*

CERTIFICATE OF SERVICE

I, Robert B. Carey, hereby certify that on December 23, 2013, a true and correct copy of the foregoing Notice of Motion and Motion for Preliminary Approval of Class Settlement and Order Directing Notice to the Class was filed electronically with the Clerk of Courts at my direction using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Robert B. Carey

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23 *Nicole Marie Hunter, et al.*

24 UNITED STATES DISTRICT COURT
25 CENTRAL DISTRICT OF CALIFORNIA
26 WESTERN DIVISION

27 IN RE: HYUNDAI AND KIA FUEL
28 ECONOMY LITIGATION

MDL Case No. 2:13-ml-2424-GW-FFM

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND ORDER
DIRECTING NOTICE TO CLASS**

Date: January 23, 2014

Time: 8:30 a.m.

Judge: Hon. George Wu; Courtroom: 10

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1 Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs respectfully
2 submit this memorandum of points and authorities in support of their Motion for
3 Preliminary Approval of Class Settlement.

4 **I. SUMMARY OF FACTS AND THE PROPOSED SETTLEMENT**

5 **A. The Litigation**

6 This litigation arises out of misstatements by Defendants Hyundai Motor
7 America (“HMA”) and Kia Motors America (“KMA”) regarding the fuel economy
8 of their vehicles in advertisements and Monroney stickers—the stickers displayed in
9 the window of every new car which list certain official car specifications. The first
10 class action filed with respect to the misstatements in the fuel-economy numbers
11 stated on the Monroney stickers for Hyundai and Kia automobiles was *Hunter v.*
12 *Hyundai Motors America*. Plaintiffs filed that complaint against HMA and KMA on
13 November 2, 2012, in the Central District of California, asserting claims for violation
14 of the California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et*
15 *seq.*), violation of the California False Advertising Law (Cal. Bus. & Prof. Code §§
16 17500, *et seq.*), violation of the California Consumer Legal Remedies Act (Cal. Civ.
17 Code §§ 1750, *et seq.*), breach of express warranty (Cal. Com. Code § 2313), fraud
18 (California common law), negligent misrepresentation (California common law), and
19 unjust enrichment/common law claim for restitution. The *Hunter* Plaintiffs alleged
20 that HMA and KMA conducted flawed testing in establishing the EPA MPG
21 estimates for many of their vehicles.

22 On November 6, 2012, the plaintiffs in *Brady, et al. v. Hyundai Motor*
23 *America, et al.* filed a class-action complaint against HMA and KMA in the Central
24 District of California on the same basis and alleging the same causes of action as
25 those in the *Hunter* action. But the *Brady* Plaintiffs included more information
26 regarding the Reimbursement Program, and how a successful class action would
27 seek to pay the Class members damages in a lump-sum payment now to account for

1 the time value of money and to alleviate the Class members' burden of proving their
2 losses, driving to the dealership, and having to fill out paperwork every time
3 reimbursement is requested.

4 In an action filed before the November 2012 announcement—and the first of
5 its type—the plaintiffs in *Espinosa et al. v. Hyundai Motor America* filed a class-
6 action complaint against HMA on January 6, 2012, alleging that HMA disseminated
7 false advertisements regarding the expected gas mileage of its vehicles. This
8 complaint, filed in the Central District of California, asserted claims for violation of
9 the Unfair Business Practices Act (Cal. Bus. & Prof. Code §§ 17200, et seq.),
10 violation of False Advertising Laws (Cal. Bus. & Prof. Code §§ 17500, et seq.),
11 violation of California's Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750, et
12 seq.), fraud, negligent misrepresentation, and deceit (Cal. Civ. Code § 1710). The
13 *Espinosa* Plaintiffs filed their First Amended Complaint on February 23, 2012,
14 asserting the same causes of action and additionally: (1) providing various consumer
15 complaints regarding overstated MPGs; (2) alleging that HMA may have inflated
16 EPA numbers and may not have followed appropriate EPA protocols; (3) providing
17 more details regarding HMA's violations of the Unfair Business Practices Act; and
18 (4) noting that HMA failed to respond to their Notice of Intent to Bring an Action for
19 Damages Under the Consumer Legal Remedies Act.

20 In total, there were fifty-two putative class-action complaints filed in federal
21 court¹ (and one filed in state court²) against HMA, KMA, Hyundai Motors
22

23 ¹ The Federal cases, along with their MDL status are as follows: *Espinosa v.*
24 *Hyundai Motor Am.* (Lead Case); *Gordon v. Hyundai Motor Am.* (MDL Transfer);
25 *Hunter v. Hyundai Motor Am.* (MDL Transfer); *Sanders v. Hyundai Motor Am.*
26 (MDL Transfer); *Wilton v. Kia Motors Am., Inc.* (MDL Transfer); *Krauth v. Hyundai*
27 *Motor Am.* (MDL Transfer); *Brady v. Hyundai Motor Am.* (MDL Transfer);
28 *Graewingholt v. Hyundai Motor Am.* (MDL Transfer); *Kievit v. Hyundai Motor Am.*
(MDL Transfer); *Maturani v. Hyundai Motor Am.* (MDL Transfer); *Thomson v.*
Hyundai Motor Am. (MDL Transfer); *Rottner v. Hyundai Motor Am.* (MDL
Transfer); *Thomas v. Hyundai Motor Am.* (Intra-Dist. Transfer); *Olson v. Hyundai*

1 Corporation (“HMC”), and/or Kia Motors Corporation (“KMC”) (HMC and KMC
2 together, “HKMC”) regarding the MPG overstatement. Based on the February 5,
3 2013 Transfer Order from the Judicial Panel on Multidistrict Litigation (“JPML”),
4 many of those cases were transferred and consolidated in this Court as *In re:*
5 *Hyundai and Kia Fuel Economy Litigation*, MDL No. 2424. During the months after
6 the *Hunter* and *Brady* Plaintiffs filed their complaints, the *Espinosa*, *Hunter*, and
7 *Brady* Plaintiffs (together, the “Settling Plaintiffs” or “Plaintiffs”) reached an
8 agreement in principle on settlement terms with HMA, and extended the same terms

9
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11 *Motor Company* (Intra-Dist. Transfer); *Lipman v. Hyundai Motor Am.* (CTO
12 2/15/13); *Gudgalis v. Hyundai Motor Am.* (CTO 2/15/13); *Bayard v. Hyundai Motor*
13 *Am.* (Intra-Dist. Transfer); *Quiroz v. Kia Motors Am., Inc.* (Intra-Dist. Transfer);
14 *Naythons v. Hyundai Motor Company* (MDL Transfer); *Simmons v. Kia Motors*
15 *Corporation* (MDL Transfer); *Woodruff v. Kia Motors Am., Inc.* (MDL Transfer);
16 *Armstrong v. Kia Motors Am.* (MDL Transfer); *Hoessler v. Kia Motors Am.* (MDL
17 Transfer); *Washburn v. Kia Motors Corporation* (MDL Transfer); *Kurash v.*
18 *Hyundai Motor Am.* (Tag Along); *Leggett v. Kia Motors Corporation* (MDL
19 Transfer); *Carullo v. Kia Motors Am., Inc.* (Intra-Dist. Transfer); *Torres v. Kia*
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24 *Icovozzi v. Kia Motors Am., Inc.* (Intra-Dist. Transfer); *Dunst v. Hyundai Motor Am.*
25 (CTO 2/13/13); *Rezai v. Hyundai Motor Am.* (MDL Transfer); *Hasper v. Hyundai*
26 *Motor Am.* (Intra-Dist. Transfer); *Fellers v. Kia Motors Am. Inc.* (Intra-Dist.
27 Transfer); *Elliott v. Hyundai Motor Am.* (Intra-Dist. Transfer); *Bonsignore v. Kia*
28 *Motors Am.* (Intra-Dist. Transfer); *Sutta v. Hyundai Motors Am.* (Intra-Dist.
Transfer); *Myers v. Hyundai Motors Am.* (Intra-Dist. Transfer); *Figueroa v. Hyundai*
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Brown v. Kia Motors Am. (Intra-Dist. Transfer); *Cestaro v. Hyundai Motors Am.*
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cv-01504 (Intra-District Transfer); *Setser v. Kia Motors America*, Case no. 13-cv-
00387 (Intra-District Transfer); *Wilson v. Kia Motors America*, Case no. 13-cv-
01069 (March 7, 2013 Transfer). (See Dkt. 6 at Exhibit 2 as well as Dkt. 32, 33, 34,
38, 39, 40, 43, and 44 for more detail.)

² *Bird v. Hyundai Motor Am.*. (See *id.*)

1 to KMA. Liaison counsel was designated for the non-settling plaintiffs, and KMA
2 subsequently agreed to the proposed Settlement terms.

3 With the Court's guidance in establishing a settlement discovery schedule, and
4 with ongoing input from liaison counsel, the parties conducted interviews of integral
5 employees of HMA, KMA, and HKMC, and propounded requests for production and
6 interrogatories on Defendants. The confirmatory process is substantially complete
7 and has resulted in eleven interviews of Defendants' key personnel in the U.S. and
8 Korea, as well as analysis of hundreds of thousands of pages of documents produced.
9 Non-settling plaintiffs' counsel have been regularly updated through liaison counsel.

10 The Settlement requires Defendants to address issues associated with the MPG
11 overstatements on many of their vehicle models, provide lump-sum payments to
12 Class members to compensate them for their extra fuel costs, and pay damages
13 related to Hyundai's advertising of the MPG ratings of four of its vehicles. The
14 Settlement Agreement is attached hereto as Exhibit 1. The parties have diligently
15 worked to draft appropriate pleadings, including a stipulated notice regarding a
16 proposed schedule for class-action settlement proceedings, a draft notice to the Class,
17 this motion, and proposed orders granting preliminary and final approval of the
18 class-action Settlement.

19 **B. The Affected Vehicles**

20 As described below, Hyundai and Kia were contacted by the EPA when the
21 EPA's in-use coastdown testing of the 2011 Model Year Elantra showed coastdown
22 test results that materially differed from the certified numbers that HKMC had
23 provided to the EPA and that were used to calculate vehicle EPA estimates.
24 Coastdown tests (which quite literally measure the time for a car to "coastdown"
25 from 45 MPG to 15 MPG with the transmission in neutral) are used to calculate the
26 drag coefficient for a car, which, in turn, is used in conjunction with a dynamometer to
27 estimate fuel efficiency.

1 HKMC researched its coastdown testing procedures and existing regulations
2 in an effort to determine how and why the EPA in-use vehicle results would differ
3 from its own, including issues relating to track smoothness, tire surface, ambient
4 weather, warm-up time, vehicle weight, vehicle selection (pilot or production), data
5 analysis software, and coastdown direction. (See Ex. 2, Dec. 23, 2013 Decl. of
6 Robert Carey (“Carey Decl.”) at Ex. J HKMCST0008210-8230). HKMC eventually
7 discovered a process change to its testing undertaken in May 2010, which was
8 expected to minimize divergence among test results, and that, in actuality, rendered
9 its testing protocol different from the EPA’s protocol. Testing revealed that the
10 process change explained much of the test-result divergence for vehicles tested and
11 certified after May 2010. (*Id.*) HKMC also discovered that for some models, there
12 had been a deviation from protocol—that is, a process mistake—in obtaining
13 coastdown testing results which were used to calculate the drag coefficient.

14 HKMC determined that the following vehicles had coastdown tests affected by
15 the process change, but *not* the process mistake:

Hyundai Vehicles	Kia Vehicles
2012 & 2013 Accent	2011 Optima
2012 & 2013 Azera	2012 & 2013 Sorento
2011, 2012 & 2013 Elantra	2012 & 2013 Sportage
2011 & 2012 Sonata	
2012 & 2013 Genesis	
2013 Santa Fe	
2012 & 2013 Tucson	

25 HKMC also determined that certain model Veloster, Rio, and Soul vehicles
26 had coastdown tests affected by the process change and the process mistake:

Hyundai Vehicles	Kia Vehicles
2011 & 2012 Veloster	2012 & 2013 Rio
	2012 & 2013 Soul

C. The Defendants

Defendants Hyundai Motor America and Kia Motors America, Inc. are the United States distributors for vehicles manufactured by Hyundai Motor Corporation and Kia Motors Corporation, their Korean parent companies. HMA and KMA consider themselves to be competitors in the marketplace—they do not generally work together, with the reimbursement program at issue in this case being one notable exception. (Tr. of Apr. 19, 2013 Tape-Recorded Interview of Michael Sprague (“Sprague Tr.”), at 84-86, attached to Carey Decl. as Ex. A.) ; Tr. of Aug. 30, 2013 Tape-Recorded Interview of John Krafcik (“Krafcik Tr.”) at 111, attached to Carey Decl. as Ex. F.) When interviewed, HMA, KMA, and HKMC employees generally claimed that Defendants’ U.S.-based marketing and planning departments were not involved with the Korea-based product development and testing mistakes that led to the MPG overstatements. At the same time, Defendants admit that until the EPA stepped in, they accepted and utilized faulty MPG information received from HKMC’s Korean testing facility.

1. Kia Motors America, Inc.

According to KMA Director of Marketing Michael Sprague, KMA’s marketing strategy for the past five years focused attributes of design, technology, safety, value, and quality. (Carey Decl. Ex. A, Sprague Tr. at 17-20, 76.) Fuel economy was not a major focus of KMA marketing. (Carey Decl. Ex. A, Sprague Tr. at 17-19, 39-40.) Marketing references to fuel economy incorporated information from the Product Reference Guide (“PRG”), information which is provided by the parent company in Korea. (Carey Decl. Ex. A, Sprague Tr. at 12.)

1 When Michael Sprague learned that there would be a restatement of EPA estimates
2 for MPG, he reviewed KMA's then-current advertising and did not find any
3 advertisements highlighting incorrect MPG estimates that needed to be changed.
4 (Carey Decl. Ex.A, Sprague Tr. at 57-9.) When the marketing department became
5 aware of weaknesses or strengths related to particular car models, they would pass
6 that information onto the KMA Product Planning Group. (Carey Decl. Ex. A,
7 Sprague Tr. at 34-35, 101.)

8 KMA's Product Planning Group is headed by Orth Hedrick. (Tr. of June 5,
9 2013 Tape-Recorded Interview of Orth Hedrick ("Hedrick Tr."), at 3-4, attached to
10 Carey Decl. as Ex. C.) The KMA Product Planning Group collects and collates U.S.
11 consumer preferences and passes that information onto the Korean parent company.
12 (Carey Decl. Ex. C, Hedrick Tr. at 4.) It provides the Overseas Planning and
13 Marketing Team in Korea with preferences for the U.S. market. (Carey Decl. Ex. C,
14 Hedrick Tr. at 13-14.) While the Product Planning Group does not plan or set the
15 specifications for future vehicles, it does provide input to engineers and designers in
16 Korea who design and manufacture the vehicles for distribution and sale. (Carey
17 Decl. Ex. C, Hedrick Tr. at 19-21.) KMA's Product Planning Group had no
18 involvement in testing or certification of EPA-estimated MPG. (Carey Decl. Ex. C,
19 Hedrick Tr. at 27.) Its role in the restatement process was to update the PRG with
20 the restated MPG estimates for the affected vehicles. (Carey Decl. Ex. C, Hedrick
21 Tr. at 28, 56.)

22 The reimbursement program for KMA is run through the Consumer Affairs
23 and Warranty Department, which is directed by Michelle Cameron. Ms. Cameron's
24 department is responsible for customer contacts that occur directly between KMA
25 and consumers. (Tr. of June 4-5, 2013 Tape-Recorded Interview of Michelle
26 Cameron ("Cameron Tr.") at 8, attached to Carey Decl. as Ex. B.) Ms. Cameron
27 claimed that while there have been periods of increased consumer complaints about

1 the fuel efficiency of Kia vehicles, these periods coincide with times of high fuel
2 prices, and not with the release of any particular vehicles or model years. (Carey
3 Decl. Ex. B, Cameron Tr. at 30-31.) She claims she never saw MPG-related
4 complaints reach a level that would cause her to bring the issue to the attention of
5 other Kia departments. (Carey Decl. Ex. B, Cameron Tr. at 31-32.)

6 Prior to the November 2012 restatement, Ms. Cameron claims that she was not
7 aware that vehicle manufacturers did their own EPA MPG testing and certification.
8 (Carey Decl. Ex. B, Cameron Tr. at 74-75.) After the restatement, Ms. Cameron's
9 department was involved with consumer communications and replacing Monroney
10 labels to reflect the restated EPA MPG estimates. (Carey Decl. Ex. B, Cameron Tr.
11 at 82-83.) Ms. Cameron's department tracked and supervised the Monroney label-
12 replacement process. (Carey Decl. Ex. B, Cameron Tr. at 95-97.) At the same time,
13 brochures relating to the affected vehicles were reprinted to reflect the restated MPG
14 estimates. (Carey Decl. Ex. B, Cameron Tr. at 166-67.)

15 2. Hyundai Motor America

16 According to national manager William Reedy, HMA's marketing group has
17 no involvement in the development of vehicles and their specifications. (Tr. of Aug.
18 29, 2013 Tape-Recorded Interview of William Reedy ("Reedy Tr."), at 32, attached
19 to Carey Decl. as Ex. E.) The information that marketing uses in its communications
20 comes from the HMA product-planning group. (Carey Decl. Ex. E, Reedy Tr. at
21 111-12.) The "4 for 40" advertising campaign, which focused on four Hyundai
22 vehicles that attained 40 MPG EPA estimates, was created by Innocean, an
23 advertising company that is owned by HMC. (Carey Decl. Ex. E, Reedy Tr. at 31,
24 46-49; 110.) Innocean, upon review of the various vehicle specifications for the
25 Hyundai product line, observed that four vehicles were rated at 40 MPG and
26 developed the "4 for 40" advertisements. (*Id.*) According to Ms. Reedy, HMC did
27 not direct the development of this content. (*Id.*)

1 HMA's Director of Product Planning, Scott Margason, was interviewed as part
2 of the confirmatory discovery process. (Tr. of Aug. 29, 2013 Tape-Recorded
3 Interview of Scott Margason ("Margason Tr.") at 5, attached to Carey Decl. as Ex.
4 D.) HMA Product Planning interfaces with HMC's Overseas Product Marketing
5 Team, which provides input to HMC for the development of future vehicles. (Carey
6 Decl. Ex. D, Margason Tr. at 14, 102-103.) HMA Product Planning had no
7 involvement in the setting or checking of EPA MPG estimates. (Carey Decl. Ex. D,
8 Margason Tr. at 48, 136.) According to Mr. Margason, Product Planning first
9 learned of the issues surrounding the EPA MPG estimates at the same time that it
10 learned HMC would be restating the MPG estimates. (Carey Decl. Ex. D, Margason
11 Tr. at 57.) HMA Product Planning's role in the restatement process was to make
12 sure that the information contained on new Monroney labels accurately reflected the
13 restated MPG for the affected vehicles, based on MPG information it received from
14 HMC. (Carey Decl. Ex. D, Margason Tr. at 48, 134; Tr. of Aug. 30, 2013 Tape-
15 Recorded Interview of John Krafcik ("Krafcik Tr.") at 13-14, attached to Carey Decl.
16 as Ex. F.)

17 HMA President and CEO, John Krafcik, was interviewed by Plaintiffs as part
18 of the confirmatory discovery process. (Carey Decl. Ex. F, Krafcik Tr. at 4.) HMA
19 did not have any involvement in EPA MPG testing and certification. (Carey Decl.
20 Ex. F, Krafcik Tr. at 10.) Prior to the restatement at issue here, Mr. Krafcik claims
21 that he had no knowledge of the coastdown testing component of calculating EPA
22 MPG estimates. (Carey Decl. Ex. F, Krafcik Tr. at 9.) Mr. Krafcik also claims that
23 before the restatement he also had no knowledge of HMC's Energy Efficiency
24 Group ("EEE"), an HMC group newly founded in 2008, which was involved in
25 calculating and certifying the EPA MPG estimates at issue in this case. (Carey Decl.
26 Ex. F, Krafcik Tr. at 12-13; Tr. of Sept. 12, 2013 Tape-Recorded Interview of
27 Kwang-Yeon Kim ("Kim Tr."), at 8-9, attached to Carey Decl. as Ex. G; Carey Decl.

1 at Ex. K HKMCST0008398.) Mr. Krafcik states that he first learned that EPA was
2 questioning Hyundai's MPG estimates in July 2012, at a meeting with members of
3 the HMC Research and Development ("R&D") team. (Carey Decl. Ex. F, Krafcik
4 Tr. at 38-39.) HMA then changed its advertising focus away from fuel economy for
5 the summer selling season. (Carey Decl. Ex. F, Krafcik Tr. at 40-41.)

6 **3. Hyundai/Kia Motor Corporation**

7 EPA testing and certification for new vehicle model years was performed in
8 South Korea by engineers in the EEE group of the parent HMC corporation. (Carey
9 Decl. Ex. G, Kim Tr. at 5, 9.) Mr. Kim, who was interviewed as part of the
10 confirmatory discovery process, was in charge of HMC's EEE group, which was
11 responsible for the coastdown testing for all Hyundai and Kia vehicles as of January
12 2009. (Carey Decl. Ex. G, Kim Tr. at 3-5, 9; Carey Decl. at Ex. K
13 HKMCST0008398.) Testing was physically completed at HMC's Namyang R&D
14 facility. (Carey Decl. at Ex. J HKMCST0008212, Carey Decl. at Ex. K
15 HKMCST0008397.) In 2006, the testing protocol was updated from SAE J1263 to
16 SAE J2263. (Carey Decl. at Ex. J HKMCST0008211.)

17 As noted above, the EEE group was created in 2008. The group was
18 originally tasked with determining the effect that the various vehicle components had
19 on fuel efficiency for the completed vehicle. (Carey Decl. Ex. G, Kim Tr. at 8;
20 Carey Decl. at Ex. K HKMCST0008398.) The EEE would provide feedback for
21 product planning and design based on test results. (Carey Decl. Ex. G, Kim Tr. at
22 12-13.) Mr. Joon-Ho Lee was a member of the EEE team specializing in analyzing
23 how tires and friction affected fuel economy. (Tr. of Sept. 13, 2013 Tape-Recorded
24 Interview with Joon-Ho Lee ("Lee Tr.") at 5, attached to Carey Decl. as Ex. I.) In
25 response to an inquiry about the effect of tires on coastdown testing, Mr. Lee
26 suggested changes to the coastdown testing protocol in May 2010. (Carey Decl. Ex.
27 I, Lee Tr. at 6-7; Carey Decl. Ex. G, Kim Tr. at 23; Ex. K HKMCST0008398.) He

1 advised increasing the warm-up period for coastdown tests from 30 minutes to 60
2 minutes in order to put the tires at an equilibrium temperature and increase the
3 consistency of coastdown results. (Carey Decl. Ex. I, Lee Tr. 13.) He also
4 determined that keeping the tires warm between runs and running tests between 20
5 and 35 degrees Celsius would increase consistency. (Carey Decl. Ex. I, Lee Tr. 14.)
6 In summary, the protocol changes included the following: (1) narrowing the range of
7 acceptable ambient temperature; (2) increasing the vehicle warm-up time prior to
8 testing; (3) keeping the vehicle warmed-up between test runs; and (4) increasing the
9 number of test run pairs. (Carey Decl. Ex.G, Kim Tr. at23-24; Carey Decl. at Ex. K
10 HKMCST0008405-8407.) Mr. Lee claims he was not concerned with whether the
11 additional warm-up would result in longer or shorter coastdown distances and thus
12 higher or lower MPG estimates. (Carey Decl. Ex. I, Lee Tr. 13.) The first vehicle to
13 be certified under the modified protocol was the Model Year 2011 Hyundai Elantra,
14 which was tested in May 2010. (Carey Decl. at Ex. K HKMCST0008404-8405.)

15 In a meeting in May 2012, Mr. Kim learned that the EPA's coastdown results
16 for an in-use Elantra vehicle were materially different from the certified numbers
17 provided by HKMC. (Carey Decl. Ex. G, Kim Tr. at 25-27.) HKMC then
18 researched the cause of the differences. (*See generally*, Carey Decl. at Ex. K
19 HKCMST0008395-8412; Carey Decl. at Ex. J HKMCST0008209-8230.) Mr. Kim
20 tasked Jin-Ho Ha with researching why the EPA's coastdown results could have
21 been different. (Carey Decl. Ex. G, Kim Tr. at 28.) This is when Mr. Kim claims
22 that he first learned that Mr. Lee had made the changes described above to HKMC's
23 coastdown testing protocol. (Carey Decl. Ex. G, Kim Tr. at 24-26, 28.) Mr. Kim
24 claims that the changes to the coastdown testing methodology in 2010 were done to
25 improve the accuracy of the coastdown tests. (Carey Decl. Ex. G, Kim Tr. at 41;
26 Carey Decl. at Ex. K HKMCST0008404.) HKMC's communications with the EPA
27 similarly state that the protocol changes aimed to increase the "reliability of the test

1 results” (Carey Decl. at Ex. J HKMCST0008216), and to “improve test accuracy and
2 reduce test-to-test variation” (Carey Decl. at Ex. K HMCST0008404).

3 For most of the vehicles at issue, the May 2010 protocol changes were shown
4 to be the possible cause of the differences. (*Id.*; Carey Decl. at Ex. K
5 HKCMST0008410.) HKMC’s research revealed that the Model Year 2013 Santa Fe
6 coastdown test results were further skewed by high-wind conditions during the
7 testing in 2011. (Carey Decl. at Ex. K HKCMST0008410.) For certain Soul, Rio,
8 Veloster, and Santa Fe vehicle models, however, the protocol changes were
9 inadequate to explain the differences in the coastdown test results. (*Id.*) Certain
10 model Soul, Rio, and Veloster vehicles’ coefficients were incorrectly calculated
11 using single-direction coastdown test runs. (Carey Decl. at Ex. K
12 HKMCST0008410-8411.)

13 During the confirmatory discovery process in Korea, HKMC made the
14 engineer responsible for this mistake, Ms. Chong Ah Kwon, available for interview.
15 Ms. Chong Ah Kwon is a research and development engineer at Hyundai. (Tr. of
16 Sept. 13, 2013 Tape-Recorded Interview of Chong Ah Kwon (“Kwon Tr.”) at 3,
17 attached to Carey Decl. as Ex. H.) Ms. Kwon began working in the EEE group in
18 October 2008, and specifically worked on how the electronics packages for the
19 chassis could be used to optimize fuel economy, including through the use of
20 Intermittent Stop and Go (ISG) programming. (Carey Decl. Ex. H, Kwon Tr. at 4-6.)
21 Her work required her to measure the fuel-efficiency differences, if any, attributable
22 to ISG packages. (Carey Decl. Ex. H, Kwon Tr. at 5-7.) To do that, she needed the
23 coefficients derived from coastdown testing. (Carey Decl. Ex. H, Kwon Tr. at 7-8.)
24 Ms. Kwon claims that coefficients were available for many of the vehicles she was
25 looking at, but not the the Veloster, Soul, and Rio. (Carey Decl. Ex. H, Kwon Tr. at
26 7.)

1 Ms. Kwon asked a senior engineer about the process, and then set out to
2 conduct the coastdown tests herself to obtain the needed coefficients. (Carey Decl.
3 Ex. H, Kwon Tr. at 8-12.) The senior engineer discussed the use of five sets of runs
4 (a set including an upwind and immediately following downwind run), but Ms.
5 Kwon misunderstood the requirement of matched sets. (Carey Decl. Ex. H, Kwon
6 Tr. at 12-13.) She received from the test driver at least ten coastdown times from the
7 tests for each vehicle, and she entered into the spreadsheet tool the five longest
8 coastdown times for each vehicle. (Carey Decl. Ex. H, Kwon Tr. at 21-22.) From
9 the spreadsheet, Ms. Kwon obtained the coastdown coefficient she needed for each
10 vehicle for her testing and performed her ISG-related tests. (Carey Decl. Ex. H,
11 Kwon Tr. at 23-24.) Ms. Kwon claims that she had no idea that her coastdown test
12 entries would later be used for purposes of EPA MPG certification; she states that
13 she did the tests for her own use in measuring the effects of use of the ISG package
14 in various model vehicles. (Carey Decl. Ex. H, Kwon Tr. at 13-14.) She first
15 learned that her coastdown tests were used for EPA certification in approximately
16 August of 2012. (Carey Decl. Ex. H, Kwon Tr. at 25.)

17 **B. Defendants' Reimbursement Program**

18 On November 2, 2012, Defendants issued a press release apologizing to their
19 customers and stating that procedural errors at their joint testing operations
20 overstated the fuel-economy ratings for approximately 900,000 Hyundai and Kia
21 vehicles sold between 2010 and 2012; the EPA-estimated fuel-economy figures were
22 reduced by an average of 3%. Defendants informed customers that they corrected
23 the test processes in response to the EPA and were initiating a reimbursement
24 program to compensate past and current Hyundai or Kia vehicle owners for
25 additional fuel costs incurred to date and in the future (the "Reimbursement
26 Program"). The amount offered by the Reimbursement Program is based on the
27 customer's vehicle model, odometer reading, and the average gas price in their area,

1 and Defendants added 15% to the amount to account for the inconvenience caused
2 by the mileage overstatements and the need to address it through the Reimbursement
3 Program. Customers are asked to visit their local Hyundai or Kia dealer on an
4 ongoing basis so the dealer can verify the odometer reading and arrange for a debit
5 card containing the Reimbursement Program amount to be sent to the customer. The
6 current deadline to register in the Reimbursement Program is December 31, 2013,
7 but the program will continue for current owners for as long as they own their
8 vehicle.

9 **E. The Market Effects of the Announcement**

10 The November 2012 restatement hurt the market standing of some but not all
11 affected Hyundai and Kia vehicles. For example, the restatement caused the 2013
12 Hyundai Veloster, the 2013 Hyundai Elantra GT, the 2013 Kia Rio, the 2013 Kia
13 Soul, and the 2011 Kia Sorento to lose class-leading fuel economy ratings. (Carey
14 Decl. at Ex. N HMAST2004827, HMAST2004849; Carey Decl. at Ex. P
15 KMAST0006182, KMAST0006184; Carey Decl. at Ex. R KMAST0016055,
16 KMAST0016056; Carey Decl. at Ex. Q KMAST0006229, KMAST0006231; Carey
17 Decl. at Ex. S KMAST0016717; Carey Decl. at Ex. T KMAST0026778.) Other
18 models were not so affected because they were not class leaders in fuel economy,
19 and because the restated fuel economy estimate was not so drastic. The 2013
20 Hyundai Elantra moved from 33 MPG to 32 MPG (combined), maintaining the
21 second-best rating in its class. (Carey Decl. at Ex. O HMAST2032670,
22 HMAST2032649.) Similarly, the 2012 Hyundai Azera remained at 23 MPG, still
23 trailing the leader in its class. (Carey Decl. at Ex.M HMAST0085158.) The 2011
24 Hyundai Sonata HEV and 2012 Hyundai Tucson remained class leaders in fuel
25 economy even after the restatement. (Carey Decl. at Ex. L HMAST0084982; Carey
26 Decl. at Ex. W HMAST0085531.)

1 Hyundai and Kia both experienced declining market share in the U.S. in 2013,
2 and the announcement arguably contributed to this decline.³ Unit sales of Kia
3 vehicles declined slightly but remained above 2011 levels.⁴ At the same time, the
4 announcement did not cause all sales to decline. Sales of Hyundai vehicles increased
5 after the November 2, 2012 announcement, with overall Hyundai sales improving
6 over results from the previous two twelve-month periods.⁵ For November and
7 December 2012, the months immediately following the announcement, Hyundai's
8 U.S. sales increased to 53,487 and 59,435 units respectively.⁶ These sales
9 represented a 13% improvement over sales results for November and December of
10 2011 and a 32% increase with respect to November and December of 2010.⁷ Car
11 sales typically peak in the spring and summer for current-year models, and 2013 saw
12

13
14 ³ Kia Motors, 2013 3Q Business Results, App. at 10 (Oct. 25, 2013); Kia Motors,
15 2013 1H Business Results, App. at 10 (Jul. 26, 2013); Kia Motors, 1Q 2013 Earnings
16 Overview App. at 11 (Apr. 26, 2013). Kia's quarterly sales reports are available at
17 <http://www.kmcir.com/eng/library/quarterly.asp> (last visited Dec. 23, 2013). *See*
18 *also* Hyundai Motor Company, 2013 U.S. Retail Sales, 2012 U.S. Retail Sales,
19 *available at* [http://worldwide.hyundai.com/WW/Corporate/InvestorRelations/
20 IRActivities/SalesPerformance/USRetailSales/index.html](http://worldwide.hyundai.com/WW/Corporate/InvestorRelations/IRActivities/SalesPerformance/USRetailSales/index.html) (last visited Dec. 23,
21 2013). Statements concerning sales data are based upon Defendants' publicly
22 available sources, and are subject to verification.

23 ⁴ For the twelve months ending October 2013, Kia U.S. sales totaled 536,370.
24 This number fell below the previous twelve month total of 557,763, but remained
25 well above the 462,140 cars sold in the twelve months ending October 2011. Kia
26 publishes data on U.S. retail sales at <http://www.kmcir.com/eng/library/monthly.asp>
27 (last visited Dec. 23, 2013).

28 ⁵ Hyundai US sales totaled 714,695 for the twelve month period ending October
2013, 690,460 for the period ending October 2012, and 630,841 for the period
ending October 2011. *See* Hyundai Motor Company, 2013 U.S. Retail Sales, 2012
U.S. Retail Sales, 2011 U.S. Retail Sales, and 2010 U.S. Retail Sales, *available at*
[http://worldwide.hyundai.com/WW/Corporate/InvestorRelations/IRActivities/SalesP
erformance/USRetailSales/index.html](http://worldwide.hyundai.com/WW/Corporate/InvestorRelations/IRActivities/SalesPerformance/USRetailSales/index.html) (last visited Dec. 23, 2013).

⁶ *See id.* 2012 U.S. Retail Sales.

⁷ *See id.* 2011 U.S. Retail Sales and 2010 U.S. Retail Sales.

1 this trend continue for Hyundai. Sales jumped in February 2013 and remained
2 strong through the end of the summer.⁸

3 Many vehicles affected by the announcement continued to show competitive
4 sales performance. Sales of the Hyundai Elantra, an affected vehicle, overtook the
5 rest of the fleet, more than doubling from January to May 2013 and remaining strong
6 for the rest of selling season.⁹ Sales of the Santa Fe, another affected vehicle,
7 likewise increased into the summer months during that same period of time.¹⁰ Sales
8 of both of these vehicles outpaced sales from the previous year by a wide margin.¹¹
9 The Kia Rio also showed strong performance, with sales improving over the
10 previous year and more than doubling over a two-year period, despite its restated gas
11 mileage.¹² Meanwhile, sales of the 2013 Sonata fell short, even though the 2013
12 Sonata, a flagship model, was not subject to the announcement.¹³

13 _____
⁸ See *id.* 2013 U.S. Retail Sales.

14 ⁹ See *id.* 2013 U.S. Retail Sales.

15 ¹⁰ See *id.* 2013 U.S. Retail Sales.

16 ¹¹ See *id.* 2013 U.S. Retail Sales, 2012 U.S. Retail Sales, 2011 U.S. Retail Sales,
17 2010 U.S. Retail Sales. Santa Fe sales totaled 75,431 for the twelve month period
18 ending October 2011, and 68,194 for the twelve-month period ending October 2012.
19 In the twelve months after the announcement, Santa Fe sales reached 84,971.
20 Elantra sales totaled 182,649 for the twelve-month period ending October 2011, and
21 192,526 for the twelve-month period ending October 2012. In the twelve months
22 following the announcement, Elantra sales reached 244,416.

23 ¹² Kia reports selling 40,949 Rio units in the twelve-month period ending October
24 2013, up from 39,752 units for the twelve-month period ending October 2012 and
25 17,707 units for the period ending October 2011. See Kia Retail Sales by Country
26 2013, Retail Sales by Country 2012, and Retail Sales by Country 2011, available at
27 <http://www.kmcir.com/eng/library/monthly.asp> (last visited Dec. 23, 2013).

28 ¹³ Sonata sales totaled 222,948 for the twelve-month period ending October 2011,
and 225,127 for the twelve-month period ending October 2012. In the twelve
months following the announcement, Sonata sales declined to 211,060. See Hyundai
Motor Company, 2013 U.S. Retail Sales, 2012 U.S. Retail Sales, 2011 U.S. Retail
Sales, and 2010 U.S. Retail Sales, available at
[http://worldwide.hyundai.com/WW/Corporate/InvestorRelations/IRActivities/SalesP
erformance/USRetailSales/index.html](http://worldwide.hyundai.com/WW/Corporate/InvestorRelations/IRActivities/SalesPerformance/USRetailSales/index.html) (last visited Dec. 23, 2013).

F. The Proposed Settlement

The parties’ Settlement Agreement in principle was negotiated over multiple sessions with the assistance of the Honorable Stephen J. Sundvold (Ret.). The Settlement Agreement proposes certification of a nationwide Settlement Class consisting of all current and former owners and lessees of a Class Vehicle (defined below) who were the owner or lessee, on or before November 2, 2012, of such Class Vehicle that was registered in the District of Columbia or one of the fifty (50) states of the United States.¹⁴ See, e.g., *Lundell v. Dell Inc.*, No. CIVA C05-3970, 2006 WL 3507938, at * (N.D. Cal. Dec. 5, 2006) (certifying nationwide settlement class). The Class Vehicles are as follows:

Hyundai Vehicles	Kia Vehicles
2012 & 2013 Accent	2011 & 2012 Optima HEV
2012 & 2013 Azera	2012 & 2013 Rio
2011, 2012 & 2013 Elantra	2012 & 2013 Sorento (GDI engine)
2013 Elantra Coupe	2012 & 2013 Soul
2013 Elantra GT	2012 & 2013 Soul ECO
2012 & 2013 Genesis	2012 & 2013 Sportage
2013 Santa Fe Sport	
2011 & 2012 Sonata HEV	
2012 & 2013 Tucson	
2012 & 2013 Veloster	

¹⁴ The following are excluded from the Class: (i) Rental Fleet Owners; (ii) government entities, except to the extent that a government entity is the owner or lessee of a Fleet Class Vehicle (in which case such government entity is not excluded from the Class); (iii) judges assigned to the MDL Litigation, including the judge or judges assigned to any lawsuit prior to the transfer of that lawsuit to the MDL Litigation; and (iv) persons who have previously executed a release of HMA or KMA that includes a claim concerning the fuel economy of such Class Vehicle. (See Exhibit 1, Settlement Agreement §§ 1.4, 2.1.)

1 (See Exhibit 1, Settlement Agreement §§ 1.4, 2.1.)

2 Under the proposed Settlement, a Class member may elect continued
3 participation in the Reimbursement Program, a lump-sum payment, a dealer service
4 debit card, or a new car rebate certificate. (*Id.* §§ 3.1, 3.2.) If a Class member elects
5 the lump-sum payment, he will no longer be entitled to receive further compensation
6 pursuant to the Reimbursement Program, and the lump-sum-payment amount will be
7 reduced by the amount the Class member has already received through the
8 Reimbursement Program. (*Id.* §§ 5.1, 5.2.) If the lump-sum payment is less than the
9 amount the Class member has received through the Reimbursement Program, the
10 Class member must remain in the Reimbursement Program. (*Id.* § 5.3.)

11 The lump-sum payment amount will be in the form of a cash debit card that
12 may be used like a credit card or used at an ATM; the Class member may transfer the
13 entire balance of the debit card to a checking or other bank account; there will be no
14 issuer fees imposed on the Class member; and the debit card will be non-
15 transferrable and will expire one year after it is issued. (*Id.* § 3.2.1.) The dealer
16 service credit compensation will be in the form of a debit card valued at 150% of the
17 amount that otherwise would be paid as a cash debit card; it may only be used at an
18 authorized Hyundai or Kia dealer towards any merchandise, parts, or service; there
19 will be no issuer fees imposed on the Class member; and the debit card will be non-
20 transferrable and will expire two years after it is issued. (*Id.* § 3.2.2.) The new car
21 rebate certificate will be in the form of a certificate valued at 200% of the amount
22 that otherwise would be paid as a cash debit card; it may only be used toward the
23 purchase of a new Hyundai or Kia vehicle; there will be no issuer fees imposed on
24 the Class member; and the certificate will be non-transferrable (except to a family
25 member) and will expire three years after it is issued. (*Id.* § 3.2.3.) The value of any
26 debit card, dealer service credit card, and new car rebate certificate will remain
27

1 Defendants' property until expended, and upon expiration, the value will become
2 Defendants' permanent property. (*Id.* § 3.2.4.)

3 The Class members are entitled to the following benefits under the proposed
4 Settlement:

- 5 • Current original owners will receive compensation in the amount set forth
6 in the Settlement Agreement (Exhibit B for Hyundai Class Vehicles, and
7 Exhibit C for Kia Class Vehicles) in accordance with the specific Class
8 Vehicle(s) the current original owner owns. (*Id.* § 3.1.1.)
- 9 • Current non-original owners will receive compensation which is one-half
10 of the amount set forth in the Settlement Agreement (Exhibit B for
11 Hyundai Class Vehicles, and Exhibit C for Kia Class Vehicles) with
12 respect to the specific Class Vehicle(s) the current non-original owner
13 owns. (*Id.* § 3.1.2.)
- 14 • Former owners will receive compensation in the amount they are qualified
15 to receive pursuant to the Reimbursement Program, except that they shall
16 also be entitled to a lump-sum payment, a dealer service debit card, or a
17 new car rebate voucher. (*Id.* §§ 3.1.3, 3.2.)
- 18 • Current lessees will receive compensation in the amount set forth in the
19 Settlement Agreement (Exhibit B for Hyundai Class Vehicles, and Exhibit
20 C for Kia Class Vehicles) in accordance with the specific Class Vehicle the
21 current lessee leases. (*Id.* § 3.1.4.)
- 22 • Former lessees will receive compensation in the amount that they are
23 qualified to receive pursuant to the Reimbursement Program, except that
24 they shall also be entitled to a lump-sum payment, a dealer service debit
25 card, or a new car rebate voucher. (*Id.* §§ 3.1.5, 3.2.)
- 26 • Current fleet owners will receive compensation in the amount set forth in
27 the Settlement Agreement (Exhibit B for Hyundai Class Vehicles, and
28 Exhibit C for Kia Class Vehicles) in accordance with the specific Class
Vehicles the fleet owner owns. (*Id.* § 3.1.6.)
- Former fleet owners will receive compensation in the amount they are
qualified to receive pursuant to the Reimbursement Program, except that

1 they shall also be entitled to a lump-sum payment, a dealer service debit
2 card, or a new car rebate voucher. (*Id.* §§ 3.1.7, 3.2.)

- 3 • Any current original owner, current lessee, or current fleet owner of an
4 Elantra, Accent, Veloster, or Sonata Hybrid Class Vehicle who either
5 remains in the Reimbursement Program or elects benefits under the
6 proposed settlement will receive the following additional compensation: (i)
7 \$100 for a current original owner, or (ii) \$50 for a current lessee or current
8 fleet owner. Like the other compensation under the settlement, this
9 compensation will be in the form of a debit card that may be used like a
credit card or used at an ATM. These Class members shall also be entitled
to a lump-sum payment, a dealer service debit card, or a new car rebate
voucher. (*Id.* §§ 3.1.8, 3.2.)

10 In exchange for the benefits provided by the Defendants under the proposed
11 Settlement, Class members will release the Defendants from all claims that arise
12 from or relate to fuel economy or mileage performance, including marketing or
13 advertising of fuel economy or mileage performance. (*Id.* §§ 13.1, 13.2.) The
14 release expressly excludes claims for personal injury, damage to tangible property
15 other than a Class Vehicle, or any and all claims pertaining to anything other than the
16 Class Vehicles. (*Id.* § 13.1.)

17 The Settlement Agreement proposes that Notice of this proposed settlement be
18 disseminated to the Settlement Class by first-class mail. (*Id.* § 11.1.) The Notice
19 will be mailed to every Class member whose current address is reasonably
20 ascertained from an available R.L. Polk & Company database. (*Id.*) Mailing will be
21 completed at the sole expense of Defendants. (*Id.*)

22 The draft Notice, which is attached as Exhibit G to the Settlement Agreement,
23 provides the claim form that Class members must complete, sign, and submit to
24 obtain settlement benefits, and it enables Class members to exclude themselves from
25 the Settlement by mailing a letter stating their intention to an address stated in the
26 Notice. (*Id.* §§ 11.1-11.5; Ex. G.) The draft Notice also explains the process by
27 which Class members can object to the Settlement Agreement and informs them that

1 they are permitted to attend the Fairness Hearing, either with or without counsel. (*Id.*
2 § 11.6; Ex. G.) The claims period will be nine months, measured from the date the
3 Notice is mailed, and Defendants will also request that dealers apprise customers
4 who are members of the Class of the availability of settlement relief, including by
5 distributing flyers to Class members receiving vehicle service. (*Id.* §§ 4, 6.2, Ex. D.)

6 In addition, the proposed Settlement requires Defendants to establish and
7 maintain a website dedicated to the Settlement, which will enable Class members to
8 access and download the Class Notice, find answers to frequently asked questions,
9 and obtain other relevant information about the Settlement. (*Id.* §§ 11.2, 11.3.) The
10 proposed Settlement further requires Defendants to establish and maintain a toll-free
11 customer service number that Class members may call for further information about
12 the Settlement and how to obtain settlement benefits. (*Id.* §§ 11.2, 11.4.) The draft
13 Notice includes the toll-free phone number. (*Id.* at Ex. G.)

14 The proposed Settlement also provides that HMA and KMA shall pay
15 Plaintiffs' reasonable attorneys' fees in an amount to be separately negotiated and
16 approved by the Court. (*Id.* § 12.1.) Beyond that agreement, the parties did not
17 discuss attorneys' fees prior to or in connection with the execution of the Settlement
18 Agreement or the confirmatory discovery process. (*Id.* §§ 12.2, 12.4.)

19 **II. ARGUMENT**

20 **A. The Court Should Preliminarily Approve The Proposed Settlement.**

21 Federal Rule of Civil Procedure 23(e), requires judicial approval for any
22 settlement agreement that will bind absent class members. *See* Fed. R. Civ. P. 23(e);
23 *see also Briggs v. United States*, No. C 07-05760 WHA, 2010 WL 1759457, at *3
24 (N.D. Cal. Apr. 30, 2010). The Court must take three steps in considering approval
25 of the proposed Settlement: (1) the Court must preliminarily approve the proposed
26 Settlement; (2) members of the Class must be given notice of it; and (3) a final
27 hearing must be held, after which the Court must decide whether the tentative

1 Settlement is fair, reasonable, and adequate. See MANUAL FOR COMPLEX LITIGATION
2 (FOURTH) § 21.632, at 320-21 (4th ed. 2004) (“MANUAL (FOURTH)”). The decision
3 to approve a proposed class-action settlement is within the sound discretion of the
4 district court judge “because he is exposed to the litigants, and their strategies,
5 positions, and proof.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir.
6 2000). See also *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.
7 1992); accord *Bruno v. Quten Research Inst., LLC*, No. SACV 11–00173 DOC (Ex),
8 2013 WL 990495, at *1 (C.D. Cal. Mar. 13, 2013).

9 The sole inquiry at the preliminary-approval stage is “whether a proposed
10 settlement is fundamentally fair, adequate, and reasonable,” recognizing that “[i]t is
11 the settlement taken as a whole, rather than the individual component parts, that must
12 be examined for overall fairness.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir.
13 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). But
14 the ultimate question of fairness, reasonableness, and adequacy is answered at the
15 final-approval stage, after notice of the settlement has been given to class members
16 and they have had an opportunity to comment on the settlement. See 5 JAMES WM.
17 MOORE, MOORE’S FEDERAL PRACTICE § 23.83(1), at 23-336.2 to 23-339 (3d ed.
18 2002). Preliminary approval is merely the prerequisite to providing notice to the
19 class so that all class members are “afforded a full and fair opportunity to consider
20 the proposed [settlement] and develop a response.” *Williams v. Vukovich*, 720 F.2d
21 909, 921 (6th Cir. 1983). See also *Misra v. Decision One Mortgage Co.*, No. SA
22 CV 07-0994 DOC (RCx), 2009 WL 4581276, at *3, 9 (C.D. Cal. Apr. 13, 2009)
23 (“To determine whether preliminary approval is appropriate, the settlement need
24 only be *potentially* fair, as the Court will make a final determination of its adequacy
25 at the hearing on Final Approval, after such time as any party has had a chance to
26 object and/or opt out.”) (Emphasis in original; citation omitted.)

1 Courts have consistently noted that the standard for preliminary approval is
2 *less rigorous* than the analysis at final approval. Preliminary approval is appropriate
3 as long as the proposed settlement falls “within the range of possible judicial
4 approval.” A. CONTE & H.B. NEWBERG, NEWBERG ON CLASS ACTIONS § 11:25 (4th
5 ed. 2002) (“NEWBERG”) (*citing* MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.41
6 (3rd ed. 1995) (“MANUAL (THIRD)”)); MANUAL (FOURTH) § 21.632, at 321. Courts
7 employ a “threshold of plausibility” standard intended to identify conspicuous
8 defects. *Kakani v. Oracle Corp.*, No. C 06-06493 WHA, 2007 WL 1793774, at *6
9 (N.D. Cal. June 19, 2007). Unless the Court’s initial examination “disclose[s]
10 grounds to doubt its fairness or other obvious deficiencies,” the Court should order
11 that notice of a formal fairness hearing be given to settlement Class members under
12 Rule 23(e). *West v. Circle K Stores, Inc.*, No. CIV. S-04-0438 WBS GGH, 2006 WL
13 1652598, at *11 (E.D. Cal. June 13, 2006) (citation omitted); MANUAL (FOURTH)
14 § 21.632, at 321-22.

15 **1. The proposed Settlement is sufficiently fair, reasonable, and**
16 **adequate for preliminary approval.**

17 To determine whether a proposed settlement is fair, adequate, and reasonable,
18 a district court must ultimately consider several factors, including: (i) the strength of
19 the plaintiffs’ case; (ii) the risk, expense, complexity, and likely duration of further
20 litigation; (iii) the risk of maintaining class-action status throughout the trial; (iv) the
21 amount offered in settlement; (v) the extent of discovery completed and the stage of
22 the proceedings; (vi) the experience and views of counsel; (vii) the presence of a
23 governmental participant;¹⁵ and (viii) the reaction of the class members to the
24 proposed settlement. *Staton*, 327 F.3d at 959 (internal citation and quotation marks
25 omitted). The proposed Settlement is fair, adequate, and reasonable after analysis of
26 each of these factors.

27 ¹⁵ This factor does not apply at the preliminary-approval stage.

1 **i. The Strength of Plaintiffs’ Case and the Risk, Expense,**
2 **Complexity, and Likely Duration of Further Litigation**

3 The heart of Plaintiffs’ claims is that Defendants adopted, promulgated,
4 represented, and benefited from inaccurate fuel-efficiency ratings, which were
5 caused by Defendants’ process changes and flaws for coastdown tests outlined and
6 specified in federal law. Fuel-efficiency ratings exist to establish realistic—and
7 more importantly, identically calculated—estimates that consumers can use for
8 comparison of fuel efficiency between manufacturers when purchasing a new
9 vehicle. Uniformity of the testing process across the entire industry is critical;
10 otherwise, the EPA MPG estimates would be useless for their intended purpose.
11 Plaintiffs each purchased or leased a car whose EPA fuel-economy ratings and
12 advertised fuel-efficiency numbers were inaccurate and higher than they would have
13 been if the EPA’s standardized test procedures had been followed.

14 Plaintiffs conducted settlement negotiations assuming a solid probability that
15 they could prove deceptive conduct on the part of the Defendants. Defendants’
16 overstatements significantly increased the fuel-efficiency ratings for numerous
17 vehicles, and the overstatements propelled many of those vehicles to class-leading
18 market positions. Some models showed such remarkable gains in fuel efficiency
19 ratings as to raise serious questions as to their legitimacy. For example, the 2012 Kia
20 Soul’s highway fuel economy rating was overstated by as much as 6 MPG,
21 representing a 4 MPG gain over the previous model-year. (Carey Decl. at Ex. R
22 KMAST0016056; Carey Decl. at Ex. T KMAST0026780; Carey Decl. at Ex. V
23 KMAST0030693.) The 2012 Kia Rio’s highway fuel economy rating was similarly
24 overstated by 4 MPG, topping the 2011 model-year MPG by the same amount.
25 (Carey Decl. at Ex. R KMAST0016056, Carey Decl. at Ex. U KMAST0027444.)
26 Progress in fuel efficiency is generally incremental, resting upon the optimization of
27 traditional car components. Dramatic increases are extremely unusual absent a

1 radical technological breakthrough. Plaintiffs contend that Defendants very likely
2 noticed and chose to ignore such aberrational differences in their existing product
3 line.

4 These circumstances prompted Plaintiffs to undertake a detailed investigation
5 into Defendants' testing and marketing decisions. A scheme to achieve top-of-class
6 status would confer additional marketing advantages, as would a scheme to propel
7 numerous vehicles (including Optima, Sonata, Accent, Elantra, Veloster, and Rio
8 models) above the 40 MPG fuel economy milestone. (Carey Decl. at Ex. R
9 KMAST0016055-16056.) These benefits and profits would not be accounted for in a
10 damages model limited to the value of the extra fuel to be purchased by class
11 members. Hence, Plaintiffs have negotiated a settlement which will compensate
12 class members beyond the pay-as-you-go Reimbursement Program that Defendants
13 offered.

14 At the same time, changes in fuel efficiency alone do not appear to have
15 determined consumer preferences. Vehicles affected by the November 2012
16 announcement enjoyed a strong sales record in the months following the
17 announcement and generally sold better than cars not included in the announcement.
18 This was the case even though Defendants acted to review their marketing materials
19 and correct misstatements regarding fuel economy. While Defendants deny that the
20 overstatement materially affected consumer preferences and have characterized the
21 overstatement as the result of unintentional testing mistakes, Plaintiffs assessed the
22 value of the settlement understanding that Defendants faced potential exposure to
23 punitive damages for knowing concealment.

24 Plaintiffs and their counsel believe their claims are meritorious, but
25 Defendants have raised and would continue to raise challenges to the legal and
26 factual basis for such claims. For example, Defendants would be expected to
27 challenge the materiality of changes in fuel economy ratings, as well as consumers'

1 right to expect vehicles to achieve a given level of fuel economy under varying use
2 conditions. Defendants have argued that Plaintiffs' claims are federally preempted
3 and would be expected to continue to defend on that basis as well. Defendants also
4 might argue that the 2010 changes in the precise coastdown testing procedures were
5 consistent with the EPA-mandated testing protocol (SAE J2263), and that the
6 tabulation mistake concerning certain vehicles was unintentional. Although the
7 parties differ as to the likelihood of Plaintiffs ultimately prevailing at trial and on
8 appeal, it is apparent that both sides bear some risk in proceeding to litigate the case.

9 Through its Reimbursement Program, Defendants have addressed some of the
10 issues involved in this litigation, and Defendants contend they made sufficient
11 disclosures about the flawed EPA testing and the resulting inaccuracy of the fuel-
12 efficiency ratings. Plaintiffs contend, however, that the Reimbursement Program is
13 insufficient because it does not account for the time value of money and it places
14 Class members in the inappropriate and inconvenient position of bearing the burden
15 of proving their losses on an annual basis. The proposed Settlement strikes a balance
16 between the parties' positions on the scope and substance of the Reimbursement
17 Program by adding benefits not found in the Reimbursement Program, such as a
18 lump-sum payment, a dealer service credit, and a new car rebate certificate. The
19 proposed settlement also provides additional monetary relief to the owners and
20 lessees of the Hyundai Elantra, Accent, Veloster and Sonata Hybrid above the
21 reimbursement program, as those models were the subject of a targeted MPG
22 advertising campaign. The proposed Settlement thus provides immediate certainty
23 and valuable benefits to the Class members, rather than forcing them to wait years
24 for all litigation and appeals to be fully resolved at the risk of recovering nothing.

25 If this case is not settled, it would be necessary to continue, as Defendants
26 have done since the inception of this lawsuit, to raise objections to the legal and
27 factual basis for expanding Defendants' liability beyond the relief set forth in the

1 Reimbursement Program. Such an inquiry would necessarily involve an enormous
2 amount of discovery, including expert testimony regarding the coastdown testing
3 protocol, as well as the scope of Defendants’ alleged knowledge of the changes to
4 the coastdown testing protocol. The proposed Settlement, on the other hand,
5 balances these costs, risks, and potential for delay against the benefits of settlement,
6 achieving a settlement that is fair and desirable to the Class. *See* NEWBERG § 11:50
7 (“In most situations, unless the settlement is clearly inadequate, its acceptance and
8 approval are preferable to lengthy and expensive litigation with uncertain results.”);
9 *accord Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,
10 526 (C.D. Cal. 2004).

11 This factor weighs in favor of preliminary approval of the Settlement because,
12 though Plaintiffs’ case is strong, continued litigation will be long, expensive, and
13 complex, and will necessarily present a risk that Plaintiffs may not prevail.

14 **ii. The Risk Of Maintaining Class-Action Status**
15 **Throughout The Trial.**

16 A litigation class has not been certified in this MDL. Additionally, there is a
17 group of plaintiffs who do not support the proposed Settlement, and this could cause
18 issues with maintaining class-action status. Furthermore, there are several recent
19 decisions denying class certification in vehicle cases involving similar class-
20 certification issues, which demonstrates that there is a high degree of risk that class-
21 action status could not be maintained throughout litigation. *See, e.g., Marcus v.*
22 *BMW of N. Am., LLC*, 687 F.3d 583 (3d Cir. 2012); *Daigle v. Ford Motor Co.*, No.
23 09-3214 (MJD/LIB), 2012 WL 3113854 (D. Minn. July 31, 2012); *Corder v. Ford*
24 *Motor Co.*, 283 F.R.D. 337 (W.D. Ky. 2012); *Edwards v. Ford Motor Co.*, No. 11-
25 CV-1058-MMA(BLM), 2012 WL 2866424 (S.D. Cal. June 12, 2012); *Cholakyan v.*
26 *Mercedes-Benz, USA, LLC*, 281 F.R.D. 534 (C.D. Cal. 2012); *In re Ford Motor Co.*
27 *E-350 Van Products Liab. Litig.*, MDL No. 1687, 2012 WL 379944 (D.N.J. Feb. 6,

1 2012); *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581 (9th Cir. 2012); *Am.*
2 *Honda Motor Co. v. Superior Court*, 199 Cal. App. 4th 1367 (Cal. App. 2d Dist.
3 2011); *Lloyd v. Gen. Motors Corp.*, 275 F.R.D. 224 (D. Md. 2011), 266 F.R.D. 98
4 (D. Md. 2010); *Oscar v. BMW of N. Am., LLC*, 274 F.R.D. 498 (S.D.N.Y. 2011), No.
5 09 Civ. 11(PAE), 2012 WL 2359964 (S.D.N.Y. June 19, 2012).

6 **iii. The Amount or Type of Relief Offered in Settlement.**

7 The proposed Settlement has high value and provides substantial economic
8 and non-monetary benefits to the Class in comparison to what Plaintiffs and the
9 Class could achieve through a successful trial. Plaintiffs have steadfastly sought
10 reimbursement for economic damages as a lump-sum payment, and as a result, the
11 Class will receive significant cash payments via debit cards. (Exhibits B and C;
12 Settlement Agreement § 3.2.1.) The cash value of the debit cards exceeds the
13 estimated present value of the “pay-as-you-go” Reimbursement Program for a
14 significant proportion of vehicle owners, in addition to conferring an advantage of
15 immediate payment without the burden of seeking repeated reimbursement from the
16 deal.¹⁶ The debit card also protects the current owner from potential loss associated
17 with selling a vehicle before the Reimbursement Program benefit can be obtained.

18 Alternatively, Class members can elect a dealer service credit at 150% of the
19 cash value to which they would otherwise be entitled pursuant to the lump-sum-
20 payment calculation, or a new car rebate certificate at 200% of the cash value to
21 which they would otherwise be entitled pursuant to the lump-sum-payment
22 calculation. (Settlement Agreement §§ 3.2.2., 3.2.3.) While Courts often question
23 the true value of coupon/credit awards in class settlements, here, the consumer’s
24

25 ¹⁶ The parties continue to gather data relating to ongoing Reimbursement Program
26 participation rates. Upon consideration of this and additional background data
27 relating to Reimbursement Program benefits, Plaintiffs intend to present additional
28 details reflecting the relative benefits of the proposed settlement against the
Reimbursement Program at the final fairness hearing stage.

1 ability to choose his/her remedy makes this option very valuable. Consumers who
2 can and will actually use the 150%-200% credits will elect to do so and get a bonus,
3 but those who do not will still get 100% of their damages as cash. Additionally,
4 those Class members who wish to stay in the current “pay-as-you-go”
5 Reimbursement Program are free to do so. (*Id.* § 3.1.8.)

6 There are also non-monetary benefits provided to the Class by the proposed
7 Settlement. Defendants will request that Hyundai and Kia dealers apprise customers
8 who are members of the Class of the availability of settlement relief, including by
9 distributing flyers to Class members receiving vehicle service. (*Id.* § 6.2.) This
10 heightened level of disclosure is attributable to the filing of this litigation, and it is
11 considered a non-monetary benefit. *See Finkel v. Am. Oil & Gas, Inc.*, 10-cv-01808-
12 CMA-MEH, 2012 WL 171038, at *2 (D. Colo. Jan. 20, 2012) (*citing Merola v. Atl.*
13 *Richfield Co.*, 515 F.2d 165, 169-70 (3d Cir. 1975), and *Tandycrafts, Inc. v. Initio*
14 *Partners*, 562 A.2d 1162, 1165 (Del. 1989)).

15 It is likely that a successful result at trial would not garner a better result than
16 that achieved by the proposed Settlement. But even if it did, “[i]t is well-settled law
17 that a cash settlement amounting to only a fraction of the potential recovery will not
18 *per se* render the settlement inadequate or unfair.” *Officers for Justice v. Civil Serv.*
19 *Comm’n of City & Cnty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) (*citing*
20 *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173-74 (4th Cir. 1975)). In light of the
21 uncertainties of trial, the value of the Settlement plainly meets (and exceeds) the
22 adequacy standard and renders this factor supportive of the proposed Settlement.

23 **iv. The Extent Of Discovery Completed And The Stage Of**
24 **The Proceedings.**

25 If the parties have sufficient information sharing and cooperation in providing
26 access to necessary data, the settlement may be deemed fair, reasonable, and
27 adequate. *Misra*, 2009 WL 4581276, at *8 (*citing Mego*, 213 F.3d at 459). It is

1 well-established that parties can acquire sufficient information in the absence of
2 formal discovery and based on only informal means of acquiring information. *See*
3 *Clesceri v. Beach City Investigations & Protective Servs.*, No. CV-10-3873-JST
4 (RZx), 2011 WL 320998, at *9 (C.D. Cal. Jan. 27, 2011) (“In the context of class
5 action settlements, formal discovery is not a necessary ticket to the bargaining table
6 where the parties have sufficient information to make an informed decision about
7 settlement.” (quoting *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th
8 Cir. 1998))).

9 Here, by the time settlement negotiations began, the *Espinosa* action had been
10 actively litigated for more than a year. The *Espinosa* Plaintiffs had filed two
11 amended complaints, this Court had made a substantive ruling in response to HMA’s
12 motion to dismiss; the parties had conducted extensive pre-trial discovery including
13 the review of approximately 30,000 documents; Plaintiff and expert depositions had
14 occurred; and the parties had fully briefed and argued a motion for class certification.
15 Furthermore, to evaluate the economic-loss portion of the Class members’ claims in
16 the MDL and establish the elements of damage, the Settling Plaintiffs only needed to
17 know fuel costs by region, the Class members’ actual mileage or their mileage in the
18 aggregate, the Class Vehicles’ fuel-economy ratings, and the ownership periods of
19 the Class Vehicles (with adjustments for fleet and leased vehicles). The Settling
20 Plaintiffs had all of this information prior to negotiating the Settlement. Most of the
21 necessary information is publicly available from NHTSA and the Department of
22 Transportation, and any missing information was supplied by the documents
23 provided by HMA and KMA. This makes it very easy to figure out what the Class
24 members’ damages are in advance, and discovery was not needed to calculate the
25 damages—certainly not in the aggregate and likely not individually—because the
26 Class members will provide the requisite information. The value of the Settlement
27 comes from the lump-sum payment to Class members and increased participation by
28

1 Class members through various methods of notification, including the Class Notice
2 as well as notice from individual Hyundai and Kia dealers regarding the Settlement.

3 Thus, while this case settled relatively early in the proceedings, the parties
4 have conducted extensive formal and informal discovery: Defendants have produced
5 hundreds of thousands of documents and data pursuant to written requests from
6 Plaintiffs, giving the parties access to a substantial amount of detailed information
7 concerning the nature and scope of the flawed testing, including the number of
8 affected vehicles and the number and content of consumer complaints. Disputes on
9 written discovery were resolved by negotiation and motion practice. Documents
10 produced included materials previously requested by the EPA and various state
11 attorneys general in the course of their investigations. Plaintiffs took eleven
12 interviews of key personnel from HMA, KMA, and HKMC—including the most
13 senior executives of each American subsidiary, senior engineers at the South Korean
14 parent companies, and an engineer responsible for testing mistakes which led to the
15 overstatement. Plaintiffs travelled to South Korea to inspect the testing ground, tour
16 the R&D facility, and interview the engineers and managers involved in coastdown
17 testing.

18 Representatives of non-settling plaintiffs participated in document and in-
19 person discovery efforts. Plaintiffs reserved the right to re-negotiate or rescind the
20 settlement if discovery showed that Defendants' conduct was substantially or
21 materially different than represented and anticipated. For this same reason, Plaintiffs
22 have not negotiated or requested a settlement regarding their claim for attorney's
23 fees, and attorney's fees will not be addressed until discovery is complete.

24 The fruits of this discovery have enabled the parties to assess the merits of
25 their case and arrive at a fair, reasonable, and adequate resolution. Documents and
26 interviews illustrate the issues and problems in HKMC's testing procedures which
27 led to the overstatements. Both parties are confident that they have identified the

1 specific process changes and process mistakes at the heart of the dispute. Plaintiffs
2 have diligently evaluated and examined the sequence of events giving rise to their
3 claims, as well as Defendants’ position regarding the interpretation and application
4 of EPA regulations. While facts will always be subject to interpretation, discovery to
5 date has enabled the parties to understand in great detail the objective sequence of
6 events that would form the basis for the adjudication of this lawsuit. Discovery to
7 date therefore provides sufficient background and information necessary to evaluate
8 the fairness, adequacy, and reasonableness of the proposed Settlement. *See Misra*,
9 2009 WL 4581276, at *8; *see also Clesceri*, 2011 WL 320998, at *9, 12
10 (preliminarily approving the settlement where the parties conducted significant
11 informal discovery, and the plaintiff reviewed hundreds of pages of documents and
12 conducted numerous informal interviews regarding the background of the case)
13 (internal quotation marks omitted).

14 Throughout their “investigation, discovery and research,” Plaintiffs’ counsel
15 “presented the court [and the non-settling plaintiffs] with documentation supporting”
16 the proposed Settlement. *See Mego*, 213 F.3d at 459. Therefore, Plaintiffs believe
17 they have reviewed the necessary data to make an informed decision about the
18 benefits of the proposed Settlement, and the Court should find that sufficient
19 discovery took place.

20 **v. The Experience And Views Of Counsel.**

21 Counsel for Plaintiffs and Defendants support the approval of the
22 Settlement—a fact that confers a presumption of validity on the proposed Settlement.
23 *See Hughes v. Microsoft Corp.*, Nos. C98–1646C, 2001 WL 34089697, at *7 (W.D.
24 Wash. Mar. 26, 2001). “Great weight” is accorded to the recommendation of
25 counsel, who are most closely acquainted with the facts of the underlying litigation.
26 *DIRECTV*, 221 F.R.D. at 528. *See also Clesceri*, 2011 WL 320998, at *10 (“Courts
27 give weight to counsels’ opinions regarding the fairness of a settlement, when it is

1 negotiated by experienced counsel.”); *In re Wash. Pub. Power Supply Sys. Sec.*
2 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989), *aff’d sub nom. Class Plaintiffs v.*
3 *City of Seattle*, 955 F.2d 1268 (9th Cir. 1992) (“Counsels’ opinions warrant great
4 weight both because of their considerable familiarity with this litigation and because
5 of their extensive experience in similar actions.”). This is because “[p]arties
6 represented by competent counsel are better positioned than courts to produce a
7 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac.*
8 *Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Therefore, “the trial judge,
9 absent fraud, collusion, or the like, should be hesitant to substitute its own judgment
10 for that of counsel.” *DIRECTV*, 221 F.R.D. at 528 (*quoting Cotton v. Hinton*, 559
11 F.2d 1326, 1330 (5th Cir. 1977)).

12 In this case, counsel for Plaintiffs and Defendants support approval of the
13 proposed Settlement. Counsel for the Hunter and Brady Plaintiffs has set forth the
14 basis for its recommendation in the Carey Declaration, attached hereto as Exhibit 2,
15 and counsel for the Espinosa Plaintiffs has set forth the basis for its recommendation
16 in the Declaration of Richard D. McCune, attached hereto as Exhibit 3. Therefore,
17 this factor weighs heavily in favor of preliminarily approving the terms of the
18 proposed Settlement.

19 **vi. The Reaction Of The Class Members To The Proposed**
20 **Settlement.**

21 At the preliminary-approval stage, the reaction of class members to the
22 proposed settlement is usually not known because notice has not yet been sent to the
23 class. As such, this factor is not as meaningful a consideration now as it may be at
24 the final fairness hearing where Class members will have an opportunity to object to
25 the proposed settlement. The parties will provide further evidence of the reaction of
26 the Class members before the Settlement fairness hearing.

1 Importantly, in a complex class-action litigation such as this, granting
2 preliminary approval and directing notice to class members where the class has not
3 been certified prior to settlement may actually enhance class members' opt-out
4 rights. *See In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 205-06
5 (S.D.N.Y. 1995). The court explained that "because the right to exclusion [from the
6 class] is provided simultaneously with the opportunity to accept or reject the terms of
7 a proposed settlement," class members have a more concrete basis upon which to
8 decide what they will sacrifice by opting out. *Id.*; *see also In re Baldwin-United*
9 *Corp.*, 105 F.R.D. 475, 481 (S.D.N.Y. 1984). The putative Class members in this
10 case will likewise benefit from the simultaneous class certification¹⁷ and Notice of
11 proposed Settlement, militating in favor of preliminary approval.

12 **2. The Proposed Settlement Is The Result Of Extensive, Arm's-**
13 **Length Negotiations Conducted By Highly Experienced**
14 **Counsel.**

15 In addition to the factors discussed above, the Court must also be satisfied that
16 "the settlement is not the product of collusion among the negotiating parties" when,
17 as here, the "settlement agreement is negotiated prior to formal class certification."
18 *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).
19 *See also Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 301-02 (E.D. Cal.
20 2011) ("Preliminary approval of a settlement and notice to the proposed class is
21 appropriate: '[i]f [1] the proposed settlement appears to be the product of serious,
22 informed, noncollusive negotiations, [2] has no obvious deficiencies, [3] does not
23 improperly grant preferential treatment to class representatives or segments of the
24 class, and [4] falls with the range of possible approval . . .'" (*quoting In re*
25 *Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007) (adding
26 numbers))).

26 ¹⁷ Plaintiffs have filed concomitantly with this joint motion a motion for class
27 certification.

1 The factors considered here include whether the settlement was the product of
2 arm’s-length negotiations between experienced, capable counsel;¹⁸ the end result
3 achieved;¹⁹ and whether counsel are to receive a disproportionate distribution of the
4 settlement under a “clear sailing” arrangement providing for the payment of
5 attorneys’ fees separate and apart from class funds where fees not awarded revert to
6 the defendants rather than to the class.²⁰

7 Here, the proposed Settlement is the product of extensive, months-long
8 negotiations conducted at arm’s-length among well-informed, sophisticated counsel,
9 over multiple sessions with the assistance of the Honorable Stephen J. Sundvold
10 (Ret.). (Carey Decl. ¶¶ 9-10) Plaintiffs’ counsel met with Hyundai representatives
11 in person to discuss claims and settlement possibilities on November 14, 2012, and
12 December 14, 2012. (*Id.* at ¶ 10) Two mediation sessions followed with Hyundai
13 on January 16, 2013 and February 12, 2013, and a third occurred that also included
14 claims against Kia on March 21, 2013. (*Id.* at ¶ 10.) Negotiators for both sides

15 ¹⁸ See NEWBERG § 11:41 (a proposed settlement is entitled to “an initial
16 presumption of fairness” when the settlement has been “negotiated at arm’s length
17 by counsel for the class”); *Hughes*, 2001 WL 34089697, at *7 (“A presumption of
18 correctness is said to attach to a class settlement reached in arms-length negotiations
19 between experienced capable counsel after meaningful discovery.” (*quoting*
20 MANUAL (THIRD) § 30.42)); *City P’ship Co. v. Atl. Acquisition Ltd. P’ship*, 100 F.3d
21 1041, 1043 (1st Cir. 1996) (“When sufficient discovery has been provided and the
22 parties have bargained at arms-length, there is a presumption in favor of the
23 settlement.”); *Flinn*, 528 F.2d at 1173 (“While the opinion and recommendation of
24 experienced counsel is not to be blindly followed by the trial court, such opinion
25 should be given weight in evaluating the proposed settlement.”).

26 ¹⁹ See *Mars Steel Corp. v. Cont’l Illinois Nat. Bank & Trust Co. of Chicago*, 834
27 F.2d 677, 684 (7th Cir. 1987) (“Rather than attempt to prescribe the modalities of
28 negotiation, the district judge permissibly focused on the end result of the negotiation
... The proof of the pudding was indeed in the eating.”); *In re Agent Orange Prod.
Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff’d*, 818 F.2d 145 (2d Cir.
1987) (“The most important consideration is the strength of plaintiffs’ case on the
merits weighed against the amount offered in settlement.”) (*citing* 7A C. WRIGHT &
A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1797 (1972)).

²⁰ See *In re Bluetooth*, 654 F.3d at 947-49.

1 were in frequent contact by phone and email during this time to discuss substantive
2 settlement issues and ongoing discovery efforts. (*Id.* at ¶ 10.)

3 The negotiations involved the evaluation of the documents received and of the
4 information garnered from interviews taken during the settlement-discovery phase.
5 (*Id.* at ¶ 10.) The parties demonstrated that they were fully prepared to litigate this
6 case through final judgment; in fact, the Espinosa Plaintiffs have engaged a full
7 round of briefing on the merits of motions to dismiss and have briefed their motion
8 for class certification. (*Id.* at ¶ 10; Dkt. 6 at Ex. 2.) Plaintiffs’ counsel have
9 represented consumers in a number of significant class actions against Hyundai and
10 Kia. Two of these actions are presently ongoing, while Plaintiffs’ counsel negotiated
11 successful, court-approved settlements in others.²¹ In short the litigation has been
12 contested since its inception and settlement negotiations were similarly adversarial.

13 Although Defendants have agreed to separately pay an award of attorneys’
14 fees and costs, the fees-and-costs negotiations were purposefully delayed by the
15 parties until *after* the parties concluded settlement negotiations, and after the
16 confirmatory discovery process. (*See* Settlement Agreement § 12; Carey Decl. ¶ 12;
17 McCune Decl. ¶ 22.) Such practice is seen as generally preferable because the
18 simultaneous negotiation of class relief and attorneys’ fees creates a potential
19 conflict of interest. *See* MANUAL (FOURTH) § 21.7 (“Separate negotiation of the class
20 settlement before an agreement on fees is generally preferable.”); *see also In re*
21 *Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 334-35
22 (3d Cir. 1998) (affirming final approval of class settlement and fee award where
23

24 ²¹ *See Irwin v. Hyundai Motor Am., Inc.*, Case No. CV2003-020169 (Maricopa
25 County Super. Ct.) (settlement); *Kearney v. Hyundai Motor Co.*, Case No. 09-CV-
26 1298 (C.D. Cal.) (settlement); *Cirulli v. Hyundai Motor Co.*, Case No. 08-CV-0854
27 (C.D. Cal.) (settlement); *Anderson v. Hyundai Motor Co.*, Case No. 13-CV-1842
(C.D. Cal.) (pending); *Sims v. Kia Motors Am., et al.*, Case No. 13-CV-1791 (C.D.
28 Cal.) (pending).

1 “[t]here [was] no indication the parties began to negotiate attorneys’ fees until after
2 they had finished negotiating the settlement agreement.”).

3 Since attorneys’ fees and costs will be determined separately and apart from
4 the negotiations that have led to the proposed Settlement and after the confirmatory
5 discovery process, and since any fees and costs not awarded to Plaintiffs’ counsel
6 will not revert to Defendants, there is no risk of collusion or impropriety.

7 For all of these reasons, the Court should preliminarily approve the proposed
8 Settlement.

9 **B. The Proposed Notice Is Adequate And Should Be Approved.**

10 Reasonable notice must be provided to Class members to allow them an
11 opportunity to object to the proposed Settlement. *See Durrett v. Hous. Auth. of City*
12 *of Providence*, 896 F.2d 600, 604 (1st Cir. 1990); *see also* FED. R. CIV. P.
13 23(c)(2)(b), 23(e)(1). Rule 23(e)(1) requires that the Court direct notice of the
14 proposed Settlement “in a reasonable manner.” In a settlement class maintained
15 under Rule 23(b)(3), as here, notice must meet the requirements of both Rule
16 23(c)(2) and Rule 23(e), but since “[t]he requirements of Rule 23(c)(2) are stricter
17 than the requirements of Rule 23(e) and arguably stricter than the due process
18 clause,” the plan for dissemination of notice need only satisfy Rule 23(c)(2).
19 *Carlough v. Amchem Prods., Inc.*, 158 F.R.D. 314, 324-25 (E.D. Pa. 1993). Under
20 Rule 23(c)(2)(B), notice to the Class must be “the best notice that is practicable
21 under the circumstances, including individual notice to all members who can be
22 identified through reasonable effort,”²² although actual notice is not required.²³

23 To satisfy Rule 23(c)(2), Rule 23(e), due process, and bind all members of the
24 Class, the Notice must:

- 25 1. Describe the essential terms of the proposed settlement;

26 ²² *See also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997).

27 ²³ *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994).

- 1 2. Disclose any special benefits provided to the class representatives;
- 2 3. Provide information regarding attorneys' fees;
- 3 4. Indicate the time and place of the hearing to consider approval of the
4 settlement, and the method for objecting to (or, if permitted, for opting
5 out of) the settlement;
- 6 5. Explain the procedures for allocating and distributing settlement funds,
7 and, if the settlement provides different kinds of relief for different
8 categories of class members, clearly set out those variations; and
- 9 6. Prominently display the address and phone number of class counsel and
10 the procedure for making inquiries.

11 MANUAL (THIRD) § 30.212. *See also Churchill Vill., LLC v. General Elec.*, 361 F.3d
12 566, 575 (9th Cir. 2004) (“Notice is satisfactory if it ‘generally describes the terms of
13 the settlement in sufficient detail to alert those with adverse viewpoints to investigate
14 and to come forward and be heard.’” (*quoting Mendoza v. Tucson Sch. Dist. No. 1*,
15 623 F.2d 1338, 1352 (9th Cir.1980))).

16 Here, the form of Notice proposed is clear, precise, informative, and complies
17 with the foregoing standards. (*See Settlement Agreement § 11 and Ex. G.*) Plaintiffs
18 propose to disseminate the Notice by mailing it via first-class mail to every Class
19 member whose current address is reasonably ascertainable from an available R.L.
20 Polk & Company database. (*Id.* § 11.1.) Such a process satisfies the requirements of
21 due process. *See Sullivan v. Am. Express Publ’g Corp.*, No. SACV 09-142-JST
22 (ANx), 2011 WL 2600702, at *8 (C.D. Cal. June 30, 2011) (“Notice by mail has
23 been found by the Supreme Court to be sufficient if the notice is ‘reasonably
24 calculated . . . to apprise interested parties of the pendency of the action and afford
25 them an opportunity to present their objections.’” (*quoting Mullane v. Cent. Hanover*
26 *Bank & Trust Co.*, 339 U.S. 306, 314 (1950))). Furthermore, the proposed Notice
27 builds upon the illustrative form suggested by the Federal Judicial Center for
28 consumer class settlements and clearly lays out the claims, class eligibility, and a
 member’s legal rights and duties. Federal Judicial Center, Class Action Notices

1 Page, Federal Judicial Center, [http://www.fjc.gov/public/home.nsf/autoframe?](http://www.fjc.gov/public/home.nsf/autoframe?openform&url_l=/public/home.nsf/inavgeneral?openpage&url_r=/public/home.nsf/pages/376)
2 [openform&url_l=/public/home.nsf/inavgeneral?openpage&url_r=/public/home.nsf/p](http://www.fjc.gov/public/home.nsf/autoframe?openform&url_l=/public/home.nsf/inavgeneral?openpage&url_r=/public/home.nsf/pages/376)
3 [ages/376](http://www.fjc.gov/public/home.nsf/autoframe?openform&url_l=/public/home.nsf/inavgeneral?openpage&url_r=/public/home.nsf/pages/376) (last visited December 23, 2013).

4 The proposed Notice will, therefore, fairly and accurately inform the Class
5 members of the terms of the proposed settlement and provide sufficient opportunity
6 for them to make informed decisions regarding their rights. Accordingly, the Court
7 should approve the proposed Notice and direct its dissemination.

8 **III. CONCLUSION**

9 For the foregoing reasons, Plaintiffs request that the Court (1) grant
10 preliminary approval to the parties' Settlement Agreement, and (2) approve and
11 order the proposed form and method of notice.

12
13 DATED: December 23, 2013

HAGENS BERMAN SOBOL SHAPIRO LLP

By /s/Robert B. Carey

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DATED: December 23, 2013

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Baldeschi*

CERTIFICATE OF SERVICE

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I, Robert B. Carey, hereby certify that on December 23, 2013, a true and correct copy of the foregoing Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Settlement and Order Directing Notice To Class was filed electronically with the Clerk of Courts at my direction using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Robert B. Carey

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of this 23rd day of December, 2013, by and between (1) Named Plaintiffs Nicole Marie Hunter, Kaylene Brady, Travis Brissey, Ronald Burkard, Adam Cloutier, Steven Craig, John Dixson, Erin Fanthorpe, Thomas Ganim, Eric Hadesh, Michael Keeth, Lillian E. Levoff, John Kirk MacDonald, Michael Mandahl, Nicholas McDaniel, Mary Moran-Spicuzza, Gary Pincas, Brandon Potter, Thomas Purdy, Rocco Renghini, Michelle Singleton, Ken Smiley, Gregory M. Sonstein, Roman Staro, Gayle Stephenson, Andres Villicana, and Richard Williams (“Named Plaintiffs” or “Class Representatives”), individually and as representatives of a Class defined below, (2) Hyundai Motor America (“HMA”); and Kia Motors America, Inc. (“KMA”) (collectively, the “Parties”).

WHEREAS, on November 2, 2012, HMA and KMA each issued a statement informing the public that they were voluntarily adjusting the fuel economy ratings for certain 2011-2013 model year vehicles. Both HMA and KMA simultaneously announced that each company was instituting a reimbursement program to compensate affected vehicle owners and lessees for the additional fuel costs associated with the adjusted fuel economy ratings.

WHEREAS, on November 2, 2012, Plaintiffs Nicole Marie Hunter, E. Brandon Bowron, and Giuseppina Roberto, individually and on behalf of a putative class of “all persons who currently own or lease a Hyundai or Kia automobile whose EPA fuel economy ratings were less than the fuel economy rating produced by the applicable federal test,” filed a complaint against HMA and KMA in the U.S. District Court for the Central District of California, alleging that, *inter alia*, the prior fuel economy ratings on certain Hyundai and Kia vehicles misstated the vehicles’ fuel economy (the “Hunter Litigation”). The complaint in the Hunter Litigation asserted claims under various laws and alleged that, as a result of the purported misrepresentation, plaintiffs purchased vehicles they would not have otherwise purchased, or paid more for the vehicles than they would have otherwise paid.

WHEREAS, on November 6, 2012, Named Plaintiffs Kaylene Brady, Travis Brissey, Colnett Brubaker, Ronald Burkard, Adam Cloutier, Steven Craig, John Dixson, Erin Fanthorpe, Eric Hadesh, Michael Keeth, John Kirk MacDonald, Michael Mandahl, Nicholas McDaniel, Mary Moran-Spicuzza, Steve Perry, Gary Pincas, Brandon Potter, Thomas Purdy, Rocco Renghini, Michelle Singleton, Ken Smiley, Gregory M. Sonstein, Roman Staro, Gayle Stephenson, Andres Villicana, and Richard Williams individually and on behalf of a putative class of “all persons who currently own or lease a Hyundai or Kia automobile whose EPA fuel economy ratings were less than the fuel economy rating produced by the applicable federal test,” filed a complaint against HMA and KMA in the U.S. District Court for the Central District of California, making allegations and asserting claims similar to the Hunter Litigation (the “Brady Litigation”).

WHEREAS, on January 6, 2012, Kehlief Espinosa filed a class action complaint, which was amended on August 2, 2012, alleging that HMA disseminated false and misleading advertisements regarding fuel economy for a number of Hyundai models, including alleging that the Hyundai Elantra was falsely and misleadingly advertised as achieving 40 mpg, and Named Plaintiffs Lillian Levoff and Thomas Ganim filed a motion for class certification in the Espinosa action on September 14, 2012.

WHEREAS, additional lawsuits were filed asserting similar allegations against HMA and KMA.

WHEREAS, Plaintiffs allege the Reimbursement Program (defined below) to be deficient in several respects, including that the program required owners to request reimbursement several times over the life of the vehicle.

WHEREAS, the Judicial Panel on Multi-District Litigation issued an order, dated February 5, 2013, transferring and centralizing the Hunter Litigation, the Brady Litigation, and other lawsuits in a multi-district litigation (“MDL”) in the U.S. District Court for the Central District of California, which is known as In Re: Hyundai and Kia Fuel Economy Litigation, No.

2:13-ml-02424-GW-FFM (hereinafter the “MDL Litigation,” which shall mean In Re: Hyundai and Kia Fuel Economy Litigation No. 2:13-ml-02424-GW-FFM and all lawsuits transferred to and centralized in such MDL).

WHEREAS, Class Counsel (defined below) and the Class Representatives have conducted an investigation into the facts and the law regarding the MDL Litigation, and have concluded that a settlement with HMA and KMA according to the terms set forth below is in the best interests of plaintiffs and the Settlement Class.

WHEREAS, as part of the confirmatory discovery process overseen by Judge George H. Wu and with input from liaison counsel who was appointed by the Court, HMA, KMA, and Hyundai Motor Company have produced more than 28,000 documents, totaling more than 300,000 pages. HMA, KMA, and Hyundai Motor Company have also made eleven witnesses available for interviews as well as produced the transcript of a deposition taken by the Environmental Protection Agency in its related investigation. As part of the same confirmatory discovery process, settling plaintiffs’ counsel inspected Hyundai Motor Group’s test track facility in Namyang, South Korea. Settling Plaintiffs’ counsel also independently investigated the circumstances surrounding the market for Hyundai and Kia vehicles at the time the alleged errors were made and reviewed discovery materials from the *Espinosa* case. The Parties refrained from seeking Court approval of this settlement until confirmatory discovery was substantially complete.

WHEREAS, despite their denial of any liability or culpability and their belief that they have meritorious defenses to the claims alleged, HMA and KMA nevertheless have decided to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation without admission of liability.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, and intending to be legally bound, it

is agreed by and among the undersigned that the MDL Litigation be settled, compromised, and dismissed with prejudice on the terms and conditions set forth below.

1. Definitions.

1.1. "Agreement" means this Settlement Agreement, including any schedules or exhibits hereto.

1.2. "Class" means all Class Members collectively.

1.3. "Class Counsel" means Hagens Berman Sobol Shapiro LLP and McCuneWright, LLP.

1.4. "Class Member" means any current or former owner or lessee of a Class Vehicle who was the owner or lessee, on or before November 2, 2012, of such Class Vehicle that was registered in the District of Columbia or one of the fifty (50) states of the United States, except that the following are excluded: (i) Rental Fleet Owners (defined below); (ii) government entities, except to the extent that a government entity is the owner or lessee of a Fleet Class Vehicle (in which case such government entity is not excluded from the Class); (iii) judges assigned to the MDL Litigation, including the judge or judges assigned to any lawsuit prior to the transfer of that lawsuit to the MDL Litigation; and (iv) persons who have previously executed a release of HMA or KMA that includes a claim concerning the fuel economy of such Class Vehicle. The parties agree that participation in the existing Reimbursement Program was not intended to and does not, by itself, result in a release of any claims, provided that the Parties also agree that nothing in this Agreement should be interpreted to restrict Defendants' ability to argue that any compensation received pursuant to the Reimbursement Program will reduce any losses that are alleged to be sustained by a claimant.

1.5. "Class Vehicle" means any vehicle identified in Exhibit A.

1.6. "Court" or "District Court" means the United States District Court for the Central District of California.

1.7. “Current Fleet Owner” means a governmental entity, corporation, or Person (i) that purchased, on or before November 2, 2012, one or more Fleet Class Vehicles as new vehicles, provided that neither HMA nor KMA agreed to repurchase such Fleet Class Vehicles at a later date and (ii) that remains the owner of such Fleet Class Vehicles on the date of this Settlement Agreement.

1.8. “Current Lessee” means a Person (i) who leased, on or before November 2, 2012, a Class Vehicle and (ii) who remains the lessee of such Class Vehicle on the date of this Settlement Agreement.

1.9. “Current Non-Original Owner” means a Person (i) who purchased a Class Vehicle, on or before November 2, 2012, that was previously owned or leased by another Person; (ii) who remains the owner of such Class Vehicle on the date of this Settlement Agreement; and (iii) who is not a Fleet Owner of such Class Vehicle.

1.10. “Current Original Owner” means a Person (i) who purchased a Class Vehicle, on or before November 2, 2012, as a new vehicle; (ii) who remains the owner of such Class Vehicle on the date of this Settlement Agreement; and (iii) who is not a Fleet Owner of such Class Vehicle.

1.11. “Effective Date” shall have the meaning given to it in Section 14 below.

1.12. “Fleet Class Vehicle” means a Class Vehicle purchased by a governmental entity, corporation, or Person that negotiated the purchase terms with HMA or KMA (as the case may be), as opposed to one of their authorized dealers, provided that neither HMA nor KMA agreed to repurchase such Fleet Class Vehicles at a later date.

1.13. “Fleet Owner” means a governmental entity, corporation, or Person that purchased one or more Fleet Class Vehicles, on or before November 2, 2012, as new vehicles, provided that neither HMA nor KMA agreed to repurchase such Fleet Class Vehicles at a later date.

1.14. “Former Fleet Owner” means a governmental entity, corporation, or Person (i) that purchased one or more Fleet Class Vehicles, on or before November 2, 2012, as new vehicles, provided that neither HMA nor KMA agreed to repurchase such Fleet Class Vehicles at a later date and (ii) that does not own such Fleet Class Vehicles as of the date of this Settlement Agreement.

1.15. “Former Lessee” means a Person (i) who leased a Class Vehicle, on or before November 2, 2012, and (ii) who does not lease or own such Class Vehicle as of the date of this Settlement Agreement.

1.16. “Former Owner” means a Person (i) who purchased a Class Vehicle, on or before November 2, 2012; (ii) who does not own such Class Vehicle as of the date of this Settlement Agreement; and (iii) who was not a Fleet Owner of such Class Vehicle.

1.17. “Party” means a Class Representative, HMA, or KMA, and “Parties” means the Class Representatives, HMA, and KMA.

1.18. “Person” means any individual or entity.

1.19. “Reimbursement Program(s)” means the compensation programs HMA and KMA announced on November 2, 2012 to compensate owners of Class Vehicles for estimated additional fuel expenses incurred as a result of restated fuel economy ratings, as detailed on the websites <http://www.HyundaiMPGinfo.com> and <http://www.KIAMPGinfo.com>.

1.20. “Releasees” shall refer jointly and severally, individually and collectively to entities that marketed the Class Vehicles, entities that designed, developed, and/or disseminated advertisements for the Class Vehicles, HMA, KMA, Hyundai America Technical Center, Inc. (also doing business as Hyundai-Kia America Technical Center), Hyundai Motor Company, Kia Motors Corporation, all affiliates of the Hyundai Motor Group, and each of their respective future, present, and former direct and indirect parents, subsidiaries, affiliates, divisions, predecessors, successors, assigns, dealers, distributors, agents, principals, suppliers, vendors, issuers, licensees, and joint ventures, and their respective future, present, and former

officers, directors, employees, partners, general partners, limited partners, members, managers, agents, shareholders (in their capacity as shareholders), and legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this paragraph, “affiliates” means entities controlling, controlled by or under common control with a Releasee.

1.21. “Releasers” shall refer jointly and severally, individually and collectively to the Class Representatives, the Settlement Class Members, and their future, present, and former direct and indirect parents, subsidiaries, affiliates, divisions, predecessors, successors, and assigns, and their respective future, present, and former officers, directors, employees, partners, general partners, limited partners, members, managers, agents, shareholders (in their capacity as shareholders) and legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this paragraph, “affiliates” means entities controlling, controlled by or under common control with a Releaser.

1.22. “Rental Fleet Owner” means an owner of one or more Fleet Class Vehicles that are available to be rented or leased.

1.23. “Settlement Class” means all “Settlement Class Members” collectively.

1.24. “Settlement Class Member” means any Class Member who has not timely elected to “opt out” of the settlement described in this Settlement Agreement.

2. Certification of the Class.

2.1. The Parties stipulate and agree that, for the purposes of the settlement set forth herein only, and subject to Court approval, the following Class meets the requirements of Federal Rule of Civil Procedure 23 and should be certified:

All current and former owners and lessees of a Class Vehicle (i) who were the owner or lessee, on or before November 2, 2012, of such Class Vehicle that was registered in the District of Columbia or one of the fifty (50) states of the United States, except that the following are excluded: (i) Rental Fleet Owners; (ii) government

entities, except to the extent that a government entity is the owner or lessee of a Fleet Class Vehicle (in which case such government entity is not excluded from the Class); (iii) judges assigned to the MDL Litigation, including the judge or judges assigned to any lawsuit prior to the transfer of that lawsuit to the MDL Litigation; and (iv) persons who have previously executed a release of HMA or KMA that includes a claim concerning the fuel economy of such Class Vehicle.

2.2. The Parties stipulate and agree that, for the purposes of the settlement set forth herein only, and subject to Court approval, the Class Representatives shall serve as the representatives of the Class and Class Counsel shall be appointed as counsel for the Class.

3. Consideration for Settlement.

3.1 As consideration for the settlement set forth herein, HMA and KMA will provide to Settlement Class Members the following benefits:

3.1.1 Current Original Owner Compensation. The compensation for a Current Original Owner shall be the amount set forth in Exhibit B (for Hyundai Class Vehicles) and Exhibit C (for Kia Class Vehicles) in accordance with the specific Class Vehicle(s) the Current Original Owner owns.

3.1.2 Current Non-Original Owner Compensation. The compensation for a Current Non-Original Owner shall be one half (50 percent) of the amount set forth in Exhibit B (for Hyundai Class Vehicles) and Exhibit C (for Kia Class Vehicles) for Current Original Owners, with respect to the specific Class Vehicle(s) the Current Non-Original Owner owns.

3.1.3 Former Owner Compensation. The compensation for a Former Owner shall be the amount that the Former Owner is qualified to receive pursuant to the

Reimbursement Program. A Former Owner may elect an alternative form of compensation as provided by Section 3.2.

3.1.4 Current Lessee Compensation. The compensation for a Current Lessee shall be the amount set forth in Exhibit B (for Hyundai Class Vehicles) and Exhibit C (for Kia Class Vehicles) in accordance with the specific Class Vehicle the Current Lessee leases.

3.1.5 Former Lessee Compensation. The compensation for a Former Lessee shall be the amount that the Former Lessee is qualified to receive pursuant to the Reimbursement Program. A Former Lessee may elect an alternative form of compensation as provided by Section 3.2.

3.1.6 Current Fleet Owner Compensation. The compensation for a Current Fleet Owner shall be the amount set forth in Exhibit B (for Hyundai Class Vehicles) and Exhibit C (for Kia Class Vehicles) in accordance with the specific Class Vehicles the Fleet Owner owns.

3.1.7 Former Fleet Owner Compensation. The compensation for a Former Fleet Owner shall be the amount that the Former Fleet Owner is qualified to receive pursuant to the Reimbursement Program. A Former Owner may elect an alternative form of compensation as provided by Section 3.2.

3.1.8 Additional Compensation Applicable to Certain Vehicles. Any Current Original Owner, Current Lessee, or Current Fleet Owner of an Elantra, Accent, Veloster or Sonata Hybrid listed on Exhibit A who remains in the Reimbursement Program may elect to receive the following additional compensation: (i) \$100 for a Current Original Owner or (ii) \$50 for a Current Lessee or Current Fleet Owner. A Settlement Class Member who is entitled to receive additional compensation pursuant to this section 3.1.8 shall remain entitled to receive such additional

compensation without regard to any provision of Section 5.1 or Section 5.2. A Settlement Class Member who is entitled to receive additional compensation pursuant to this section 3.1.8 may elect an alternative form of compensation as provided by Section 3.2. An Addendum to this Agreement will address whether a Former Owner of an Elantra, Accent, Veloster or Sonata Hybrid listed on Exhibit A who was the original retail owner of such Class Vehicle and who sold or otherwise disposed of such Class Vehicle between February 12, 2013 and December 23, 2013 is entitled to any portion of the Additional Compensation described in this Section 3.1.8.

3.2 Alternative Forms of Compensation. Compensation under the provisions of paragraphs 3.1.1 through 3.1.7 shall be in one of the following forms, at the Settlement Class Member's election.

3.2.1 A Settlement Class Member may elect to receive his or her compensation in the form of a debit card that may be used like a credit card or used at an Automatic Teller Machine. There shall be no restrictions imposed by the issuer that would prevent a Settlement Class Member from depositing the entire balance of the debit card to a checking or other bank account. The cash debit card shall be in the amount indicated pursuant to paragraph 3.1.1 through 3.1.8. The cash debit card shall be non-transferrable and shall expire one year after it is issued. There shall be no issuer fees imposed on the recipient of a cash debit card.

3.2.2 A Settlement Class Member may elect to receive his or her compensation in the form of a dealer service debit card valued at 150% of the amount that otherwise would be paid as a cash debit card. The dealer service debit card may only be used at any authorized Hyundai dealer (for Hyundai Class Vehicles) or any authorized Kia dealer (for Kia Class Vehicles) in payment towards any merchandise, parts, or service. The dealer service debit card shall be non-

transferrable and shall expire two years after it is issued. There shall be no issuer fees imposed on the recipient of a dealer service debit card.

3.2.3 A Settlement Class Member may elect to receive his or her compensation in the form of a new car rebate certificate valued at 200% of the amount that otherwise would be paid as a cash debit card. The new car rebate certificate may only be used toward the purchase of a new Hyundai vehicle (for Settlement Class Members who own(ed) or lease(d) Hyundai Class Vehicles) or a new Kia vehicle (for Settlement Class Members who own(ed) or lease(d) Kia Class Vehicles). The new car rebate certificate shall be non-transferrable, except that it may be transferred to a family member (child, parent, or sibling), and shall expire three years after it is issued. There shall be no issuer fees imposed on the recipient of a new car rebate certificate.

3.2.4 The value of any debit card, dealer service debit card, and new car rebate certificate shall remain the property of the issuer, HMA or KMA, unless and until it is expended by the Settlement Class Member. Upon expiration of any debit card, dealer service debit card, or new car rebate certificate, any unexpended funds shall become the permanent property of the issuer (HMA or KMA).

3.2.5 The Parties acknowledge and agree that any and all provisions, rights, or benefits conferred by any law of any state or territory of the U.S., or any principle of common law, that provides for how residual amounts in a settlement fund should be distributed, including, but not limited to, California Code of Civil Procedure section 384(b), are not applicable to this Settlement Agreement. Although the parties expressly agree that this settlement is not governed by California Code of Civil Procedure section 384(b) or other similar laws and does not create a settlement fund nor any "unpaid residue," the Class Representatives on behalf of themselves and the Settlement Class Members nonetheless expressly acknowledge

and agree that, to the extent permitted by law, they are waiving any protections of California Code of Civil Procedure section 384(b) and of any comparable statutory or common law provision of any other jurisdiction.

3.2.6 The Parties acknowledge and agree that the forms of compensation set forth in paragraphs 3.2.1 through 3.2.3 do not constitute gift cards, gift certificates, or member rewards cards under any federal and/or state laws.

4. Claim Process.

4.1. The Parties hereby agree that the Claim Form for this settlement shall be materially the same as Exhibit D to this Settlement Agreement. HMA shall mail the Claim Form to each Class Member who is a present or former owner or lessee of a Class Vehicle sold by HMA. KMA shall mail the Claim Form to each Class Member who is a present or former owner or lessee of a Class Vehicle sold by KMA. HMA and KMA shall mail such Claim Form with the Class Notice (identified below in Section 11).

4.2. In order for a Settlement Class Member to receive compensation pursuant to Section 3, the Claim Form must be properly completed, signed, and mailed to the appropriate addressee identified on the Claim Form with a postmark dated within nine (9) months of the last date permitted by the District Court for mailing of the Class Notice.

4.3. To the extent that HMA or KMA receives a correctly completed Claim Form with any necessary supporting documentation from a qualifying Settlement Class Member, HMA or KMA (as the case may be) shall issue compensation within ninety (90) days of the later of (i) the Effective Date or (ii) receipt of such completed Claim Form.

5. Election of Remedies.

5.1. Except as set forth in Section 3.1.8 and Section 5.3 of this Settlement Agreement, each Settlement Class Member who elects to submit a valid Claim Form to receive a form of compensation under this Settlement Agreement shall no longer be entitled to receive any further compensation pursuant to the Reimbursement Program.

5.2. Except as set forth in Section 3.1.8, to the extent that a Settlement Class Member previously received benefits pursuant to the Reimbursement Program and subsequently elects to receive a form of compensation pursuant to this Settlement Agreement, the amount of any previously received benefits shall be deducted from the amount of any compensation provided pursuant to Section 3.2 of this Settlement Agreement, provided that any such deduction shall be reduced to the extent that the Settlement Class Member elects to re-pay previously received benefits by submitting payment in the form of a check or money order at the time that the Settlement Class Member submits the Claim Form. In determining the amount of compensation due to any Settlement Class Member pursuant to Section 3.2.2 or Section 3.2.3 of this Settlement Agreement, the benefit shall be calculated after considering any setoff for compensation previously received and any re-payment of benefits, i.e., the 150% and 200% values set forth in Sections 3.2.2 and Sections 3.2.3 of this Settlement Agreement shall be calculated on the basis of the *net* benefit payable to the Settlement Class Member after making any reduction for benefits previously received and any addition for re-payment of benefits.

5.3. If the applicable amount of compensation selected under paragraph 3.2.1, 3.2.2, or 3.2.3 (after considering any reductions for benefits previously received or increases for any re-payments, pursuant to Section 5.2) is less than the amount already paid to the Settlement Class Member pursuant to the Reimbursement Program, such Settlement Class Member shall

remain in the Reimbursement Program, provided that nothing in this Section 5.3 shall be interpreted to bar the benefit set forth in Section 3.1.8.

6. Communications with Dealers.

6.1 The Parties acknowledge that each authorized Hyundai dealer and each authorized Kia dealer is owned and operated independently from HMA or KMA, respectively, and that neither HMA nor KMA has authority to direct any authorized Hyundai or Kia dealer to take any action pursuant to this Settlement Agreement.

6.2 Promptly after the Effective Date of this Settlement Agreement (defined in Section 14), HMA and KMA shall each request, in good faith, that their authorized dealers assist Settlement Class Members who visit the dealer for the purpose of requesting a mileage check pursuant to the Reimbursement Program, by providing such Settlement Class Members who have not submitted a Claim Form with a flyer substantially in the form of Exhibit E. HMA and KMA shall request that their authorized dealers provide such assistance until the deadline for the submission of Claim Forms.

7. Settlement Administration. HMA and KMA shall bear the costs of settlement administration.

8. Confirmatory Discovery. The Parties hereby agree that, as of the Effective Date of this Agreement, confirmatory discovery will be deemed completed. The parties acknowledge that the materials produced in connection with confirmatory discovery will be relied on in the settlement approval process.

9. Obtaining Court Approval of the Agreement.

9.1 Upon full execution of this Agreement, the Parties shall request that the Court enter an order substantially in the form of Exhibit F hereto granting preliminary approval to the settlement described in this Agreement, approving the forms and methods of notice to the Settlement Class, and authorizing the dissemination of notice to the Settlement Class.

9.2 If the Court does not preliminarily approve the settlement described in this Agreement, the Agreement shall terminate and be of no force or effect, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to obtain preliminary approval of the settlement described herein.

9.3 If the Court does not grant final approval of the settlement described in this Agreement, the Agreement shall terminate and be of no force or effect, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to obtain final approval of the settlement described herein.

10. Withdrawal from Settlement.

10.1 If any of the conditions set forth below occurs and either (a) all Class Representatives or (b) HMA or (c) KMA gives notice that such party or parties wish to withdraw from this Agreement, then this Agreement shall terminate and be null and void;

10.1.1 any objections to the proposed settlement are sustained, which results in changes to the settlement described in this Agreement that the withdrawing Party deems in good faith to be material (e.g., because it increases the cost of settlement or deprives the withdrawing Party of a benefit of the settlement);

10.1.2 any attorney general or other Person is allowed to intervene in the MDL Litigation and such intervention results in changes to the settlement described in this Agreement that the withdrawing Party deems in good faith to be material (e.g., because it increases the cost of settlement or deprives the withdrawing Party of a benefit of the settlement);

10.1.3 the final approval of the settlement described in this Agreement results in changes that the withdrawing Party did not agree to and that the withdrawing Party deems in good faith to be material (e.g., because it increases the cost of settlement or deprives the withdrawing Party of a benefit of the settlement);

10.1.4 more than 3% of the Class Members exclude themselves from the settlement described in this Agreement;

10.1.5 the Court determines that Defendants have failed to comply with the confirmatory discovery process in good faith and such failure prejudiced Settlement Class Members;

10.1.6 the materials produced in the discovery process before the Effective Date of this Agreement reveal new information to the Parties which materially changes the facts relied upon in seeking approval of this Agreement; or

10.1.7 the final approval of the settlement described in this Agreement is (i) substantially modified by an appellate court and the withdrawing Party deems any such modification in good faith to be material (e.g., because it increases the cost of settlement or deprives the withdrawing Party of a benefit of the settlement) or (ii) reversed by an appellate court.

11. Notice.

11.1 A copy of the Notice of Class Action Settlement substantially in the form attached hereto as Exhibit G (the “Class Notice”), shall be mailed by first class mail to every Class Member who is reasonably ascertainable from an available R.L. Polk database (or a similar database). Such mailing shall be completed, at the sole expense of HMA and KMA not less than forty-five days prior to the date by which objections to the Agreement and requests for exclusion from the Settlement Class are due, provided that HMA and KMA shall have at least ninety (90) days from receiving notice of the District Court’s preliminary approval of the settlement described in this Agreement to initiate such mailing.

11.2 HMA and KMA shall each establish and maintain a website dedicated to the settlement (“Settlement Website”) and a toll-free customer service number that Class Members may call. The Class Notice shall include the address (URL) of the Settlement Website and the toll-free number. HMA and KMA shall maintain the Settlement Website and toll-free number at least until 30 days following the deadline for the submission of Claim Forms, after

which time HMA and KMA may direct Class Members to a different website and/or toll-free customer service number.

11.3 The Settlement Website shall enable Class Members to access and download the Class Notice and Claim Form and will provide answers to frequently asked questions (FAQs).

11.4 The toll-free number shall allow Class Members to request copies of the Class Notice and Claim Form by mail, provide updated address information, locate an authorized dealer, and ask questions concerning the proposed settlement and the process for obtaining the relief available to them pursuant to this Agreement. HMA and KMA shall provide their customer service personnel with appropriate information to assist Class Members.

11.5 The Class Notice shall provide a procedure whereby Class Members may exclude themselves from the Settlement Class by mailing a request for exclusion. Any Class Member who does not timely and validly request exclusion shall be a Settlement Class Member and shall be bound by the terms of this Agreement.

11.6 The Class Notice shall also provide a procedure for Class Members to object to the settlement set forth herein and/or to the attorneys' fees and costs for which Class Counsel will petition the Court.

11.7 The Class Representatives and HMA agree to a joint press release in the form of Exhibit I to be issued on or about the day that this Agreement is first filed with the Court. The Class Representatives and KMA agree to a joint press release in the form of Exhibit J to be issued on or about the day that this Agreement is first filed with the Court. Excepting of Exhibits I and J, neither the Parties nor their counsel shall issue (or cause any other Person to issue) any press release concerning this Agreement or the settlement set forth herein, unless otherwise agreed to in writing and neither the Parties nor their counsel shall make (or cause any other Person to make) any statements of any kind to the press concerning this Agreement or the settlement set forth herein, except that a Party or a Party's counsel may respond to an inquiry

from a member of the press by (a) directing the member of the press to a public resource to review or obtain a copy of this Agreement or the Class Notice or (b) by supplying additional information to the member of the press, provided that the responding Party will provide such additional information to the other Parties as promptly as practicable. A Party or a Party's counsel shall provide notice to the other Parties before responding to a press inquiry whenever reasonably possible. If such notice cannot reasonably be provided before responding to a press inquiry, the responding Party or Party's Counsel shall notify the other Parties promptly after responding to the press inquiry. Class Counsel shall have the right to provide a link to the Settlement Website(s) on its firm website.

12. Incentive Awards and Attorneys' Fees and Expenses.

12.1 As part of the settlement set forth herein, and subject to Court approval, HMA and KMA hereby agree to pay reasonable attorneys' fees and expenses to Class Counsel, as well as reasonable incentive awards for the Class Representatives. In the event that any Class Representatives are co-owners/lessees of a single Class Vehicle, such co-owners collectively will be entitled to a single incentive award. Such incentive awards shall be paid to Class Counsel within thirty (30) days of the Effective Date of the Settlement Agreement.

12.2 The Parties have not begun negotiations regarding the amount of attorneys' fees and expenses requested by Class Counsel. After Class Counsel discloses the amount of fees and expenses sought, the Settlement Website referenced in Section 11.2 shall set forth such amounts and shall be updated promptly to reflect any subsequent changes in such amount.

12.3 Payment of attorneys' fees and expenses is subject to HMA and KMA's receipt of Class Counsel's complete wiring instructions and W-9 documentation, and subject to Class Counsel's obligation to make appropriate refunds or repayments to HMA and KMA of the fees and expenses received if, as the result of any appeal and/or further proceedings on remand, or successful collateral attack, the amounts awarded are reduced. If the settlement set forth

herein becomes effective and the Court approves the attorneys' fees and expenses requested by Class Counsel, HMA and KMA shall pay such attorneys' fees and expenses within thirty (30) days after the later of: (i) the Effective Date of this Agreement and (ii) receipt by HMA and KMA of Class Counsel's complete wiring instructions and W-9 documentation.

12.4 The payment by HMA and KMA of the attorneys' fees and expenses is separate from and in addition to the other relief afforded the Settlement Class Members in this Agreement. Thus, the Parties shall request that the Court consider the procedure for and the grant or denial or allowance or disallowance by the Court of the award of attorneys' fees and expenses separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth herein, although any such separate consideration may be part of the settlement approval hearing; and any order or proceedings relating to the award of attorneys' fees and expenses, or any appeal from any order related thereto or reversal or modification thereof, shall not operate to terminate this Agreement or affect or delay the finality of any judgment approving the settlement set forth herein.

12.5 The Parties acknowledge that neither HMA nor KMA has agreed to pay any fees or expenses of any plaintiffs' counsel or any class representative, other than Class Counsel (as defined in Section 1.3) and the Named Plaintiffs (as defined in the first paragraph of this Agreement).

13. Final Judgment; Release of Claims.

13.1 Upon the Court's final approval of this Settlement Agreement and the settlement set forth herein, the Parties shall request that a final order substantially in the form attached hereto as Exhibit H be entered that: (a) dismisses the claims for the Settlement Class Members with prejudice; (b) dismisses with prejudice the Hunter Litigation, the Brady Litigation; (c) dismisses without prejudice *Espinosa v. HMA*, et al. No. 2:12-cv-00800 GW (FFMx), and all other lawsuits centralized in the MDL in which the named plaintiffs in such lawsuit(s) did not timely exclude themselves from the settlement set forth herein; and (d) retains

jurisdiction to resolve any future disputes arising out of the terms and conditions of this Agreement and the settlement set forth herein (“Final Order”).

13.2 As of the Effective Date of this Agreement as defined below, the Releasors (as defined in Section 1) shall be deemed to hereby fully and irrevocably release, waive, and discharge the Releasees (as defined in Section 1), whether or not specifically named herein, from any and all past, present, and future liabilities, claims, causes of action (whether in contract, tort or otherwise, including statutory, common law, property, and equitable claims), damages, costs, attorneys’ fees, losses, or demands, whether known or unknown, existing or potential, or suspected or unsuspected, that (a) were asserted in the MDL Litigation (including lawsuits transferred to and centralized in the MDL Litigation) or (b) relate to (i) the fuel economy of one or more Class Vehicles (including, but not limited to, the actual or reported miles-per-gallon of fuel obtained or achieved in a Class Vehicle); (ii) the marketing or advertising of the fuel economy of such Class Vehicles and any related disclosures or alleged nondisclosures; or (iii) the disclosures, regulatory filings, transactions, actions, conduct, or events that are the subject of the MDL Litigation regarding the Class Vehicles (“Released Claims”); provided that the Released Claims shall include any unknown claims that a Settlement Class Member does not know to exist against any of the Releasees that relate to the fuel economy of one or more Class Vehicles, which, if known, might have affected his or her decision regarding the settlement of the MDL Litigation; provided further that the Class Representatives acknowledge that they and the other Settlement Class Members may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of this release but the Released Claims shall nonetheless be deemed to include any and all Released Claims without regard to the existence of such different or additional facts concerning each of the Releasees. Notwithstanding the foregoing, no claims are released hereunder for: (i) personal injury; (ii) damage to tangible property other

than a Class Vehicle; or (iii) any and all claims that pertain to anything other than the Class Vehicles.

13.3 The release effected by this Settlement Agreement is intended to be a specific release and not a general release. If, despite, and contrary to the Parties' intention, any court construes the release as a general release under California law and determines that Section 1542 of the California Civil Code is applicable to the release, the Class Representatives, on behalf of themselves and all Settlement Class Members, hereby expressly waive the provisions of such Section 1542, which reads as follows:

Certain Claims Not Affected By General Release: A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each of the Class Representatives expressly acknowledges that the Class Representative has been advised by Class Counsel of the contents and effect of Section 1542, and with knowledge, each of the Class Representatives hereby expressly waives, on behalf of the Class Representative and all Settlement Class Members, whatever benefits the Class Representatives and the Settlement Class Members may have had pursuant to such section. Each of the Class Representatives hereby expressly waives, on behalf of the Class Representative and all Settlement Class Members, the benefit of any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code.

14. Effective Date of the Agreement.

14.1 The Effective Date of this Agreement shall be the first day after which all of the following events and conditions of this Agreement have been met or have occurred:

14.1.1 The Parties' representatives listed below have all executed this Agreement;

14.1.2 The Court has preliminarily approved the Settlement embodied in this Agreement and authorized the dissemination of notice to the Class Members by entry of an order substantially in the form of Exhibit F hereto;

14.1.3 The Court has entered the Final Order;

14.1.4 The Final Order has become final in that the time for appeal has expired or, if an appeal is taken and the Final Order is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Order is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the Final Order shall not be considered “final.”

15. No Admission of Liability.

15.1 The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with their Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever to any other Party or Person. If this Agreement is terminated or otherwise becomes null and void, the enforceability of this Section shall survive such event.

15.2 Other than a proceeding that takes place in the MDL Litigation in connection with the settlement described herein, this Agreement, acts performed in furtherance of the Agreement or the settlement set forth herein, and documents executed in furtherance of the Agreement or the settlement set forth herein, may not be deemed or used as evidence of an admission or other statement supporting: (a) the validity of any claim made by the Class Representatives, Settlement Class Members, or Class Counsel (including the appropriateness of class certification); (b) any wrongdoing or liability of the Releasees; or (c) any fault or omission

of the Releasees. For the avoidance of doubt, it is the Parties intention that the restriction set forth in this Section 15.2 will apply in all courts, administrative agencies, and other proceedings.

15.3 This Agreement shall not be offered or be admissible in evidence against HMA or KMA, or any of their respective affiliates, or cited or referred to in any action or proceeding, except in an action or proceeding that is in furtherance of its terms or brought to enforce its terms.

15.4 If this Agreement is terminated or otherwise becomes null and void, the settlement described herein shall have no further force and effect with respect to any Party to the MDL Litigation and neither this Agreement nor any statements made in connection with the settlement negotiations leading to this Agreement shall be offered in evidence against HMA or KMA, or any of their respective affiliates, or cited or referred to in the MDL Litigation or in any other action or proceeding. If this Agreement is terminated or otherwise becomes null and void, the enforceability of this Section shall survive such event.

16. Miscellaneous Provisions.

16.1 The Class Representatives, individually and as representatives of the Class defined above, expressly waive and disclaim any claim of unconscionability relating to any provision of this Agreement, specifically including, but not limited to, Section 3.2.

16.3 This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement supersedes all prior representations, agreements, understandings, both written and oral, among the Parties, or any of them, with respect to the subject matter of this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein, and no Party is relying on any prior oral or written representations, agreements, understandings, or undertakings with respect to the subject matter of this Agreement.

16.4 This Agreement shall be construed in accordance with, and be governed by, the laws of the State of California, without regard for the effect of California's choice of law principles.

16.5 Nothing in this agreement shall waive the Parties' duties under applicable covenants of good faith and fair dealing, which are expressly acknowledged and agreed to by both parties.

16.6 As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

16.7 Each Person executing this Agreement in a representative capacity represents and warrants that he or she is empowered to do so.

16.8 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. A scanned, photocopied, or facsimile signature shall be deemed an original for purposes of executing this Agreement.

16.9 The Parties to this Agreement agree to prepare and execute all documents, to seek Court approvals, defend Court approvals, and to do all things reasonably necessary to complete the settlement described in this Agreement, provided that nothing in this Agreement should be interpreted to require a Class Representative to support the settlement set forth in this Agreement unless such Class Representative concludes that the settlement is fair, reasonable and adequate.

16.10 In any construction to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by one or another of the Parties.

16.11 Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Class Notice.

16.12 This Agreement may be amended or modified only by a written instrument signed by the Parties' counsel and approved by the Court.

16.13 This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, heirs, successors, and assigns.

For Defendant Hyundai Motor America

DATED: December 23, 2013

By



W. Gerald Flannery, Jr.
Executive Vice President, Secretary
and General Counsel

DATED: December 23, 2013

By

Shon Morgan
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
65 S. Figueroa St., 10th Floor
Los Angeles CA 90017
Attorneys for Defendant Hyundai Motor America

DATED: December 23, 2013

By

Michael L. Kidney
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555 Thirteenth Street, NW
Washington, DC 20004
Attorneys for Defendant Hyundai Motor America

For Defendant Hyundai Motor America

DATED: December 23, 2013

By _____
W. Gerald Flannery, Jr.
Executive Vice President, Secretary
and General Counsel



DATED: December 23, 2013

By _____
Shon Morgan
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SULLIVAN, LLP
65 S. Figueroa St., 10th Floor
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Attorneys for Defendant Hyundai Motor America

DATED: December 23, 2013

By _____
Michael L. Kidney
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555 Thirteenth Street, NW
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Attorneys for Defendant Hyundai Motor America

For Defendant Hyundai Motor America


DATED: December 23, 2013

By _____
W. Gerald Flannery, Jr.
Executive Vice President, Secretary
and General Counsel

DATED: December 23, 2013


By _____
Shon Morgan
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Attorneys for Defendant Hyundai Motor America

DATED: December 23, 2013

By 
Michael L. Kidney
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Attorneys for Defendant Hyundai Motor America

For Defendant Kia Motors America, Inc.

DATED: DECEMBER 23, 2013

By 

John Yoon
Executive Vice President, HR/Administration/
Diversity Relations & General Counsel

DATED: _____

By _____
James P. Feeney
DYKEMA GOSSETT PLLC
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304
Attorneys for Defendant Kia Motors
America, Inc.

For Defendant Kia Motors America, Inc.

DATED: _____

By _____

John Yoon
Executive Vice President, HR/Administration/
Diversity Relations & General Counsel

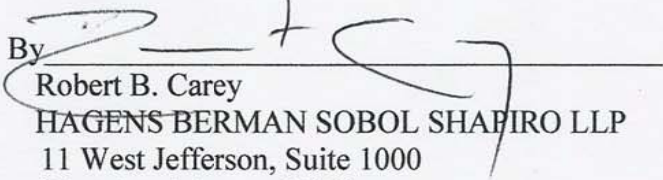
DATED: December 23, 2013

By 

James P. Feeney
DYKEMA GOSSETT PLLC
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304
Attorneys for Defendant Kia Motors
America, Inc.

For Named Plaintiffs, on behalf of themselves and the Proposed Settlement Class

DATED: December 23, 2013

By 
Robert B. Carey
HAGENS BERMAN SOBOL SHAPIRO LLP
11 West Jefferson, Suite 1000
Phoenix, Arizona 85003
Attorneys for *Hunter* and *Brady* Plaintiffs

DATED: December 23, 2013

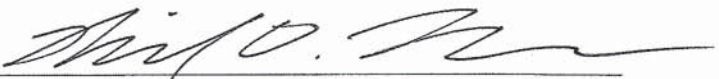
By _____
Richard D. McCune
McCuneWright, LLP
2068 Orange Tree Lane, Ste. 216
Redlands, CA 92374
Attorneys for *Espinosa* Plaintiffs

For Named Plaintiffs, on behalf of themselves and the Proposed Settlement Class

DATED: December 23, 2013

By _____
Robert B. Carey
HAGENS BERMAN SOBOL SHAPIRO LLP
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Phoenix, Arizona 85003
Attorneys for *Hunter* and *Brady* Plaintiffs

DATED: December 23, 2013

By  _____
Richard D. McCune
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2068 Orange Tree Lane, Ste. 216
Redlands, CA 92374
Attorneys for *Espinosa* Plaintiffs

LIST OF EXHIBITS

Exhibit A: List Identifying Hyundai Class Vehicles and Kia Class Vehicles

Exhibit B: Schedule with Compensation Amounts for Current Hyundai Owners

Exhibit C: Schedule with Compensation Amounts for Current Kia Owners

Exhibit D: Claim Form

Exhibit E: Dealer Flyer

Exhibit F: Proposed Order granting preliminary approval to the Agreement, approving the forms and methods of notice to the Settlement Class and authorizing the dissemination of notice to the Settlement Class.

Exhibit G: Notice of Class Action Settlement

Exhibit H: Proposed Final Order

Exhibit I: Joint Press Release Issued by Class Representatives and HMA

Exhibit J: Joint Press Release Issued by Class Representatives and KMA

Exhibit A

Exhibit A

Class Vehicles
("MY" in the lists below stands for "Model Year")

HYUNDAI VEHICLES

2013 MY Accent (automatic transmission; 1.6 liter engine)
2013 MY Accent (manual transmission; 1.6 liter engine)
2013 MY Azera (automatic transmission; 3.3 liter engine)
2013 MY Elantra (automatic transmission; 1.8 liter engine)
2013 MY Elantra (manual transmission; 1.8 liter engine)
2013 MY Elantra Coupe (automatic transmission; 1.8 liter engine)
2013 MY Elantra Coupe (manual transmission; 1.8 liter engine)
2013 MY Elantra GT (automatic transmission; 1.8 liter engine)
2013 MY Elantra GT (manual transmission; 1.8 liter engine)
2013 MY Genesis (automatic transmission; 3.8 liter engine)
2013 MY Santa Fe Sport 2WD Turbo (automatic transmission; 2.0 liter engine)
2013 MY Santa Fe Sport 2WD (automatic transmission; 2.4 liter engine)
2013 MY Santa Fe Sport 4WD Turbo (automatic transmission; 2.0 liter engine)
2013 MY Santa Fe Sport 4WD (automatic transmission; 2.4 liter engine)
2013 MY Tucson 2WD (automatic transmission; 2.0 liter engine)
2013 MY Tucson 2WD (automatic transmission; 2.4 liter engine)
2013 MY Tucson 2WD (manual transmission; 2.0 liter engine)
2013 MY Tucson 4WD (automatic transmission; 2.4 liter engine)
2013 MY Veloster Turbo (automatic transmission; 1.6 liter engine)

KIA VEHICLES

2013 MY Rio 2WD (automatic transmission; 1.6 liter engine)
2013 MY Rio 2WD (manual transmission; 1.6 liter engine)
2013 MY Rio 2WD (automatic (Eco) transmission; 1.6 liter engine)
2013 MY Sorento 2WD (automatic transmission; 2.4 liter engine (GDI))
2013 MY Sorento 4WD (automatic transmission; 2.4 liter engine (GDI))
2013 MY Soul 2WD (automatic transmission; 1.6 liter engine)
2013 MY Soul 2WD (manual transmission; 1.6 liter engine)
2013 MY Soul 2WD (automatic transmission; 2.0 liter engine)
2013 MY Soul 2WD (manual transmission; 2.0 liter engine)
2013 MY Soul ECO 2WD (automatic transmission; 1.6 liter engine)
2013 MY Soul ECO 2WD (automatic transmission; 2.0 liter engine)
2013 MY Sportage 2WD (automatic transmission; 2.0 liter engine)
2013 MY Sportage 2WD (automatic transmission; 2.4 liter engine)
2013 MY Sportage 2WD (manual transmission; 2.4 liter engine)
2013 MY Sportage 4WD (automatic transmission; 2.0 liter engine)
2013 MY Sportage 4WD (automatic transmission; 2.4 liter engine)
2013 MY Sportage 4WD (manual transmission; 2.4 liter engine)
2012 MY Rio 2WD (automatic transmission; 1.6 liter engine)
2012 MY Rio 2WD (manual transmission; 1.6 liter engine)

2013 MY Veloster (automatic transmission; 1.6 liter engine)	engine)
2013 MY Veloster (manual transmission; 1.6 liter engine)	2012 MY Sorento 2WD (automatic transmission; 2.4 liter engine (GDI))
2013 MY Veloster Turbo (manual transmission; 1.6 liter engine)	2012 MY Sorento 4WD (automatic transmission; 2.4 liter engine (GDI))
2012 MY Accent (automatic transmission; 1.6 liter engine)	2012 MY Soul 2WD (automatic transmission; 1.6 liter engine)
2012 MY Accent (manual transmission; 1.6 liter engine)	2012 MY Soul 2WD (manual transmission; 1.6 liter engine)
2012 MY Azera (automatic transmission; 3.3 liter engine)	2012 MY Soul 2WD (automatic transmission; 2.0 liter engine)
2012 MY Elantra (automatic transmission; 1.8 liter engine)	2012 MY Soul 2WD (manual transmission; 2.0 liter engine)
2012 MY Elantra (manual transmission; 1.8 liter engine)	2012 MY Soul ECO 2WD (automatic transmission; 1.6 liter engine)
2012 MY Genesis (automatic transmission; 3.8 liter engine)	2012 MY Soul ECO 2WD (automatic transmission; 2.0 liter engine)
2012 MY Genesis (automatic transmission; 4.6 liter engine)	2012 MY Sportage 2WD (automatic transmission; 2.0 liter engine)
2012 MY Genesis (automatic transmission; 5.0 liter engine)	2012 MY Sportage 2WD (automatic transmission; 2.4 liter engine)
2012 MY Genesis R-Spec (automatic transmission; 5.0 liter engine)	2012 MY Sportage 2WD (manual transmission; 2.4 liter engine)
2012 MY Sonata Hybrid Electric Vehicle (automatic transmission; 2.4 liter engine)	2012 MY Sportage 4WD (automatic transmission; 2.0 liter engine)
2012 MY Tucson 2WD (automatic transmission; 2.0 liter engine)	2012 MY Sportage 4WD (automatic transmission; 2.4 liter engine)
2012 MY Tucson 2WD (automatic transmission; 2.4 liter engine)	2012 MY Sportage 4WD (manual transmission; 2.4 liter engine)
2012 MY Tucson 2WD (manual transmission; 2.0 liter engine)	2012 MY Optima HEV 2WD (automatic transmission; 2.4 liter engine)
2012 MY Tucson 4WD (automatic transmission; 2.4 liter engine)	2011 MY Optima HEV 2WD (automatic transmission; 2.4 liter engine)
2012 MY Veloster (automatic transmission; 1.6 liter engine)	
2012 MY Veloster (manual transmission; 1.6 liter engine)	
2011 MY Elantra (automatic transmission; 1.8 liter engine)	
2011 MY Elantra (manual transmission; 1.8 liter engine)	
2011 MY Sonata Hybrid Electric Vehicle (automatic transmission; 2.4 liter engine)	

Exhibit B

**EXHIBIT B
SCHEDULE WITH COMPENSATION AMOUNTS FOR CURRENT HYUNDAI OWNERS & LESSEES**

<u>Model</u>	<u>Current Original Owner</u>	<u>Current Lessee</u>	<u>Current Fleet Owner</u>
2013 Model Year			
2013 Accent (automatic transmission; 1.6 liter engine)	\$590	\$335	\$305
2013 Accent (manual transmission; 1.6 liter engine)	\$590	\$330	\$300
2013 Azera (automatic transmission; 3.3 liter engine)	\$480	\$280	\$250
2013 Elantra (automatic transmission; 1.8 liter engine)	\$345	\$195	\$175
2013 Elantra (manual transmission; 1.8 liter engine)	\$345	\$195	\$175
2013 Elantra Coupe (automatic transmission; 1.8 liter engine)	\$240	\$140	\$125
2013 Elantra Coupe (manual transmission; 1.8 liter engine)	\$350	\$195	\$175
2013 Elantra GT (automatic transmission; 1.8 liter engine)	\$715	\$420	\$375
2013 Elantra GT (manual transmission; 1.8 liter engine)	\$480	\$280	\$250
2013 Genesis (automatic transmission; 3.8 liter engine)	\$715	\$420	\$375
2013 Santa Fe Sport 2WD Turbo (automatic transmission; 2.0 liter engine)	\$715	\$420	\$375
2013 Santa Fe Sport 2WD (automatic transmission; 2.4 liter engine)	\$715	\$420	\$375
2013 Santa Fe Sport 4WD Turbo (automatic transmission; 2.0 liter engine)	\$715	\$420	\$375
2013 Santa Fe Sport 4WD (automatic transmission; 2.4 liter engine)	\$480	\$280	\$250
2013 Tucson 2WD (automatic transmission; 2.0 liter engine)	\$480	\$280	\$250
2013 Tucson 2WD (automatic transmission; 2.4 liter engine)	\$240	\$140	\$125
2013 Tucson 2WD (manual transmission; 2.0 liter engine)	\$480	\$280	\$250
2013 Tucson 4WD (automatic transmission; 2.4 liter engine)	\$480	\$280	\$250
2013 Veloster Turbo (automatic transmission; 1.6 liter engine)	\$240	\$140	\$125
2013 Veloster (automatic transmission; 1.6 liter engine)	\$585	\$330	\$300
2013 Veloster (manual transmission; 1.6 liter engine)	\$345	\$195	\$175
2013 Veloster Turbo (manual transmission; 1.6 liter engine)	\$480	\$280	\$250

2012 Model Year			
2012 Accent (automatic transmission; 1.6 liter engine)	\$530	\$290	\$275
2012 Accent (manual transmission; 1.6 liter engine)	\$510	\$280	\$265
2012 Azera (automatic transmission; 3.3 liter engine)	\$515	\$305	\$275
2012 Elantra (automatic transmission; 1.8 liter engine)	\$320	\$165	\$160
2012 Elantra (manual transmission; 1.8 liter engine)	\$320	\$165	\$160
2012 Genesis (automatic transmission; 3.8 liter engine)	\$450	\$270	\$240
2012 Genesis (automatic transmission; 4.6 liter engine)	\$600	\$355	\$315
2012 Genesis (automatic transmission; 5.0 liter engine)	\$600	\$355	\$315
2012 Genesis R-Spec (automatic transmission; 5.0 liter engine)	\$675	\$400	\$355
2012 Sonata Hybrid Electric Vehicle (automatic transmission; 2.4 liter engine)	\$320	\$170	\$160
2012 Tucson 2WD (automatic transmission; 2.0 liter engine)	\$320	\$190	\$170
2012 Tucson 2WD (automatic transmission; 2.4 liter engine)	\$365	\$210	\$190
2012 Tucson 2WD (manual transmission; 2.0 liter engine)	\$420	\$245	\$220
2012 Tucson 4WD (automatic transmission; 2.4 liter engine)	\$425	\$245	\$220
2012 Veloster (automatic transmission; 1.6 liter engine)	\$535	\$320	\$285
2012 Veloster (manual transmission; 1.6 liter engine)	\$360	\$200	\$190

2011 Model Year			
2011 Elantra (automatic transmission; 1.8 liter engine)	\$320	\$160	\$160
2011 Elantra (manual transmission; 1.8 liter engine)	\$345	\$160	\$160
2011 Sonata Hybrid Electric Vehicle (automatic transmission; 2.4 liter engine)	\$280	\$140	\$140

Exhibit C

Hunter/Brady v Kia

Exhibit C to Settlement Agreement

Schedule of Compensation Amount Value for Current Kia Owners/Lessees

Affected Vehicle Model List	Current Original Owner Retail	Current Lessee	Current Fleet
2013MY			
2013 Rio (A-6, 1.6L, 4cyl.)	\$ 475	\$ 275	\$ 245
2013 Rio (M-6, 1.6L, 4cyl.)	\$ 475	\$ 275	\$ 245
2013 Rio Eco (A-6, 1.6L, 4cyl.)	\$ 475	\$ 275	\$ 245
2013 Sorento 2WD (A-6, 2.4L, GDI)	\$ 235	\$ 135	\$ 125
2013 Sorento 4WD (A-6, 2.4L, GDI)	\$ 475	\$ 275	\$ 245
2013 Soul (A-6, 1.6L, 4cyl.)	\$ 710	\$ 410	\$ 370
2013 Soul (A-6, 2.0L, 4cyl.)	\$ 1,420	\$ 820	\$ 740
2013 Soul (M-6, 1.6L, 4cyl.)	\$ 710	\$ 410	\$ 370
2013 Soul (M-6, 2.0L, 4cyl.)	\$ 950	\$ 545	\$ 495
*2013 Soul Eco (A-6, 1.6L, 4cyl.)	\$ -	\$ -	\$ -
2013 Soul Eco (A-6, 2.0L, 4cyl.)	\$ 1,185	\$ 685	\$ 615
2013 Sportage 2WD (A-6, 2.0L, 4cyl.)	\$ 475	\$ 275	\$ 245
2013 Sportage 2WD (A-6, 2.4L, 4cyl.)	\$ 235	\$ 135	\$ 125
*2013 Sportage 2WD (M-6, 2.4L, 4cyl.)	\$ -	\$ -	\$ -
2013 Sportage 4WD (A-6, 2.0L, 4cyl.)	\$ 475	\$ 275	\$ 245
2013 Sportage 4WD (A-6, 2.4L, 4cyl.)	\$ 475	\$ 275	\$ 245
*2013 Sportage 4WD (M-6, 2.4L, 4cyl.)	\$ -	\$ -	\$ -
2012MY			
2012 Optima Hybrid	\$ 235	\$ 135	\$ 125
2012 Rio (A-6, 1.6L, 4cyl.)	\$ 475	\$ 265	\$ 245
2012 Rio (M-6, 1.6L, 4cyl.)	\$ 475	\$ 265	\$ 245
2012 Sorento 2WD (A-6, 2.4L, GDI/SIDI)	\$ 475	\$ 265	\$ 245
2012 Sorento 4WD (A-6, 2.4L, GDI)	\$ 410	\$ 230	\$ 210
2012 Soul (A-6, 1.6L, 4cyl.)	\$ 715	\$ 405	\$ 375
2012 Soul (A-6, 2.0L, 4cyl.)	\$ 1,170	\$ 660	\$ 610
2012 Soul (M-6, 1.6L, 4cyl.)	\$ 950	\$ 535	\$ 495
2012 Soul (M-6, 2.0L, 4cyl.)	\$ 935	\$ 525	\$ 485
*2012 Soul Eco (A-6, 1.6L, 4cyl.)	\$ -	\$ -	\$ -
*2012 Soul Eco (A-6, 2.0L, 4cyl.)	\$ -	\$ -	\$ -
2012 Sportage 2WD (A-6, 2.0L, 4cyl.)	\$ 475	\$ 265	\$ 245
2012 Sportage 2WD (A-6, 2.4L, 4cyl.)	\$ 475	\$ 265	\$ 245
2012 Sportage 2WD (M-6, 2.4L, 4cyl.)	\$ 475	\$ 265	\$ 245
2012 Sportage 4WD (A-6, 2.0L, 4cyl.)	\$ 95	\$ 55	\$ 50
2012 Sportage 4WD (A-6, 2.4L, 4cyl.)	\$ 475	\$ 265	\$ 245
*2012 Sportage 4WD (M-6, 2.4L, 4cyl.)	-	-	-
2011MY			
2011 Optima Hybrid	\$ 170	\$ 85	\$ 90
* There are no reported volumes for these vehicles.			

Exhibit D

CLAIM FORM

To make a claim in the IN RE HYUNDAI/KIA FUEL ECONOMY LITIGATION settlement, please complete and return this form by U.S. mail, postmarked no later than **[9 months after deadline for class notice mailing]**, to:

For **Hyundai Vehicles**, mail completed form to:

For **Kia Vehicles**, mail completed form to:

[CLAIMS ADDRESS]

[CLAIMS ADDRESS]

IMPORTANT: BEFORE FILLING OUT THIS FORM, READ THIS ENTIRE CLAIM FORM AND THE ACCOMPANYING CLASS NOTICE CAREFULLY.

THE CLASS NOTICE CONTAINS ADDITIONAL INFORMATION REGARDING YOUR ELIGIBILITY FOR SETTLEMENT BENEFITS AND OTHER IMPORTANT INFORMATION.

STEP 1: Are you a current or former owner or lessee of a vehicle listed below? YES ___ NO ___

If YES, check the box next to your vehicle model and go to STEP 2. ("MY" in the list below stands for "Model Year.") If you own more than one vehicle identified below, use a separate Claim Form for each vehicle.

If NO, you are not a class member and you are not eligible for Settlement Benefits.

HYUNDAI VEHICLES

Kia VEHICLES

- | | |
|---|--|
| <ul style="list-style-type: none"><input type="checkbox"/> 2013 MY Accent (automatic transmission; 1.6 liter engine)<input type="checkbox"/> 2013 MY Accent (manual transmission; 1.6 liter engine)<input type="checkbox"/> 2013 MY Azera (automatic transmission; 3.3 liter engine)<input type="checkbox"/> 2013 MY Elantra (automatic transmission; 1.8 liter engine)<input type="checkbox"/> 2013 MY Elantra (manual transmission; 1.8 liter engine)<input type="checkbox"/> 2013 MY Elantra Coupe (automatic transmission; 1.8 liter engine)<input type="checkbox"/> 2013 MY Elantra Coupe (manual transmission; 1.8 liter engine)<input type="checkbox"/> 2013 MY Elantra GT (automatic transmission; 1.8 liter engine)<input type="checkbox"/> 2013 MY Elantra GT (manual transmission; 1.8 liter engine)<input type="checkbox"/> 2013 MY Genesis (automatic transmission; 3.8 liter engine)<input type="checkbox"/> 2013 MY Santa Fe Sport 2WD Turbo (automatic transmission; 2.0 liter engine)<input type="checkbox"/> 2013 MY Santa Fe Sport 2WD (automatic transmission; 2.4 liter engine)<input type="checkbox"/> 2013 MY Santa Fe Sport 4WD Turbo (automatic transmission; 2.0 liter engine)<input type="checkbox"/> 2013 MY Santa Fe Sport 4WD (automatic transmission; 2.4 liter engine)<input type="checkbox"/> 2013 MY Tucson 2WD (automatic transmission; 2.0 liter engine)<input type="checkbox"/> 2013 MY Tucson 2WD (automatic transmission; 2.4 liter engine) | <ul style="list-style-type: none"><input type="checkbox"/> 2013 MY Rio 2WD (automatic transmission; 1.6 liter engine)<input type="checkbox"/> 2013 MY Rio 2WD (manual transmission; 1.6 liter engine)<input type="checkbox"/> 2013 MY Rio 2WD (automatic (Eco) transmission; 1.6 liter engine)<input type="checkbox"/> 2013 MY Sorento 2WD (automatic transmission; 2.4 liter engine (GDI))<input type="checkbox"/> 2013 MY Sorento 4WD (automatic transmission; 2.4 liter engine (GDI))<input type="checkbox"/> 2013 MY Soul 2WD (automatic transmission; 1.6 liter engine)<input type="checkbox"/> 2013 MY Soul 2WD (manual transmission; 1.6 liter engine)<input type="checkbox"/> 2013 MY Soul 2WD (automatic transmission; 2.0 liter engine)<input type="checkbox"/> 2013 MY Soul 2WD (manual transmission; 2.0 liter engine)<input type="checkbox"/> 2013 MY Soul ECO 2WD (automatic transmission; 1.6 liter engine)<input type="checkbox"/> 2013 MY Soul ECO 2WD (automatic transmission; 2.0 liter engine)<input type="checkbox"/> 2013 MY Sportage 2WD (automatic transmission; 2.0 liter engine)<input type="checkbox"/> 2013 MY Sportage 2WD (automatic transmission; 2.4 liter engine)<input type="checkbox"/> 2013 MY Sportage 2WD (manual transmission; 2.4 liter engine)<input type="checkbox"/> 2013 MY Sportage 4WD (automatic transmission; 2.0 liter engine)<input type="checkbox"/> 2013 MY Sportage 4WD (automatic transmission; 2.4 liter engine) |
|---|--|

- 2013 MY Tucson 2WD (manual transmission; 2.0 liter engine)
- 2013 MY Tucson 4WD (automatic transmission; 2.4 liter engine)
- 2013 MY Veloster Turbo (automatic transmission; 1.6 liter engine)
- 2013 MY Veloster (automatic transmission; 1.6 liter engine)
- 2013 MY Veloster (manual transmission; 1.6 liter engine)
- 2013 MY Veloster Turbo (manual transmission; 1.6 liter engine)
- 2012 MY Accent (automatic transmission; 1.6 liter engine)
- 2012 MY Accent (manual transmission; 1.6 liter engine)
- 2012 MY Azera (automatic transmission; 3.3 liter engine)
- 2012 MY Elantra (automatic transmission; 1.8 liter engine)
- 2012 MY Elantra (manual transmission; 1.8 liter engine)
- 2012 MY Genesis (automatic transmission; 3.8 liter engine)
- 2012 MY Genesis (automatic transmission; 4.6 liter engine)
- 2012 MY Genesis (automatic transmission; 5.0 liter engine)
- 2012 MY Genesis R-Spec (automatic transmission; 5.0 liter engine)
- 2012 MY Sonata Hybrid Electric Vehicle (automatic transmission; 2.4 liter engine)
- 2012 MY Tucson 2WD (automatic transmission; 2.0 liter engine)
- 2012 MY Tucson 2WD (automatic transmission; 2.4 liter engine)
- 2012 MY Tucson 2WD (manual transmission; 2.0 liter engine)
- 2012 MY Tucson 4WD (automatic transmission; 2.4 liter engine)
- 2012 MY Veloster (automatic transmission; 1.6 liter engine)
- 2012 MY Veloster (manual transmission; 1.6 liter engine)
- 2011 MY Elantra (automatic transmission; 1.8 liter engine)
- 2011 MY Elantra (manual transmission 1.8 liter engine)
- 2011 MY Sonata Hybrid Electric Vehicle (automatic transmission; 2.4 liter engine)
- 2013 MY Sportage 4WD (manual transmission; 2.4 liter engine)
- 2012 MY Rio 2WD (automatic transmission; 1.6 liter engine)
- 2012 MY Rio 2WD (manual transmission; 1.6 liter engine)
- 2012 MY Sorento 2WD (automatic transmission; 2.4 liter engine (GDI))
- 2012 MY Sorento 4WD (automatic transmission; 2.4 liter engine (GDI))
- 2012 MY Soul 2WD (automatic transmission; 1.6 liter engine)
- 2012 MY Soul 2WD (manual transmission; 1.6 liter engine)
- 2012 MY Soul 2WD (automatic transmission; 2.0 liter engine)
- 2012 MY Soul 2WD (manual transmission; 2.0 liter engine)
- 2012 MY Soul ECO 2WD (automatic transmission; 1.6 liter engine)
- 2012 MY Soul ECO 2WD (automatic transmission; 2.0 liter engine)
- 2012 MY Sportage 2WD (automatic transmission; 2.0 liter engine)
- 2012 MY Sportage 2WD (automatic transmission; 2.4 liter engine)
- 2012 MY Sportage 2WD (manual transmission; 2.4 liter engine)
- 2012 MY Sportage 4WD (automatic transmission; 2.0 liter engine)
- 2012 MY Sportage 4WD (automatic transmission; 2.4 liter engine)
- 2012 MY Sportage 4WD (manual transmission; 2.4 liter engine)
- 2012 MY Optima HEV 2WD (automatic transmission; 2.4 liter engine)
- 2011 MY Optima HEV 2WD (automatic transmission; 2.4 liter engine)

STEP 2: Did you purchase or lease the vehicle identified in STEP 1 on or before November 2, 2012?

YES ___ NO ___ If YES, go to STEP 3. If NO, you are not a class member and you are not eligible for Settlement Benefits.

STEP 3: Place an X on the line next to the category that describes you and go to STEP 4:

- You are the original purchaser of the vehicle identified in STEP 1 AND you still owned the vehicle on [date of settlement agreement]. You are considered a Current Original Owner.
- You are the second or subsequent purchaser of the vehicle identified in STEP 1 AND you still owned the vehicle on [date of the settlement agreement]. You are considered a Current Non-Original Owner.
- You are a former or current lessee of the vehicle identified in STEP 1 AND you still leased the vehicle on [date of settlement agreement]. You are considered a Current Lessee.
- You are a former owner of the vehicle identified in STEP 1, and you no longer owned the vehicle on [date of settlement agreement]. You are considered a Former Owner.
- You are a former lessee of the vehicle identified in STEP 1, and you no longer leased the vehicle on [date of settlement agreement]. You are considered a Former Lessee.
- You are acting on behalf of a governmental entity or a corporation or other entity that is the current or former owner of the vehicle identified in STEP 1 and that negotiated the purchase terms directly with Hyundai Motor America or Kia Motors America, Inc., as opposed to one of their authorized dealers (hereinafter referred to as a "Fleet Vehicle") AND the purchase agreement does not contain a repurchase provision AND the vehicle is not available to be rented or leased.

If you checked the prior box, also check one of the two boxes below:

- The Fleet Vehicle identified in STEP 1 was still owned on [date of settlement agreement] by the governmental entity or corporation or other entity that purchased them. You are considered a Current Fleet Owner.
- The Fleet Vehicle identified in STEP 1 was no longer owned on [date of settlement agreement] by the governmental entity or corporation or other entity that purchased it. You are considered a Former Fleet Owner.

STEP 4: Determine the maximum cash value of your Settlement Benefits. For Current owners and lessees review Schedule A, at the end of the Class Notice: Find your vehicle model as indicated in answer to STEP 1 on Schedule A, and fill in the number listed under the column corresponding to the category you checked in STEP 3. For Former owners and lessees, utilize the reimbursement calculator located at hyundaimpginfo.com for Hyundai Class Vehicles or KIAMPginfo.com for Kia Class Vehicles.

Write the number here: _____. Go to STEP 5

STEP 5: Have you previously registered to receive benefits under the Lifetime Reimbursement Program?

YES ___ NO ___ If YES, go to STEP 6. If NO, go to STEP 7.

STEP 6: You may still choose to receive the up-front payment of lump-sum Settlement Benefits instead of future benefits under the Lifetime Reimbursement Program. If you choose to receive Settlement Benefits in STEP 7 and select the Debit Card option in STEP 8, you will receive the cash value of the Settlement Benefits less the amount of money you previously received under the Reimbursement Program, unless you select one of the alternative compensation benefits: 150% of that amount for a Dealer Service Debit Card, or 200% for a New Purchase Rebate Certificate).

If you are electing to receive either a lump-sum Dealer Service Debit Card or a New Purchase Rebate Certificate, you also may choose to enclose a check to repay the money you received under the Lifetime Reimbursement Program, and credit that amount toward your Settlement Benefit, which will then be used to calculate the value of your Dealer

Service Debit Card or New Purchase Rebate Certificate. Are you enclosing a repayment check with your Claim Form?

- YES ___ NO ___ If YES, please make the check payable to Hyundai Motor America (for Hyundai owners/lessees) or Kia Motors America, Inc. (for Kia owners/lessees) and write the amount of your enclosed check here: _____.

Go to STEP 7.

STEP 7: Make an election. Do you want to receive lump-sum **Settlement Benefits** or do you want to remain in, or register for, the **Lifetime Reimbursement Program**? Lump-sum Settlement Benefits are calculated based upon several factors, including the extra fuel cost for the average time of vehicle ownership. Lump-sum Settlement Benefits provide compensation in one payment, without the need for additional dealer visits or paperwork. The Lifetime Reimbursement Program allows you to make periodic requests for reimbursement of extra fuel costs at your Hyundai/Kia dealer for the time of your vehicle ownership. In making your election, you should consider your own personal circumstances. Details regarding the Settlement Benefits and the Lifetime Reimbursement Program can be found in Questions 6 through 9 of the Class Notice. You may elect to receive either lump-sum Settlement Benefits or future benefits under the Lifetime Reimbursement Program, but not both.

- Settlement Benefits** **Lifetime Reimbursement Program**
If you selected Settlement Benefits, go to STEP 8. If you selected Lifetime Reimbursement Program, go to STEP 9.

STEP 8: Choose how you prefer to receive Settlement Benefits. Check one of the boxes below and then go to STEP 10.

- Debit Card.** This debit card can be used like cash and will be pre-loaded with the value of the Settlement Benefits that corresponds to your vehicle (STEP 1) and the category you checked in STEP 3. The balance of the card can be deposited to a checking or other bank account. It will expire one year after it is issued.
- Dealer Service Debit Card.** The dealer service debit card can be used for goods and services at any authorized participating Hyundai dealership (for Hyundai owners/lessees) or Kia dealership (for Kia owners/lessees) and will be pre-loaded with a value that is **1.5 times** (150%) the amount that would otherwise be loaded on a Debit Card for you. It will expire two years after it is issued.
- New Car Rebate Certificate.** The new car rebate certificate can be applied toward the purchase of a new Hyundai vehicle (for Hyundai owners/lessees) or Kia vehicle (for Kia owners/lessees) and will be pre-loaded with a value that is **double** (200%) the amount that would otherwise be loaded on a Debit Card for you. It will expire three years after it is issued.

STEP 9: ANSWER ONLY IF YOU CHECKED LIFETIME REIMBURSEMENT PROGRAM IN STEP 7. If you are considered a Current Original Owner, Current Lessee, or Current Fleet Owner of an Elantra, Accent, Veloster or Sonata Hybrid Class Vehicle, which of the payment forms described in STEP 8 do you wish to elect for your Additional Compensation? (This Additional Compensation is described in the response to Question 9 of the Class Notice.)

- Debit Card.**
- Dealer Service Debit Card.**
- New Car Rebate Certificate.**

Note: if you have not already registered for the Lifetime Reimbursement Program and wish to do so (and you have not checked the "Settlement Benefits" box in STEP 5), registration information is available at: hyundaimpginfo.com (for Hyundai Class Vehicles) or KIampginfo.com (for Kia Class Vehicles).

STEP 10: Please print your name and address and vehicle information below. Please print neatly.

<u>You:</u>	<u>Your vehicle:</u>
Name: _____	Brand (Hyundai or Kia): _____
Address: _____	Model: _____
City: _____	Model Year: _____
State: _____ Zip code: _____	VIN: _____
Telephone: _____ E-mail: _____	

Go to STEP 11.

STEP 11: CERTIFICATION. You must date, sign, and mail this CLAIM FORM so that it is postmarked by **[9 months after deadline for class notice mailing] in order to make a valid claim.**

You must also provide proof that you owned or leased the vehicle as of November 2, 2012, such as a copy of the most recent registration certificate (or the one in effect on November 2, 2012). Please also include a copy of the purchase or lease contract. If you are considered a Former owner or lessee, please also include evidence of the mileage when you bought and sold the vehicle (such as purchase and sale contract or related documents, odometer disclosure statements, smog certifications, repair orders or other documents demonstrating mileage at the time of purchase and/or sale/disposal).

By signing and submitting this Claim From, you certify that all of the foregoing information is true and correct.

_____	_____
Date	Signature

PLEASE MAKE SURE YOU WRITE YOUR NAME AND VIN ON EACH PAGE OF THIS FORM.
PLEASE MAKE A COPY OF YOUR COMPLETED FORM AND ATTACHMENTS FOR YOUR RECORDS

Exhibit E

TO ALL CUSTOMERS WHO ARE CURRENTLY ENROLLED IN THE [Hyundai/Kia] FUEL ECONOMY LIFETIME REIMBURSEMENT PROGRAM:

Please be advised that you may choose to receive a one-time lump-sum benefit, 150% of this amount in a dealer service debit card, or 200% of this amount in a new car rebate certificate – less amounts already received. The benefits are offered as part of a class action settlement, in amounts [figures/description to be filled in]. For more information, review the Class Notice issued in connection the class action settlement to determine what action you wish to take.

For more information, and for a copy of the Class Notice, please visit [URL of Settlement website] or call [toll-free number].

Exhibit F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

In Re:

HYUNDAI AND KIA FUEL
ECONOMY LITIGATION

No. MDL 13-2424-GW(FFMx)

**[PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT, SETTING A
HEARING ON FINAL
APPROVAL OF SETTLEMENT,
AND DIRECTING NOTICE TO
THE CLASS**

WHEREAS, Named Plaintiffs Nicole Marie Hunter, Kaylene Brady, Travis Brissey, Ronald Burkard, Adam Cloutier, Steven Craig, John Dixon, Erin Fanthorpe, Eric Hadesh, Michael Keeth, John Kirk MacDonald, Michael Mandahl, Nicholas McDaniel, Mary Moran-Spicuzza, Gary Pincas, Brandon Potter, Thomas Purdy, Rocco Renghini, Michelle Singleton, Ken Smiley, Gregory M. Sonstein, Roman Starno, Gayle Stephenson, Andres Villicana, and Richard Williams (“Named Plaintiffs” or “Class Representatives”), individually and as representatives of a Class defined below, and Defendants Hyundai Motor America (“HMA”) and Kia Motors America, Inc. (“KMA”) (collectively, the “Parties”) have entered into a Settlement Agreement dated December , 2013, which, if approved, would resolve this class action;

WHEREAS, the Named Plaintiffs have filed a motion for preliminary approval of the proposed settlement, and the Court has reviewed and considered the motion, the supporting brief, the Settlement Agreement, and all exhibits thereto, including the proposed class notice (the “Notice”), and finds there is sufficient basis for granting preliminary approval of the settlement, directing that notice be disseminated to the class, and setting a hearing at which the Court will consider whether to grant final approval of the settlement;

IT IS HEREBY ORDERED that:

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

2. Pursuant to the Settlement Agreement, the class has been defined as: All current and former owners and lessees of a Class Vehicle who were the owner or lessee, on or before November 2, 2012, of such Class Vehicle that was registered in the District of Columbia or one of the fifty (50) states of the United States, except that the following are excluded: (i) Rental Fleet Owners; (ii) government entities, except to the extent that a government entity is the owner or lessee of a Fleet Class Vehicle (in which case such government entity is not excluded from the Class); (iii) judges assigned to the MDL Litigation, including the judge or judges assigned to any lawsuit prior to the transfer of that lawsuit to the MDL Litigation; and (iv) persons who have previously executed a release of HMA or KMA that includes a claim concerning the fuel economy of such Class Vehicle (the "Class" or "Class Members").

2. The Court preliminarily approves the proposed settlement, finding that the terms of the Settlement Agreement appear sufficiently fair, reasonable, and adequate to warrant dissemination of the Notice of the proposed settlement to the Class. The Court finds that the Settlement Agreement contains no obvious deficiencies and that the parties entered into the Settlement Agreement in good faith, following arm's-length negotiation between their respective counsel.

3. The Court appoints Hagens Berman Sobol Shapiro LLP and McCuneWright, LLP as settlement class counsel and Nicole Marie Hunter, Kaylene Brady, Travis Brissey, Ronald Burkard, Adam Cloutier, Steven Craig, John Dixson, Erin Fanthorpe, Eric Hadesh, Michael Keeth, John Kirk MacDonald, Michael Mandahl, Nicholas McDaniel, Mary Moran-Spicuzza,

Gary Pincas, Brandon Potter, Thomas Purdy, Rocco Renghini, Michelle Singleton, Ken Smiley, Gregory M. Sonstein, Roman Starno, Gayle Stephenson, Andres Villicana, and Richard Williams as class representatives.

4. The Court hereby approves the form and procedures for disseminating notice of the proposed settlement to the Class as set forth in the Settlement Agreement. The Court finds that the notice to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to the Class in full compliance with the requirements of applicable law.

5. For purposes of identifying current and former owners and lessees of Class Vehicles, R.L. Polk & Company is hereby authorized to provide the names and most current addresses of such owners and lessees to HMA and/or KMA or their designee(s). Any governmental agency in possession of names or addresses of current and former Class Vehicle owners or lessees is hereby authorized and directed to release that information to R.L. Polk & Company upon request.

6. As set forth in the Settlement Agreement, HMA and KMA shall bear all costs and expenses in connection with providing notice to the Class and administering the proposed settlement.

7. Any Class Member shall have the right to opt out of the Class and the settlement by sending a written request for exclusion from the Class to the address listed in the Notice postmarked no later than the deadline provided for such exclusion as set forth in the Notice. To be effective, the request for exclusion must: include the Class Member's name, address, telephone number, the Class Member's Vehicle Identification Number (VIN), and signature and state his or her desire to "opt-out" or be "excluded" from the proposed settlement in *In Re*:

Hyundai and KIA Fuel Economy Litigation, No. MDL 13-2424-GW(FFMx) (C.D. Cal.). Any Class Member who does not submit a timely and valid request for exclusion shall be subject to and bound by the Settlement Agreement and every order or judgment entered concerning the Settlement Agreement.

8. Any Class Member who intends to object to final approval of the settlement and/or the amount of attorneys' fees must send a letter, postmarked no later than the deadline provided for such objection to the Court, Class Counsel, and Defense Counsel, as set forth in the Notice. The letter should state that the Class Member "objects" to the proposed settlement in *In Re: Hyundai and KIA Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx) (C.D. Cal.). Each objection must include the Class Member's name, address, telephone number, the Class Member's Vehicle Identification Number (VIN) and signature and the basis for the objection.

9. Any Class Member wishing to speak at the Fairness Hearing must send a letter postmarked no later than the deadline for such notice of intention to appear stating his or her desire to appear in person, or through counsel, at the Fairness Hearing to the Court, Class Counsel, and Defense Counsel, as set forth in the Notice. The letter should state that it is a "Notice of Intention to Appear in *In Re: Hyundai and KIA Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx)." Such notice of intention to appear must include the Class Member's name, address, telephone number, the Class Member's Vehicle Identification Number (VIN) and signature.

10. The Court will hold a Fairness Hearing addressing the final approval of the Settlement Agreement, an award of fees and expenses to Class Counsel, and incentive payments to the class representatives, before the undersigned judge at the U.S. District Court, Central District of California, 255 East Temple Street, Los Angeles, CA, 90012-3332. At the Fairness

Hearing, the Court will consider: (i) whether the settlement should be approved as fair, reasonable, and adequate for the class; (ii) whether a judgment granting approval of the settlement and dismissing the lawsuit with prejudice should be entered; and (iii) whether Class Counsel's application for attorneys' fees and expenses should be granted.

11. The following schedule shall govern the class action settlement proceedings:

(i) HMA and KMA must cause individual notice, substantially in the form attached to the Settlement Agreement as Exhibit G (proposed Class Notice), to be mailed via first-class mail to all reasonably identifiable Class Members, on or before _____.

(ii) Class Members must mail any letter objecting to the proposed settlement on or before _____.

(iii) Class Members must mail any letter electing to exclude themselves from the Class on or before _____.

(iv) Class Members wishing to appear at the Fairness Hearing must mail any letter stating their intent to appear on or before _____.

(v) The parties shall submit motions for final approval of the proposed settlement, including any exhibits or attachments thereto, on or before _____.

(vi) The Fairness Hearing shall be held on _____.

The dates established for items (ii), (iii), (iv) and (vi) shall be included in the Notice mailed to Class Members.

12. Plaintiffs shall file, on or before _____, a motion for attorneys' fees and expenses. HMA and KMA shall file any responses to the motion on or before _____.

_____, and, if necessary, Plaintiffs shall file a reply brief in support of its motion on or before _____.

DATED: _____

Hon. George H. Wu
U.S. District Court Judge

Exhibit G

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

In Re:

HYUNDAI AND KIA FUEL
ECONOMY LITIGATION

No. MDL 13-2424-GW(FFMx)

If you purchased or leased one of the Model Year 2011, 2012 or 2013 Hyundai or Kia vehicles listed in Schedule A at the end of this notice, you may be entitled to cash or other benefits:

- If the Settlement described below is approved by the Court, certain current and former owners and lessees of the Model Year 2011, 2012 and 2013 Hyundai and Kia vehicles listed in Schedule A (hereinafter “Class Vehicles”) can receive a cash payment or other benefits (for more details, see response to Question 9 below: “What does the Settlement provide? What can I get from the Settlement?”).
- If you previously received compensation under the reimbursement program initiated by Hyundai Motor America (hereinafter “HMA”) and by Kia Motors America, Inc. (hereinafter “KMA”) in November 2012, you may still be eligible to receive a cash payment under the Settlement.
- Your legal rights are affected whether you act or don’t act. Please read this entire notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DUE DATE
DO NOTHING	To participate in the lump-sum payment program, do nothing now and if the Settlement is approved, fill out a one-time claim form to receive benefits.	
EXCLUDE YOURSELF	Get no reimbursement under the Settlement. This is the only option that allows you to be part of any other lawsuit against HMA, KMA, Hyundai America Technical Center, Inc. (also doing business as Hyundai-Kia America Technical Center), Hyundai Motor Company, Kia Motors Corporation, and/or their affiliates in connection with the legal claims in this case.	
OBJECT	Write to the Court about why you	

	don't like the Settlement.	
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.	

These rights and options—and the deadlines to exercise them—are explained in this notice.

- The Court in charge of this matter still has to decide whether to approve the Settlement. Settlement benefits will become available if the Court approves the Settlement and after any appeals are resolved. Please be patient.

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BASIC INFORMATION

1. Why did I get this notice?

You may have purchased or leased one of the vehicles involved in two class action lawsuits. The Court has ordered this notice to be mailed to you because you have a right to know about a proposed Settlement of the class action lawsuits, and about your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, HMA and KMA will provide benefits agreed to in the Settlement for certain past and present owners and lessees. This notice explains the lawsuits, the Settlement, your legal rights, the benefits available, who is eligible for them, and how to get them.

The Court in charge of the lawsuits is the U.S. District Court for the Central District of California, and the cases are known as *Hunter, et al. v. HMA and KMA*, No. 12-1909-GW(FFM) and *Brady, et al. v. HMA and KMA*, No. 12-1930-GW(FFM). Both cases were transferred to *In Re: Hyundai and KIA Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx) (hereinafter “MDL Litigation.”) The people who sued are called the Plaintiffs, and the companies they sued, HMA and KMA, are called the Defendants.

2. What are these lawsuits about?

On November 2, 2012, HMA and KMA each issued a statement informing the public that they were voluntarily adjusting the fuel economy ratings downward for the Class Vehicles. Both HMA and KMA simultaneously announced that each company was instituting a lifetime reimbursement program (hereinafter “Lifetime Reimbursement Program”) to compensate affected vehicle owners and lessees for the additional fuel costs associated with the lowered fuel economy ratings.

The lawsuits claimed that, prior to November 2, 2012, the fuel economy ratings for the Class Vehicles constituted actionable misrepresentations. Plaintiffs claimed that, because of the alleged misrepresentation, they purchased vehicles they otherwise would not have purchased or paid more for the vehicles than they otherwise would have paid. Plaintiffs also assert that the Lifetime Reimbursement Program is inadequate. HMA and KMA denied Plaintiffs’ Allegations.

3. Why are these lawsuits class actions?

In a class action, people called “class representatives” sue on behalf of other people who have similar claims. All of these people together are the “Class” or “Class Members” if the Court approves this procedure. Then, that Court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a Settlement?

Both sides in the lawsuit agreed to a Settlement to avoid the cost and risk of further litigation, including a potential trial, and so that the Class Members can get benefits, in exchange for releasing HMA and KMA from liability. The Settlement does not mean that HMA or KMA broke any laws and/or did anything wrong, and the Court did not decide which side was right. The Settlement here has been preliminarily approved by the Court, which authorized the issuance of this Notice. The Class Representatives and the lawyers representing them (called “Class Counsel”) believe that the Settlement is in the best interests of all Class Members.

This Notice summarizes the terms of the Settlement. The Settlement Agreement along with all exhibits and addenda sets forth in greater detail the rights and obligations of the parties. If there is any conflict between this Notice and the Settlement Agreement, the Settlement Agreement governs.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the Settlement?

Judge Wu has decided that this class will include any current or former owner or lessee of a Class Vehicle who was the owner or lessee, on or before November 2, 2012, of such Class Vehicle that was registered in the District of Columbia or one of the fifty (50) states of the United States, except that the following are excluded: (i) Rental Fleet Owners; (ii) government entities, except to the extent that a government entity is the owner or lessee of a Fleet Class Vehicle (in which case such government entity is not excluded from the Class); (iii) judges assigned to the MDL Litigation, including the judge or judges assigned to any lawsuit prior to the transfer of that lawsuit to the MDL Litigation; and (iv) persons who have previously executed a release of HMA or KMA that includes a claim concerning the fuel economy of such Class Vehicle.

“Rental Fleet Owner” means an owner of one or more Fleet Class Vehicles that are available to be rented or leased.

“Fleet Class Vehicle” means a Class Vehicle purchased by a governmental entity corporation, or Person that negotiated the purchase terms with HMA or KMA (as the case may be), as opposed to one of their authorized dealers, provided that neither HMA nor KMA agreed to repurchase such Fleet Class Vehicles at a later date.

The Class Vehicles are the Model Year 2011, 2012 and 2013 Hyundai and Kia vehicles listed in Schedule A attached to this Notice.

6. What if I already received money under the Lifetime Reimbursement Program?

In November 2012, HMA and KMA initiated the Lifetime Reimbursement Program to reimburse certain current and former owners and lessees of the Class Vehicles for the additional fuel costs associated with the fuel economy ratings that were adjusted downward on November 2, 2012. If you received reimbursement pursuant to this Lifetime Reimbursement Program (or if you receive such reimbursement in the future), you will still be a member of the Class, unless you take the steps to exclude yourself from the Class (see response to Question 12 below: “How do I get out of the Settlement?”). If you do exclude yourself, you can still keep any reimbursement you already received and any reimbursement that you receive in the future pursuant to the Lifetime Reimbursement Program, but you will not have the right to share in the benefits offered in the Settlement.

7. I'm still not sure if I am included.

If you are still not sure whether you are included in this class, you can ask for free help. You can call [(XXX)-XXX-XXXX] (for Hyundai vehicles) and [(XXX)-XXX-XXXX] (for Kia vehicles)] and ask whether your vehicle is included in the Settlement. You will need to have your Vehicle Identification Number (VIN) ready. The VIN is located on a placard on the top of the dashboard and is visible through the driver's side corner of the windshield. For more information, you can also visit the website [URL].

8. How does the Settlement relate to the Lifetime Reimbursement Program HMA and KMA established in 2012?

Pursuant to the Lifetime Reimbursement Program, owners and lessees who owned or leased their Class Vehicle on or before November 2, 2012, are eligible to receive a personalized debit card that reimburses them for the additional fuel costs associated with the fuel economy ratings that were adjusted downward on November 2, 2012. The reimbursement formula is based on three factors: (1) the number of miles the owner or lessee has accumulated on the vehicle in question; (2) the difference between the original and revised combined fuel economy ratings of the vehicle in question, in miles per gallon; and (3) the 2012 average fuel price for the area in which the owner lives, based on U.S. Energy Information Association data. In addition, HMA and KMA add an extra 15 percent to the reimbursement amount. Former owners and lessees of the Class Vehicles are eligible to receive a one-time reimbursement using this formula. Current owners and lessess are eligible to receive a reimbursement for prior accumulated mileage, as well as periodic future reimbursement as the Class Vehicle accumulates mileage in the future.

If you register for the Lifetime Reimbursement Program, you will be eligible to receive benefits for as long as you own or lease your Class Vehicle.

Detailed information about the Lifetime Reimbursement Program, including a tool that provides a reimbursement estimate, is available at <https://hyundaimpginfo.com/> for Hyundai vehicle owners and lessees and <https://kiampginfo.com/> for Kia vehicle owners and lessees. To participate in the Lifetime Reimbursement Program, eligible owners and lessees must register within nine (9) months of [Deadline for date that class notice must be mailed.]

As outlined below, if the Settlement is approved by the Court, you can elect whether to receive the Settlement benefits or remain in (or register for) the Lifetime Reimbursement Program. To make your choice, you may want to consider the benefits available under the Lifetime Reimbursement Program and the Settlement for your particular Class Vehicle and your other personal circumstances.

THE SETTLEMENT BENEFITS—WHAT YOU GET

9. What does the Settlement provide? What can I get from the Settlement?

The following table summarizes the Settlement benefits (assuming that the Settlement receives final court approval):

If you	The Settlement provides:
-------------	--------------------------

<p>Purchased your Class Vehicle as a new Hyundai or Kia vehicle on or before November 2, 2012 and you still own it (“Current Original Owner”)</p>	<p>Compensation in the amount set forth in Schedule A for Current Original Owners of your particular Class Vehicle (less any amount already received pursuant to the Lifetime Reimbursement Program), AND</p> <p>The opportunity to select one of the alternative forms of compensation set forth below,</p> <p>OR</p> <p>You may elect to remain in, or register for participation in, the Lifetime Reimbursement Program</p>
<p>Purchased your Class Vehicle as a used vehicle on or before November 2, 2012 and you still own it (“Current Non-Original Owner”)</p>	<p>Compensation in the amount set forth in Schedule A for Current Non-Original Owners of your particular Class Vehicle (less any amount already received pursuant to the Lifetime Reimbursement Program), AND</p> <p>The opportunity to select one of the alternative forms of compensation set forth below,</p> <p>OR</p> <p>You may elect to remain in, or register for participation in, the Lifetime Reimbursement Program</p>
<p>Purchased your Class Vehicle on or before November 2, 2012 and you do <u>not</u> still own it (“Former Owner”)</p>	<p>Compensation in the same amount you would receive pursuant to the Lifetime Reimbursement Program (less any amount already received pursuant to the Lifetime Reimbursement Program), AND</p> <p>The opportunity to select one of the alternative forms of compensation set forth below,</p> <p>OR</p> <p>You may elect to remain in, or register for participation in, the Lifetime Reimbursement Program</p>
<p>Leased your Class Vehicle on or before November 2, 2012 and you still lease it (“Current Lessee”)</p>	<p>Compensation in the amount set forth in Schedule A for Current Lessees of your particular Class Vehicle (less any amount already received pursuant to the Lifetime Reimbursement Program), AND</p> <p>The opportunity to select one of the alternative forms of compensation set forth below</p> <p>OR</p> <p>You may elect to remain in, or register for participation in, the applicable Lifetime Reimbursement Program</p>

<p>Previously leased a Class Vehicle on or before November 2, 2012 and you do <u>not</u> still lease it (“Former Lessee”)</p>	<p>Compensation in the same amount you would receive pursuant to the Lifetime Reimbursement Program (less any amount already received pursuant to the Lifetime Reimbursement Program) AND</p> <p>The opportunity to select one of the alternative forms of compensation set forth below</p> <p>OR</p> <p>You may elect to remain in, or register for participation in, the Lifetime Reimbursement Program</p>
<p>Purchased your Fleet Class Vehicles (defined below) on or before November 2, 2012 and still own them, provided that neither HMA nor KMA agreed to repurchase such Class Vehicles at a later date (“Current Fleet Owner”)</p>	<p>Compensation in the amount set forth in Schedule A for Current Fleet Owners of your particular Class Vehicles (less any amount already received pursuant to the Lifetime Reimbursement Program), AND</p> <p>The opportunity to select one of the alternative forms of compensation set forth below</p> <p>OR</p> <p>You may elect to remain in, or register for participation in, the applicable Lifetime Reimbursement Program</p>
<p>Purchased your Fleet Class Vehicles (defined below) on or before November 2, 2012 and you do not still own them, provided that neither HMA nor KMA agreed to repurchase such Class Vehicles at a later date (“Former Fleet Owner”)</p>	<p>Compensation in the same amount you would receive pursuant to the Lifetime Reimbursement Program (less any amount already received pursuant to the Lifetime Reimbursement Program)</p> <p>AND</p> <p>The opportunity to select one of the alternative forms of compensation set forth below OR</p> <p>You may elect to remain in, or register for participation in, the applicable Lifetime Reimbursement Program</p>

“Fleet Class Vehicle” means a Class Vehicle purchased by a governmental entity corporation, or Person that negotiated the purchase terms with HMA or KMA (as the case may be), as opposed to one of their authorized dealers.

Additional Compensation Applicable to Certain Vehicles

Any Current Original Owner, Current Lessee, or Current Fleet Owner of an Elantra, Accent, Veloster or Sonata Hybrid listed on Schedule A who elects to remain in or register for the Lifetime Reimbursement Program may elect to receive the additional compensation set forth below:

<p>Current Original Owners</p>	<p>\$100 per Elantra, Accent, Veloster, and Sonata Hybrid Class Vehicles</p>
<p>Current Lessees and Current Fleet Owners</p>	<p>\$50 per Elantra, Accent, Veloster, and Sonata Hybrid Class Vehicles</p>

To the extent that any Current Original Owner, Current Lessee, or Current Fleet Owner of an Elantra, Accent, Veloster or Sonata Hybrid listed on Schedule A elects to participate in the Settlement, no further election is necessary as the foregoing amounts are already included in the compensation amounts listed on Schedule A.

Alternative Forms of Compensation

Each Class Member who elects to receive compensation pursuant to this Settlement may choose to receive such compensation as a Cash Debit Card at 100% cash value, a Dealer Service Debit Card valued at 150% of the amount that otherwise would be paid as a Cash Debit Card, or a New Car Rebate Certificate valued at 200% of the amount that otherwise would be paid as a Cash Debit Card. The value of any Cash Debit Card, Dealer Service Debit Card, and New Car Rebate Certificate shall remain the property of the issuer, HMA or KMA, unless and until it is expended by the Settlement Class Member. Upon expiration of any Cash Debit Card, Dealer Service Debit Card, or New Car Rebate Certificate, any unexpended funds shall become the permanent property of the issuer (HMA or KMA). No issuer fees will be imposed on the recipient of a Cash Debit Card, Dealer Service Debit Card, or New Car Rebate Certificate.

• **Cash Debit Card**

- 100% of amount awarded
- May be used like a credit card or at an ATM
- No issuer-imposed restrictions that would prevent a recipient transferring the entire balance of the debit card to a checking or other bank account
- Non-transferable
- Expires one year after it is issued

• **Dealer Service Debit Card**

- 150% of amount that otherwise would be paid as a Cash Debit Card
- May only be used at an authorized Hyundai dealer (for Hyundai Class Vehicles) or an authorized Kia dealer (for Kia Class Vehicles) in payment towards merchandise, parts or service
- Non-transferrable
- Expire two years after it is issued.

• **New Car Rebate Certificate**

- 200% of the amount that otherwise would be paid as a Cash Debit Card
- May only be used toward the purchase of a new Hyundai vehicle (for Settlement Class Members who own(ed) or lease(d) Hyundai Class Vehicles) or a new Kia vehicle (for Settlement Class Members who own(ed) or lease(d) Kia Class Vehicles).
- Non-transferrable, except that it may be transferred to a family member (child, parent or sibling)
- Expires three years after it is issued.

If you previously received benefits pursuant to the Lifetime Reimbursement Program and now wish to obtain a Dealer Service Debit Card or a New Car Rebate Certificate, you may also elect to enclose re-payment for the benefits previously received, which will have the effect of increasing the value of your Dealer Service Debit Card or New Car Rebate Certificate.

HOW YOU CAN PARTICIPATE IN THE SETTLEMENT

10. How can I participate in the Settlement?

If you wish to receive the benefits offered under this Settlement, then you will be required to submit a claim form (which is enclosed) within nine (9) months of **[Deadline for date that class notice must be mailed.]**.

11. When would I get my Settlement benefits?

The Hon. George H. Wu, U.S. District Court Judge, will hold a hearing on **[DATE]**, at **[TIME]** at the U.S. District Court for the District of Central California, Western Division, Edward R. Roybal Federal Building and United States Courthouse, 255 East Temple Street Los Angeles, CA 90012-3332, to decide whether to approve this Settlement. If the Court approves the Settlement, there may be appeals afterwards. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps even more than a year. You may continue to check on the progress of the Settlement by visiting the following website **[URL]** or calling **[HMA TOLLFREE/KMA TOLLFREE]**.

12. What am I giving up to stay in the Class and receive a benefit?

Unless you exclude yourself, you are staying in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against HMA, KMA, Hyundai America Technical Center, Inc. (also doing business as Hyundai-Kia America Technical Center), Hyundai Motor Company, Kia Motors Corporation, all affiliates of the Hyundai Motor Group, or any other related entity about the legal issues in this case if the Settlement is approved. It also means that all of the Court's orders will apply to you and legally bind you.

However, nothing in this Settlement will prohibit you from pursuing claims for: (i) personal injury; (ii) damage to property other than to a Class Vehicle; or (iii) any and all claims that pertain to something other than a Class Vehicle.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to participate in this Settlement, but you want to keep the right to sue or continue to sue HMA or KMA, on your own, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself—or it is sometimes referred to as opting out of the Class.

13. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to “opt-out” or “be excluded from the Settlement.” Be sure to include your name, address, telephone number, your signature, the Vehicle Identification Number (VIN) of your vehicle (which is located on a placard on the top of the dashboard visible through the driver's side corner of the windshield), and refer to the case as *In Re: Hyundai and KIA Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx) (C.D. Cal.). You must mail your exclusion request postmarked no later than **[OPT OUT DEADLINE]** to:

To Class Counsel:

To Defense Counsel:

Robert B. Carey
Hagens Berman Sobol Shapiro LLP
11 West Jefferson Street, Suite 1000
Phoenix, AZ 85003

Michael L. Kidney
Hogan Lovells US LLP
555 Thirteenth St., NW
Washington, DC 20004

You can't exclude yourself on the phone or by e-mail.

If you ask to be excluded, you will not qualify for any of the Settlement benefits, and you cannot object to the Settlement. You will also not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) HMA, KMA, and the related entities listed in the response to the prior question.

14. If I don't exclude myself, can I sue HMA or KMA for the same thing later?

No. Unless you exclude yourself, you give up the right to sue HMA, KMA, Hyundai America Technical Center, Inc., (also doing business as Hyundai-Kia America Technical Center), Hyundai Motor Company, Kia Motors Corporation, all affiliates of the Hyundai Motor Group, and any other related entity for the claims that this Settlement resolves.

If you have a pending lawsuit against HMA, KMA, or the related entities listed, speak to your lawyer who represents you in that lawsuit immediately. You must exclude yourself from *this* Class to continue your own lawsuit if it concerns the same legal issues in this case. Remember, the exclusion deadline is [OPT OUT DEADLINE].

15. If I exclude myself, can I get benefits from this Settlement?

No. If you exclude yourself, you will not be eligible for benefits under the Settlement. But you will not be prohibited by this Settlement from suing, continuing to sue, or being part of a different lawsuit against HMA, KMA, and the other legal entities listed above concerning the legal issues in this case.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in the case?

The Court has asked lawyers from the law firms of Hagens Berman Sobol Shapiro LLP and McCuneWright, LLP to represent you and the Class. Together, the lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and expenses of no more than [AMOUNT]. The Court may award less than this amount. HMA or KMA will separately pay the fees and expenses that the Court awards. HMA or KMA will also separately pay the costs to administer the Settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the Settlement or some part of it.

18. How do I tell the Court that I don't like the Settlement?

If you stay in the Class, you can object to the Settlement if you don't like any part of it. You should give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the Settlement in *In Re: Hyundai and KIA Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx) (C.D. Cal.). Be sure to include your name, address, telephone number, your signature, the Vehicle Identification Number (VIN) of your vehicle (which is located on a placard on the top of the dashboard visible through the driver's side corner of the windshield), and the reasons you object to the Settlement. Mail the objection to these three different places postmarked no later than [OBJECTION DEADLINE]:

To the Court:	To Class Counsel:	To Defense Counsel:
Clerk of Court U.S. District Court, Central District of California 255 East Temple Street Los Angeles, CA 90012-3332	Robert B. Carey Hagens Berman Sobol Shapiro LLP 11 West Jefferson Street, Suite 1000 Phoenix, AZ 85003	Michael L. Kidney Hogan Lovells US LLP 555 Thirteenth St., NW Washington, DC 20004

19. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you cannot object because the case no longer affects you.

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on [DATE], at [TIME] before Judge Wu in the U.S. District Court for the District of Central California, Western Division, Edward R. Roybal Federal Building and United States Courthouse, 255 East Temple Street Los Angeles, CA 90012-3332, to consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. Judge Wu will listen to people who have asked to speak at the hearing. The Court may also decide how much Class Counsel should be paid. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The hearing may be rescheduled without further notice.

21. Do I have to come to the hearing?

No. Class Counsel will answer any questions Judge Wu may have. But you are welcome to come at your own expense. If you send a written objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intention to Appear in *In Re: Hyundai and KIA Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx).” Be sure to include your name, address, telephone number, the Vehicle Identification Number (VIN) of your vehicle (which is located on a placard on the top of the dashboard visible through the driver’s side corner of the windshield), and your signature. Your Notice of Intention to Appear must be postmarked no later than [Deadline Date], and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the three addresses listed in the response to Question 18 above. You cannot speak at the hearing if you exclude yourself.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing at this time, you will remain in the Class and be eligible for the benefits offered by the Settlement as long as you have submitted a timely and valid claim form, assuming that it is approved by the Court. But, if you do not exclude yourself, you won’t be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against HMA, KMA, or any of the other entities listed in the response to Question No. 14 about the legal issues in this case, ever again.

GETTING MORE INFORMATION

24. Are there more details about the Settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by writing to Class Counsel at the address listed in the response to Question 18 above, or you can download a copy online by visiting [URL] or request a copy by calling [HMA TOLLFREE/KMA TOLLFREE].

25. How do I get more information?

You can visit the website at [URL] where you will find answers to common questions about the Settlement, plus other information to help you determine whether you are a member of the Class and whether you are eligible for the benefits offered in the Settlement. If the website does not contain the information you are looking for, you can also call toll-free at [HMA TOLLFREE /KMA TOLLFREE]. You may also contact the Class Counsel listed in the response to Question 18 above.

Other than a request to review the Court’s files at the Clerk of the Court’s Office, please do not contact the Clerk of the Court or the Judge with questions.

BY ORDER OF:

Hon. George H. Wu
U.S. District Court for the
Central District of California

**SCHEDULE A:
VEHICLES AND CASH DEBIT CARD PAYMENT AMOUNTS**

VEHICLE MODEL	CURRENT ORIGINAL OWNER	CURRENT NON-ORIGINAL OWNER	CURRENT FLEET OWNER	CURRENT LESSEE

Exhibit H

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

No. MDL 13-2424-GW(FFMx)

In Re:

HYUNDAI AND KIA FUEL
ECONOMY LITIGATION

**[PROPOSED] ORDER
GRANTING FINAL
APPROVAL OF CLASS
ACTION SETTLEMENT**

Plaintiffs and Class Representatives Nicole Marie Hunter, Kaylene Brady, Travis Brissey, Ronald Burkard, Adam Cloutier, Steven Craig, John Dixson, Erin Fanthorpe, Thomas Ganim, Eric Hadesh, Michael Keeth, Lillian E. Levoff, John Kirk MacDonald, Michael Mandahl, Nicholas McDaniel, Mary Moran-Spicuzza, Gary Pincas, Brandon Potter, Thomas Purdy, Rocco Renghini, Michelle Singleton, Ken Smiley, Gregory M. Sonstein, Roman Starno, Gayle Stephenson, Andres Villicana, and Richard Williams (“Named Plaintiffs” or “Class Representatives”), individually and as representatives of a Class defined below, and Defendants Hyundai Motor America (“HMA”) and Kia Motors America, Inc. (“KMA”) moved this Court for an Order finally approving their settlement and taking certain other actions. On ____, 2014, the Court held a hearing on the motion and the fairness of the settlement.

Upon considering the parties’ Settlement Agreement, all papers in support of the settlement filed by the parties, any objections to the settlement, the arguments of counsel, and the entire record herein, it is hereby ORDERED as follows:

1. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties in this action.
2. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Settlement Agreement.
3. The following nationwide class is certified for settlement purposes only as

1 follows pursuant to Federal Rule of Civil Procedure 23:

2 All current and former owners and lessees of a Class Vehicle (i) who were the owner or
3 lessee, on or before November 2, 2012, of such Class Vehicle that was registered in the District
4 of Columbia or one of the fifty (50) states of the United States, except that the following are
5 excluded: (i) Rental Fleet Owners; (ii) government entities, except to the extent that a
6 government entity is the owner or lessee of a Fleet Class Vehicle (in which case such
7 government entity is not excluded from the Class); (iii) judges assigned to the MDL Litigation,
8 including the judge or judges assigned to any lawsuit prior to the transfer of that lawsuit to the
9 MDL Litigation; and (iv) persons who have previously executed a release of HMA or KMA that
10 includes a claim concerning the fuel economy of such Class Vehicle (hereinafter "Class" or
11 "Settlement Class").

12 4. The Court finds that certification of the Settlement Class is appropriate pursuant
13 to Federal Rule of Civil Procedure 23 because:

14 a. The Settlement Class is so numerous that joinder of all members is
15 impracticable, satisfying the requirement of Rule 23(a)(1);

16 b. There are questions of law or fact common to the Settlement Class, satisfying
17 the requirements of Rule 23(a)(2), including: a) whether HMA and KMA violated federal law in
18 connection with deriving or publishing the EPA fuel economy ratings of the Class Vehicles; b)
19 whether the published fuel economy ratings of the Class Vehicles were inaccurate; c) whether
20 HMA and KMA engaged in an unlawful business practice by allegedly failing to disclose the
21 accurate fuel economy ratings of the Class Vehicles; and d) whether HMA's and KMA's conduct
22 violated the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, et
23 seq. and/or California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, et
24 seq.

25 c. The claims of Class Representatives are typical of the claims of the members
26 of the Settlement Class, satisfying the requirements of Rule 23(a)(3);

27 d. The representative parties will fairly and adequately protect the interests of the
28 Settlement Class, satisfying the requirements of Rule 23(a)(4);

1 e. Questions of law or fact common to the members of the Settlement Class, as
2 set forth above, predominate over questions affecting only individual members and a class action
3 is superior to other methods available for the fair and efficient adjudication of the controversy,
4 satisfying the requirements of Rule 23(b)(3); and

5 f. The action is manageable as a class action for settlement purposes.

6 5. If this Order is set aside, materially modified, or overturned by this Court or on
7 appeal, and is not fully reinstated on further appeal, this Order certifying a Settlement Class shall
8 be vacated *nunc pro tunc*.

9 6. The Court has carefully considered and overruled any objections to the proposed
10 settlement that have been filed.

11 7. The Court concludes that the proposed settlement is a fair, reasonable and
12 adequate compromise of the claims asserted in this action.

13 8. The Court appoints Hagens Berman Sobol Shapiro LLP and McCuneWright, LLP
14 as settlement class counsel.

15 9. The Court approves the terms of the Settlement Agreement as fair, reasonable,
16 and adequate as it applies to the Class Representatives and the members of the Class under
17 Federal Rule of Civil Procedure 23. The Court further directs implementation of all terms and
18 provisions of the Settlement Agreement.

19 10. The Class Notice was disseminated in accordance with the procedures required by
20 the Court's _____, 2014 Order and in accordance with applicable law.

21 11. All parties are bound by this Order and by the Settlement Agreement.

22 12. The Court dismisses, on the merits and with prejudice, all claims currently
23 pending before it belonging to Class Members who did not request exclusion from the Class in
24 the time and manner provided for in the Class Notice ("Settlement Class Members").

25 13. The Court dismisses with prejudice Hunter, et al. v. HMA and KMA, No. 12-
26 1909-GW(FFM) and Brady, et al. v. HMA and KMA, No. 12-1930-GW(FFM). The Court
27 dismisses without prejudice *Espinosa v. HMA*, et al. No. 2:12-cv-00800 GW (FFMx) and all
28 other lawsuits centralized in this MDL in which the named plaintiffs in such lawsuit(s) did not

1 timely exclude themselves from the settlement in accordance with the procedures set forth in the
2 Class Notice.

3 14. As of the Effective Date of the Agreement, the Releasors (as defined in the
4 Settlement Agreement) shall be deemed to hereby fully and irrevocably release, waive, and
5 discharge the Releasees (as defined in the Settlement Agreement), whether or not specifically
6 named herein, from any and all past, present, and future liabilities, claims, causes of action
7 (whether in contract, tort or otherwise, including statutory, common law, property, and equitable
8 claims), damages, costs, attorneys' fees, losses, or demands, whether known or unknown,
9 existing or potential, or suspected or unsuspected, that (a) were asserted in the MDL Litigation
10 (including lawsuits transferred to and centralized in the MDL Litigation) or (b) relate to (i) the
11 fuel economy of one or more Class Vehicles (including, but not limited to, the actual or
12 reported miles-per-gallon of fuel obtained or achieved in a Class Vehicle); (ii) the marketing or
13 advertising of the fuel economy of such Class Vehicles and any related disclosures or alleged
14 nondisclosures; or (iii) the disclosures, regulatory filings, transactions, actions, conduct, or
15 events that are the subject of the MDL Litigation regarding the Class Vehicles ("Released
16 Claims"); provided that the Released Claims shall include any unknown claims that a
17 Settlement Class Member does not know to exist against any of the Releasees which relate to
18 the fuel economy of one or more Class Vehicles which, if known, might have affected his or
19 her decision regarding the settlement of the MDL Litigation; provided further that the Class
20 Representatives acknowledge that they and the other Settlement Class Members may hereafter
21 discover facts in addition to or different from those that they now know or believe to be true
22 concerning the subject matter of this release but the Released Claims shall nonetheless be
23 deemed to include any and all Released Claims without regard to the existence of such
24 different or additional facts concerning each of the Releasees. Notwithstanding the foregoing,
25 no claims are released hereunder for: (i) personal injury; (ii) damage to tangible property other
26 than a Class Vehicle; or (iii) any and all claims that pertain to anything other than the Class
27 Vehicles.

28 15. All members of the Class who did not make a valid request for exclusion in the

1 time and manner provided in the Class Notice are barred, permanently enjoined, and restrained
2 from commencing or prosecuting any action, suit, proceeding, claim or cause of action in any
3 jurisdiction or court against HMA, KMA, Hyundai America Technical Center, Inc. (also doing
4 business as Hyundai-Kia America Technical Center), Hyundai Motor Company, Kia Motors
5 Corporation, all affiliates of the Hyundai Motor Group or any other Releasee based upon,
6 relating to, or arising out of, any of the Released Claims.

7 16. The Settlement Agreement, acts performed in furtherance of the Settlement
8 Agreement or the settlement set forth therein, and documents executed in furtherance of the
9 Settlement Agreement or the settlement set forth therein may not be deemed or used as evidence
10 of an admission or other statement supporting: (a) the validity of any claim made by the Class
11 Representatives, Settlement Class Members, or Class Counsel (including the appropriateness of
12 class certification); (b) any wrongdoing or liability of the Releasees; or (c) any fault or omission
13 of the Releasees in any court, administrative agency, or other proceeding.

14 17. The Settlement Agreement shall not be offered or be admissible in evidence
15 against HMA, KMA, Hyundai America Technical Center, Inc. (also doing business as Hyundai-
16 Kia America Technical Center), Hyundai Motor Company, Kia Motors Corporation, all affiliates
17 of the Hyundai Motor Group, and/or their affiliates or cited or referred to in any action or
18 proceeding, except in an action or proceeding that is in furtherance of its terms or brought to
19 enforce its terms.

20 18. If this Order is set aside, materially modified, or overturned by this Court or on
21 appeal, and is not fully reinstated on further appeal, this Order shall be deemed vacated and shall
22 have no force or effect whatsoever.

23 19. Without affecting the finality of the Order in any way, the Court reserves
24 continuing jurisdiction over the parties regarding the enforcement of the terms of the Settlement
25 Agreement.
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DATED: _____, 2014

Hon. George H. Wu

Exhibit I

For Hyundai Motor America

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Media Contacts:

For Plaintiffs

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**HYUNDAI MOTOR AMERICA RESOLVES LITIGATION
FOLLOWING RESTATEMENT OF FUEL ECONOMY RATINGS**

**Automaker Provides Alternative Choice of Single “Lump Sum” Payment
To Take Care of Affected Owners**

ORANGE COUNTY, December 23 – Hyundai Motor America today announced that it has entered into an agreement with current and former owners and lessees of vehicles affected by the automaker’s November 2012 restatement of fuel economy ratings. The adjustment affected approximately 27 percent of Hyundai 2011-13 model year vehicles, reducing their combined city/highway fuel economy by 1-2 mpg. While today’s settlement agreement is valued at up to approximately \$210 million, that number is dependent on how many customers elect to participate in the settlement’s one-time lump sum payment option or remain in the lifetime reimbursement program Hyundai introduced at the time of the restatement.

“We are pleased with the proposed settlement,” said W. Gerald Flannery, general counsel of Hyundai Motor America. “It demonstrates the ongoing Hyundai commitment to taking care of its customers.”

At the time of the restatement in 2012, Hyundai provided a lifetime reimbursement program to cover the additional fuel costs associated with the rating change – plus a 15 percent premium in acknowledgement of the inconvenience to customers. Affected owners and lessees are compensated based on their actual mileage and the fuel costs for the region in which they live.

“Customers responded favorably to the original reimbursement program,” added Flannery.

“Today’s settlement is designed to provide them with an option, again intended to make customers fully whole for Hyundai’s fuel economy ratings restatement.”

To address plaintiffs’ claims including the requirement to return to a dealership for mileage verification, which plaintiffs felt could deter participation in the reimbursement program,

Hyundai agreed to add a lump sum payment option. The proposed cash lump sum amount, which varies by vehicle model and ownership type, will result in an average estimated payment of \$353 to Hyundai owners and lessees. For example, an owner of a 2012 Elantra would receive a lump sum payment of \$320 minus any previous reimbursement payments. Affected Hyundai owners may elect the one-time lump sum cash payment or remain in the automaker's lifetime reimbursement program; the choice is theirs. Consumers can also elect other options, such as a dealership credit of 150 percent of the lump sum cash payment amount, or a credit of 200 percent of the cash amount toward the purchase of a new Hyundai vehicle.

"Hyundai's willingness to create a way for its customers to receive all of their future extra fuel expenses in a lump sum shows they are serious about making things right for their customers," said Rob Carey, a Hagens Berman partner working on the case. "Hyundai stepped up – and its customers will now get a full recovery without the inconvenience of repeated dealership visits and paperwork."

The Court is expected to review the proposed settlement for preliminary approval in early 2014. Assuming preliminary approval is granted, notices will be sent to individual class members. Initial details of the settlement are available now at www.hyundaimpginfo.com. A more in-depth website dedicated to the settlement will be established following preliminary approval by the Court.

About Hyundai and Kia Fuel Economy Litigation, MDL No. 2424

Following disclosure of the fuel economy ratings discrepancy in November 2012, approximately 53 federal complaints were filed against Hyundai and Kia and later consolidated (*In re: Hyundai and Kia Fuel Economy Litigation, MDL No. 2424*) in United States District Court for the Central District of California before Judge George H. Wu.

About Hyundai Motor America

Hyundai Motor America, headquartered in Costa Mesa, Calif., is a subsidiary of Hyundai Motor Co. of Korea. Hyundai vehicles are distributed throughout the United States by Hyundai Motor America and are sold and serviced through more than 820 dealerships nationwide. All Hyundai vehicles sold in the U.S. are covered by the [Hyundai Assurance](#) program, which includes the 5-year/60,000-mile fully-transferable new vehicle limited warranty, Hyundai's 10-year/100,000-mile powertrain limited warranty and five years of complimentary Roadside Assistance. Hyundai Assurance includes Assurance Connected Care that provides owners of Hyundai models equipped with the Hyundai Blue Link telematics system with proactive safety and car care services complimentary for three years. These services include Automatic Collision Notification, Enhanced Roadside Assistance, Vehicle Diagnostic Alert, Monthly Vehicle Health Report and in-vehicle service scheduling.

About Hagens Berman

Seattle-based Hagens Berman Sobol Shapiro LLP represents consumers, workers, whistleblowers and investors in complex litigation. The firm has offices in nine cities and has been named one of the top plaintiffs' law firms in the country by the National Law Journal seven times. Founded in 1993, HBSS continues to successfully fight for consumer rights in class-action litigation. More about the law firm and its successes can be found at www.hbsslaw.com. Visit the firm's class-action law blog at www.classactionlawtoday.com.

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Exhibit J

Media Contacts:

For KMA

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**KIA - DRAFT
PRESS RELEASE**

**KIA MOTORS AMERICA AGREES TO RESOLVE LITIGATION
PERTAINING TO RESTATEMENT OF FUEL ECONOMY RATINGS**

**Automaker Pleased to Reach Agreement and Provide Affected Customers
with New Reimbursement Options Including a Lump Sum Cash Payment**

IRVINE, Calif., December 23, 2013 – Kia Motors America (KMA) today announced a proposed settlement of disputes that were raised by current and former owners and lessees of vehicles affected by the automaker’s November 2012 restatement of fuel economy ratings. The adjustment affected approximately 300,000 2011-13 model year Kia vehicles. While today’s proposed settlement agreement is valued at up to approximately \$185 million, the final number will be determined by the number of customers that elect to participate in one of the settlement’s lump-sum payment options or remain in the lifetime reimbursement program KMA introduced at the time of the restatement, which reimburses based on actual fuel expenses.

“Kia Motors is a responsible company, and the proposed settlement enhances our goal of making things right for our customers by providing new reimbursement options,” said John Yoon, KMA Executive Vice President HR, Administration, Diversity Relations, and General Counsel. “Kia Motors is fully committed to taking care of its customers, and today’s settlement adds flexibility by adding lump-sum payment options to the transparent reimbursement program introduced last year.”

KMA has previously offered to provide compensation to affected owners for added fuel costs as a result of the MPG adjustments from the time of the original restatement – plus an extra 15

percent for their inconvenience. Affected owners and lessees are reimbursed based on their actual mileage and the fuel costs for the region in which they live.

To address plaintiffs' claims, including that having to repeatedly return to a dealership would deter participation in the reimbursement program, KMA and the plaintiffs agreed to add lump-sum payment options. The proposed cash lump-sum amount, which varies by vehicle and ownership type and accounts for previously received compensation, will result in an estimated average payment of about \$667 for retail customers. Consumers can also elect other options such as a dealership credit of 150% of the lump sum cash payment amount, or a credit of 200% of the cash amount towards the purchase of a new Kia vehicle.

"Kia's willingness to create a way for its customers to receive all of their future extra fuel expenses in a lump sum shows they are serious about making things right for their customers," said Rob Carey, a Hagens Berman partner working on the case. "Kia stepped up—and its customers will now get a full recovery without the chores of going to the dealership or filling out paperwork for years on end."

The Court is expected to review the proposed settlement for preliminary approval in early 2014. Assuming preliminary approval is granted, notices will be sent to individual class members. Preliminary details of the settlement are available at www.KiaMPGinfo.com. A more in-depth website dedicated to the settlement will be established following preliminary approval by the Court.

About Hyundai and Kia Fuel Economy Litigation, MDL No. 2424

Following disclosure of the fuel economy ratings discrepancy in November 2012, approximately 53 complaints were filed in federal court against Hyundai and Kia and then consolidated (*In re: Hyundai and Kia Fuel Economy Litigation, MDL No. 2424*) in United States District Court for the Central District of California before Judge George H. Wu.

About Kia Motors America

Kia Motors America is the marketing and distribution arm of Kia Motors Corporation based in Seoul, South Korea. KMA offers a complete line of vehicles through more than 765 dealers

throughout the United States and serves as the "Official Automotive Partner" of the NBA and LPGA. In 2012, KMA recorded its best-ever annual sales total and gained U.S. market share for the 18th consecutive year. Kia is poised to continue its momentum and will continue to build the brand through design innovation, quality, value, advanced safety features and new technologies.

Information about Kia Motors America and its full vehicle line-up is available at its website – www.kia.com. For media information, including photography, visit www.kiamedia.com. To receive custom email notifications for press releases the moment they are published, subscribe at <http://www.kiamedia.com/us/en/newsalert>.

About Hagens Berman

Seattle-based Hagens Berman Sobol Shapiro LLP represents consumers, workers, whistleblowers and investors in complex litigation. The firm has offices in nine cities and has been named one of the top plaintiffs' law firms in the country by the National Law Journal seven times. Founded in 1993, HBSS continues to successfully fight for consumer rights in class-action litigation. More about the law firm and its successes can be found at www.hbsslaw.com. Visit the firm's class-action law blog at www.classactionlawtoday.com.

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EXHIBIT 2

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21 Fax. (206) 623-0594

22 *Attorneys for Plaintiff Kaylene P. Brady, et al. and*
23 *Nicole Marie Hunter, et al.*

24 UNITED STATES DISTRICT COURT
25 CENTRAL DISTRICT OF CALIFORNIA
26 WESTERN DIVISION

27 IN RE: HYUNDAI AND KIA FUEL
28 ECONOMY LTIGATION

MDL Case No. 2:13-ml-2424-GW-FFM

**DECLARATION OF ROBERT B.
CAREY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

1 I, Robert B. Carey, declare:

2 1. I am a partner at the law firm of Hagens Berman Sobol Shapiro, LLP,
3 counsel of record for Nicole Marie Hunter (“Hunter”), and Kaylene P. Brady, Travis
4 Brissey, Ronald J. Burkard, Adam Cloutier, Steven Craig, John J. Dixson, Erin L.
5 Fanthorpe, Eric Hadesh, Michael P. Keeth, John Kirk Macdonald, Michael Mandahl,
6 Nicholas McDaniel, Mary J. Moran-Spicuzza, Gary Pincas, Brandon Potter, Thomas
7 Purdy, Rocco Renghini, Michelle Singleton, Ken Smiley, Roman Starno, Gayle A.
8 Stephenson, Andres Villicana, and Richard Williams (the “Brady Plaintiffs”). I am
9 submitting this declaration in support of Plaintiffs’ Motion for Preliminary Approval
10 of Class Settlement. I have personal knowledge of the matters in this declaration and
11 if necessary, could testify thereto.
12
13

14 2. I am a partner of Hagens Berman Sobol Shapiro LLP, residing in the
15 Arizona office. I have more than twenty years of litigation experience, and
16 specialize in prosecuting class-action lawsuits against a variety of organizations and
17 companies. I was the immediate past Chair of the Arizona State Bar Class Actions
18 and Derivative Suits Committee and co-authored the Arizona section of the
19 American Bar Association’s 2010 survey of class-action law. In addition, I recently
20 chaired, at the request of the State Bar of Arizona, a CLE entitled “Arizona Class
21 Action Basics,” and I have served as an adjunct faculty member for graduate and
22 undergraduate law-related courses, including most recently at the Arizona State
23 University Sandra Day O’Connor College of Law for the Class Actions course. My
24 firm specializes in complex litigation and class actions and has been approved by
25
26

1 courts to serve as class counsel in hundreds of class actions, including cases in this
2 District.

3 3. On November 2, 2012, after undertaking an investigation, Hagens
4 Berman Sobol Shapiro LLP (“Hagens Berman”) filed an action in the Central
5 District of California on behalf of Hunter against Hyundai Motor America (“HMA”) and
6 Kia Motors America, Inc. (“KMA”), asserting claims for violation of the
7 California Unfair Competition Law, violation of the California False Advertising
8 Law, violation of the California Consumer Legal Remedies Act, breach of express
9 warranty, fraud, negligent misrepresentation, and unjust enrichment/common law
10 claim for restitution.¹ This suit alleged flawed EPA testing conducted by HMA and
11 KMA in establishing MPG estimates for many of their vehicles. On November 6,
12 2012, Hagens Berman filed another action in the Central District of California on
13 behalf of the Brady Plaintiffs against HMA and KMA on the same basis and alleging
14 the same causes of action as those in Hunter’s Complaint. The Brady Plaintiffs,
15 however, included more information regarding Defendants’ fuel-efficiency
16 reimbursement program, and how a successful class action would seek to pay the
17 Class members their damages in a lump-sum payment now to account for the time
18 value of money and to alleviate the Class members’ burden of proving their losses,
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23
24 ¹ The plaintiffs in *Espinosa et al. v. Hyundai Motor America* (the “Espinosa
25 Plaintiffs”) filed a class-action complaint against HMA on January 6, 2012, in the
26 Central District of California, which was amended on August 2, 2012, alleging that
27 HMA disseminated false and misleading advertisements regarding fuel economy for
28 a number of Hyundai models, including alleging that the Hyundai Elantra was falsely
and misleadingly advertised as achieving 40 mpg.

1 driving to the dealership, and having to fill out paperwork every time reimbursement
2 is requested.

3 4. In total, there were fifty-two putative class-action complaints filed in
4 Federal court (and one filed in state court) against HMA, KMA, Hyundai Motors
5 Corporation (“HMC”), and/or Kia Motors Corporation (“KMC”) regarding the MPG
6 overstatement. Based on the February 5, 2013 Transfer Order from the Judicial
7 Panel on Multidistrict Litigation (“JPML”), many of those cases were transferred and
8 consolidated in this Court as *In re: Hyundai and Kia Fuel Economy Litigation*, MDL
9 No. 2424. During the months after the Hunter and Brady Plaintiffs filed their
10 complaints, the Espinosa, Hunter, and Brady Plaintiffs (together, the “Settling
11 Plaintiffs” or “Plaintiffs”) reached an agreement in principle on settlement terms
12 with HMA, and extended the same terms to KMA. Liaison settlement counsel was
13 designated for the non-settling plaintiffs, and KMA subsequently agreed to the
14 proposed Settlement terms.

15 5. With the Court’s guidance in establishing a discovery schedule, and
16 with ongoing input from liaison settlement counsel, the parties conducted interviews
17 of integral employees of HMA, KMA, and HKMC, and propounded requests for
18 production and interrogatories on Defendants. The confirmatory discovery process
19 lasted almost seven months, the results of were routinely provided to the non-settling
20 plaintiffs through liaison counsel.

21 6. Based on my experience with similar consumer class actions, I believe
22 that settlement of this action is appropriate and in the best interests of current and
23

1 former Hyundai and Kia vehicle owners and lessees, as they will receive substantial
2 benefits and avoid the risks, uncertainty, and delay that is inherent in any litigation. I
3 also believe that the terms of the proposed Settlement are fair, adequate, and
4 reasonable. I base these conclusions on what I have learned regarding the strengths
5 and weaknesses of the parties' respective claims, defenses, and evidence in the
6 course of this action.

7
8 7. Plaintiffs have obtained information sufficient to allow them to evaluate
9 and enter into a settlement. Besides independent investigations conducted by my
10 firm, the parties have engaged in formal discovery. Among other things, Defendants
11 have provided information regarding the scope of the flawed coastdown testing in
12 different Hyundai and Kia models and model years, the corresponding MPG
13 overstatement of those vehicles, and the complaints received regarding the fuel
14 efficiency of those vehicles. Additionally, Plaintiffs' counsel has taken eleven
15 interviews of key personnel with HMA, KMA, HMC, and KMC.

16
17 8. Based on my firm's investigation and the information I obtained from
18 Defendants, I have concluded that further litigation will be protracted and expensive
19 for all parties. While I believe that Plaintiffs have valid claims, I recognize that there
20 is always an element of risk in any litigation.

21
22 9. The Settlement is fair, reasonable, and adequate because it is the
23 product of months of arm's-length negotiations between counsel and informed by the
24 Court's rulings. Plaintiffs and Defendants have engaged in a series of confidential
25 settlement communications in person, telephonically, and in writing over a number
26

1 of months, and they have engaged in multiple negotiation sessions with the
2 assistance of the Honorable Stephen J. Sundvold (Ret.). I have negotiated other
3 settlements with HMA and its counsel, all of which were deemed fair, reasonable,
4 and adequate.
5

6 10. Plaintiffs' counsel met with Hyundai representatives in person to
7 discuss claims and settlement possibilities on November 14, 2012, and December 14,
8 2012. Two mediation sessions followed with Hyundai on January 16, 2013 and
9 February 12, 2013, and a third occurred that also included claims against Kia on
10 March 21, 2013. Negotiators for both sides were in frequent contact by phone and
11 email during this time to discuss substantive settlement issues and ongoing discovery
12 efforts. The negotiations involved the evaluation of the documents received and of
13 the information garnered from interviews taken during the settlement-discovery
14 phase. The parties demonstrated that they were fully prepared to litigate this case
15 through final judgment; in fact, the *Espinosa* Plaintiffs have engaged a full round of
16 briefing on the merits of motions to dismiss and have briefed their motion for class
17 certification.
18

19
20 11. This proposed Settlement was made possible by a concerted effort to
21 identify and limit the scope of the Settlement to those vehicles that were affected by
22 the flawed EPA testing performed by Defendants, resulting in an overstatement of
23 fuel efficiency of those vehicles. We were successful, in our opinion, in identifying
24 the Hyundai and Kia models and model years that were subject to the flawed testing
25 and MPG overstatement, and for those people we expanded the reimbursement
26

1 program offered Defendants and brought additional benefits to them. None of the
2 owners or lessees of the models excluded are required to release or waive any rights,
3 and they are able to pursue such claims on their own.

4
5 12. These negotiations and the terms of the Settlement do not create or
6 reflect any conflict of interest. The parties did not negotiate fees and costs, and
7 instead deferred that negotiation until after they had agreed on the terms of the
8 Settlement. Any fees, costs, or incentive awards ultimately approved by this Court
9 will be paid by Defendants and will not diminish the settlement value available to
10 Class members. In addition, because the Settlement provides additional benefits for
11 owners and lessees who are eligible to or who did participate in the reimbursement
12 program, I believe that the named plaintiffs have no interests that are adverse or
13 antagonistic to the interests of the putative class.

14
15 13. Throughout the course of this litigation, Plaintiffs have been available
16 for multiple communications and provided information for various pleadings.

17
18 14. On April 19, 2013, as part of the confirmatory discovery process in this
19 litigation, counsel for Plaintiffs conducted an in-person, tape-recorded interview of
20 Michael Sprague. Relevant excerpts of the transcript of this tape-recorded interview,
21 with the transcriber's declaration, are attached hereto as Exhibit A.

22
23 15. On June 4, 2013, and June 5, 2013, as part of the confirmatory
24 discovery process in this litigation, counsel for Plaintiffs conducted an in-person,
25 tape-recorded interview of Michelle Cameron. Relevant excerpts of the transcript of
26

1 this tape-recorded interview, with the transcriber's declaration, are attached hereto as
2 Exhibit B.

3 16. On June 5, 2013, as part of the confirmatory discovery process in this
4 litigation, counsel for Plaintiffs conducted an in-person, tape-recorded interview of
5 Orth Hedrick. Relevant excerpts of the transcript of this tape-recorded interview,
6 with the transcriber's declaration, are attached hereto as Exhibit C.

7 17. On August 29, 2013, as part of the confirmatory discovery process in
8 this litigation, counsel for Plaintiffs conducted an in-person, tape-recorded interview
9 of Scott Margason. Relevant excerpts of the transcript of this tape-recorded
10 interview, with the transcriber's declaration, are attached hereto as Exhibit D.

11 18. On August 29, 2013, as part of the confirmatory discovery process in
12 this litigation, counsel for Plaintiffs conducted an in-person, tape-recorded interview
13 of William Reedy III. Relevant excerpts of the transcript of this tape-recorded
14 interview, with the transcriber's declaration, are attached hereto as Exhibit E.

15 19. On August 30, 2013, as part of the confirmatory discovery process in
16 this litigation, counsel for Plaintiffs conducted an in-person, tape-recorded interview
17 of John Krafcik. Relevant excerpts of the transcript of this tape-recorded interview,
18 with the transcriber's declaration, are attached hereto as Exhibit F.

19 20. On September 12, 2013, as part of the confirmatory discovery process
20 in this litigation, counsel for Plaintiffs conducted an in-person, tape-recorded
21 interview of Kwang-Yeon Kim. Relevant excerpts of the transcript of this tape-
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1 recorded interview, with the transcriber's declaration, are attached hereto as Exhibit
2 G.

3 21. On September 13, 2013, as part of the confirmatory discovery process
4 in this litigation, counsel for Plaintiffs conducted an in-person, tape-recorded
5 interview of Chong Ah Kwon. Relevant excerpts of the transcript of this tape-
6 recorded interview, with the transcriber's declaration, are attached hereto as Exhibit
7 H.
8

9 22. On September 13, 2013, as part of the confirmatory discovery process
10 in this litigation, counsel for Plaintiffs conducted an in-person, tape-recorded
11 interview of Joon-Ho Lee. Relevant excerpts of the transcript of this tape-recorded
12 interview, with the transcriber's declaration, are attached hereto as Exhibit I.
13

14 23. Documents bearing Bates numbers HKMCST0008209 to
15 HKMCST0008230 were produced by Defendants to Plaintiffs as part of the
16 confirmatory discovery process in this litigation. A true and correct copy of these
17 documents are attached hereto as Exhibit J.
18

19 24. Documents bearing Bates numbers HKMCST0008395 to
20 HKMCST0008412 were produced by Defendants to Plaintiffs as part of the
21 confirmatory discovery process in this litigation. A true and correct copy of these
22 documents are attached hereto as Exhibit K.

23 25. Documents bearing Bates numbers HMAST0084964 to
24 HMAST0085049 were produced by Defendants to Plaintiffs as part of the
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1 confirmatory discovery process in this litigation. A true and correct copy of these
2 documents are attached hereto as Exhibit L.

3 26. Documents bearing Bates numbers HMAST0085142 to
4 HMAST0085215 were produced by Defendants to Plaintiffs as part of the
5 confirmatory discovery process in this litigation. A true and correct copy of these
6 documents are attached hereto as Exhibit M.

7 27. Documents bearing Bates numbers HMAST2004793 to
8 HMAST2004885 were produced by Defendants to Plaintiffs as part of the
9 confirmatory discovery process in this litigation. A true and correct copy of these
10 documents are attached hereto as Exhibit N.

11 28. Documents bearing Bates numbers HMAST2032646 to
12 HMAST2032675 were produced by Defendants to Plaintiffs as part of the
13 confirmatory discovery process in this litigation. A true and correct copy of these
14 documents are attached hereto as Exhibit O.

15 29. Documents bearing Bates numbers KMAST0006155 to
16 KMAST0006184 were produced by Defendants to Plaintiffs as part of the
17 confirmatory discovery process in this litigation. A true and correct copy of these
18 documents are attached hereto as Exhibit P.

19 30. Documents bearing Bates numbers KMAST0006206 to
20 KMAST0006231 were produced by Defendants to Plaintiffs as part of the
21 confirmatory discovery process in this litigation. A true and correct copy of these
22 documents are attached hereto as Exhibit Q.

1 31. Documents bearing Bates numbers KMAST0016052 to
2 KMAST0016056 were produced by Defendants to Plaintiffs as part of the
3 confirmatory discovery process in this litigation. A true and correct copy of these
4 documents are attached hereto as Exhibit R.

5
6 32. Document bearing Bates number KMAST0016717 was produced by
7 Defendants to Plaintiffs as part of the confirmatory discovery process in this
8 litigation. A true and correct copy of this document is attached hereto as Exhibit S.

9 33. Documents bearing Bates numbers KMAST0026768 to
10 KMAST0026809 were produced by Defendants to Plaintiffs as part of the
11 confirmatory discovery process in this litigation. A true and correct copy of these
12 documents are attached hereto as Exhibit T.

13
14 34. Documents bearing Bates numbers KMAST0027439 to
15 KMAST0027447 were produced by Defendants to Plaintiffs as part of the
16 confirmatory discovery process in this litigation. A true and correct copy of these
17 documents are attached hereto as Exhibit U.

18 35. Documents bearing Bates numbers KMAST0030692 to
19 KMAST00327447 were produced by Defendants to Plaintiffs as part of the
20 confirmatory discovery process in this litigation. A true and correct copy of these
21 documents are attached hereto as Exhibit V.

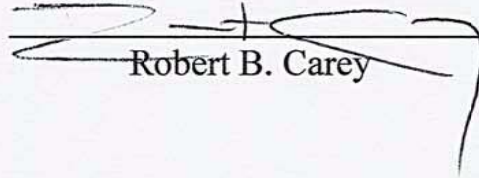
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23 36. Documents bearing Bates numbers HMAST0085497 to
24 HMAST0085576 were produced by Defendants to Plaintiffs as part of the
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confirmatory discovery process in this litigation. A true and correct copy of these documents are attached hereto as Exhibit W.

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

Executed this 23rd day of December, 2013 in Phoenix, Arizona.



Robert B. Carey

EXHIBIT 3

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*Attorneys for Plaintiff Kaylene P. Brady, et al. and
Nicole Marie Hunter, et al.*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE: HYUNDAI AND KIA FUEL
ECONOMY LITIGATION

MDL Case No. 2:13-ml-2424-GW-FFM

**DECLARATION OF RICHARD
McCUNE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Date:
Time:
Judge: Hon. George Wu; Courtroom: 10

1 I, Richard McCune, declare:

2 1. I am a partner at the law firm of McCune Wright, LLP, counsel of
3 record for Thomas Ganim, and Lillian Levoff, (the “Espinosa Plaintiffs”),

4 2. I am submitting this declaration in support of Plaintiffs’ Motion for
5 Preliminary Approval of Class Settlement. I have personal knowledge of the matters
6 in this declaration and if necessary, could testify thereto.

7 3. I am the senior partner of McCune Wright, LLP (“McCune Wright”).
8 My firm represents plaintiffs in consumer fraud class actions, product liability and
9 other complex class action litigations in California and across the United States. I
10 obtained my J.D. from the University of Southern California in June of 1987 and
11 became a member of the California Bar in November of 1987. I have more than
12 twenty-five years of litigation experience. Over the last decade, I have focused my
13 practice on representing consumers in class action litigation. Prior to that, I
14 represented plaintiffs in a variety of product liability actions, including many against
15 major vehicle manufacturers.

16 4. I have been appointed class counsel in numerous state and federal class
17 actions. In particular, in 2010, I served as class counsel, and co-trial counsel in a
18 consumer fraud class action against Wells Fargo Bank, N.A., on behalf of over one
19 million customers, in a case resulting in a \$203 million dollar trial verdict. In 2011,
20 my firm and I served as trial class counsel in a consumer class action trial that
21 resulted in a Plaintiffs’ verdict on behalf of a class of California Correct Craft, Inc.
22 boat owners. My firm and I have been appointed class counsel in certified class
23 actions in a number of other consumer fraud class actions, including cases against
24 Gateway Computers, Kaiser Steel Retirees Benefit Trust, Bank of America, N.A.,
25 Hewlett-Packard, American Honda Motor Co., Mazda Motors of America, Inc., and
26 JP Morgan Chase Bank, N.A.

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1 5. My firm's attorneys have extensive experience in litigation against most
2 of the major vehicle manufacturers including Ford Motor Company, General Motors,
3 Hyundai, Mazda, Toyota, Chrysler, Honda and Nissan. This experience includes
4 litigating to conclusion a jury trial against Ford Motor Company.

5 6. My firm has significant experience in MDL consumer class actions
6 against vehicle manufacturers in a variety of contexts. McCune Wright filed the first
7 consumer class action case against Toyota arising from unintended sudden
8 acceleration. I was appointed by Judge James V. Selna to the Plaintiffs Personal
9 Injury and Wrongful Death Committee *In re: Toyota Motor Corp. Unintended*
10 *Acceleration Marketing, Sales Practices, and Products Liability Litigation*. In
11 addition, I was also appointed to the Plaintiffs' Executive Committee *In re: Ford*
12 *Fusion and C-Max Fuel Economy Litigation* by Judge Kenneth M. Karas.

13 7. My firm filed the first class action against HMA alleging that the
14 Company inflated the fuel economy of certain of its model vehicles. Specifically, on
15 January 6, 2012, after undertaking an investigation, McCune Wright filed a class
16 action complaint, in Superior Court in Los Angeles, styled *Espinosa et al. v. Hyundai*
17 *Motor America*, alleging that HMA disseminated false advertisements regarding the
18 expected gas mileage of certain of its vehicles. This complaint, which was removed
19 to the Central District of California, asserted claims for violation of the Unfair
20 Business Practices Act (Cal. Bus. & Prof. Code §§ 17200, et seq.), violation of False
21 Advertising Laws (Cal. Bus. & Prof. Code §§ 17500, et seq.), violation of
22 California's Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750, et seq.), fraud,
23 negligent misrepresentation, and deceit (Cal. Civ. Code § 1710). The *Espinosa*
24 Plaintiffs filed their First Amended Complaint on February 23, 2012, asserting the
25 same causes of action and additionally: (1) providing various consumer complaints
26 regarding overstated MPGs; (2) alleging that HMA may have inflated EPA numbers
27 and may not have followed appropriate EPA protocols; (3) providing more details

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1 regarding HMA's violations of the Unfair Business Practices Act; and (4) noting that
2 HMA failed to respond to their Notice of Intent to Bring an Action for Damages
3 Under the Consumer Legal Remedies Act.

4 8. On March 12, 2012, Defendant HMA filed a motion to dismiss the First
5 Amended Complaint. After oral argument on April 23, 2012, the Court denied
6 Defendant's motion to dismiss. Thereafter, the parties began substantive discovery,
7 pursuant to which plaintiffs reviewed more than thirty thousand documents.
8 Plaintiffs filed a Second Amended Complaint on August 2, 2012, again alleging that
9 HMA disseminated misleading advertising, claiming that a number of its models,
10 including the Elantra would achieve 40 mpg when in fact this was not true.

11 9. Plaintiffs filed a motion for class certification on September 14, 2012.
12 In their brief in support of class certification, among other things, plaintiffs alleged
13 that HMA's "4 x 40" advertising campaign which claimed that Elantra, Accent,
14 Veloster, and Sonata Hybrid "got" 40 MPG was misleading.

15 10. In the context of the class certification briefing, the parties submitted
16 expert reports and deposed each other's experts. Defendants also deposed plaintiffs'
17 proposed class representatives.

18 11. On November 19, 2012, a MDL transfer motion was filed seeking to
19 include the Espinosa action in an MDL action with actions filed after Hyundai's
20 November 2, 2012 announcement that it was restating the MPG of certain Hyundai
21 and Kia vehicles.

22 12. Oral argument on plaintiffs' motion for class certification was held on
23 November 29, 2012, after which the Court declined to rule on the motion, requesting
24 supplemental briefing. HMA filed its supplemental brief on December 13, 2012, and
25 plaintiffs filed their supplemental brief on December 21, 2012. On December 28,
26 2012, the Court again requested further briefing on the class certification motion.
27 Specifically. The Court requested that plaintiffs inform the Court whether they

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1 intended to amend their complaint to include allegations that Hyundai had provided
2 erroneous testing data to the EPA, and seeking additional briefing on primary
3 jurisdiction and reliance issues.

4 13. Prior to the filing the second round of supplemental class certification
5 briefs, the parties for the first time discussed the possibility of a settlement.
6 Thereafter, on January 8, 2013, the Espinosa Plaintiffs and HMA filed a joint
7 stipulation to continue the briefing schedule for the second supplemental briefs on
8 class certification, notifying the court that the parties had agreed to engage in formal
9 settlement negotiations which, if successful, would moot the need for further
10 briefing.

11 14. On January 9, 2013, the Court issued an order extending the briefing
12 schedule on the class certification motion until February 21, 2013.

13 15. I participated in face to face settlement negotiations with HMA,
14 beginning on January 16, 2012.

15 16. On February 5, 2013, the Judicial Panel on Multidistrict Litigation
16 (“JPML”), consolidated the Espinosa action in this Court with a number of other
17 actions against Hyundai and Kia, the majority of which were filed after November 2,
18 2012, *as In re: Hyundai and Kia Fuel Economy Litigation*, MDL No. 2424.

19 17. Settlement negotiations continued after the January 16, 2013 meeting
20 and thereafter, I participated in an all day mediation before the Honorable Judge
21 Stephen J. Sunvold (retired) on February 12, 2013, following which the Espinosa
22 plaintiffs, Hunter, and Brady Plaintiffs (together, the “Settling Plaintiffs” or
23 “Plaintiffs”) reached an agreement in principle with HMA which was contingent
24 upon confirmatory discovery. The parties informed the Court that a tentative
25 settlement had been reached on February 14, 2013.

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1 18. Thereafter, I participated in confirmatory discovery which consisted of
2 review of thousands of additional documents and interviews of with key employees
3 of HMA, KMA, and HKMC, in the U.S. and in Korea.

4 19. Through confirmatory discovery, Defendants provided evidence that
5 demonstrated that HMA did not conduct the testing from which the 40 MPG figure
6 was derived. This discovery demonstrated that the 40 MPG figure was provided to
7 HMA by HKMC, and that HMA employees were not advised that the testing was
8 flawed until sometime in 2012.

9 20. Having litigated the *Espinosa* action for nearly two years, and having
10 conducted extensive discovery in that action as well as participating in the
11 confirmatory discovery described above, I believe that settlement of this action is
12 appropriate and in the best interests of current and former Hyundai and Kia vehicle
13 owners and lessees, as they will receive substantial benefits and avoid the risks,
14 uncertainty, and delay that is inherent in any litigation. I also believe that the terms
15 of the proposed Settlement are fair, adequate, and reasonable. I base these
16 conclusions on what I have learned regarding the strengths and weaknesses of the
17 parties' respective claims, defenses, and evidence in the course of this action.

18 21. Based on my firm's investigation and the information I obtained from
19 Defendants, I have concluded that further litigation will be protracted and expensive
20 for all parties. While I believe that Plaintiffs have valid claims, I recognize that there
21 is always an element of risk in any litigation.

22 22. The settlement negotiations were conducted without any negotiation of
23 attorney fees or costs, as the parties agreed to defer that negotiation until after the
24 Settlement was negotiated. The amount of any fees, costs, or incentive awards
25 which may be approved by this Court will have no impact on the value of the
26 settlement for class members, as any such amounts will be paid by defendants
27 separately. Throughout the course of this litigation, the *Espinosa* Plaintiffs have been

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1 deposed, submitted declarations and have been involved in multiple discussions
2 regarding the litigation.

3 I declare under penalty of perjury under the laws of the United States that the
4 foregoing is true and correct.

5 Executed this 23rd day of December, 2013 in Redlands, California.

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7 Richard D. McCune

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

In Re:

HYUNDAI AND KIA FUEL
ECONOMY LITIGATION

No. MDL 13-2424-GW(FFMx)

**[PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT, SETTING A
HEARING ON FINAL
APPROVAL OF SETTLEMENT,
AND DIRECTING NOTICE TO
THE CLASS**

WHEREAS, Named Plaintiffs Nicole Marie Hunter, E. Brandon Bowron, Kaylene Brady, Travis Brissey, Colnett Brubaker, Ronald Burkard, Adam Cloutier, Steven Craig, John Dixson, Erin Fanthorpe, Eric Hadesh, Michael Keeth, John Kirk MacDonald, Michael Mandahl, Nicholas McDaniel, Mary Moran-Spicuzza, Steve Perry, Gary Pincas, Brandon Potter, Thomas Purdy, Rocco Renghini, Michelle Singleton, Ken Smiley, Gregory M. Sonstein, Roman Starno, Gayle Stephenson, Andres Villicana, and Richard Williams (“Named Plaintiffs” or “Class Representatives”), individually and as representatives of a Class defined below, and Defendants Hyundai Motor America (“HMA”) and Kia Motors America, Inc. (“KMA”) (collectively, the “Parties”) have entered into a Settlement Agreement dated December 23, 2013, which, if approved, would resolve this class action;

WHEREAS, the Named Plaintiffs have filed a motion for preliminary approval of the proposed settlement, and the Court has reviewed and considered the motion, the supporting brief, the Settlement Agreement, and all exhibits thereto, including the proposed class notice (the “Notice”), and finds there is sufficient basis for granting preliminary approval of the settlement,

directing that notice be disseminated to the class, and setting a hearing at which the Court will consider whether to grant final approval of the settlement;

IT IS HEREBY ORDERED that:

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

2. Pursuant to the Settlement Agreement, the class has been defined as: All current and former owners and lessees of a Class Vehicle (i) who were the owner or lessee, on or before November 2, 2012, of such Class Vehicle that was registered in the District of Columbia or one of the fifty (50) states of the United States, except that the following are excluded: (i) Rental Fleet Owners; (ii) government entities, except to the extent that a government entity is the owner or lessee of a Fleet Class Vehicle (in which case such government entity is not excluded from the Class); (iii) judges assigned to the MDL Litigation, including the judge or judges assigned to any lawsuit prior to the transfer of that lawsuit to the MDL Litigation; and (iv) persons who have previously executed a release of HMA or KMA that includes a claim concerning the fuel economy of such Class Vehicle (the "Class" or "Class Members").

2. The Court preliminarily approves the proposed settlement, finding that the terms of the Settlement Agreement appear sufficiently fair, reasonable, and adequate to warrant dissemination of the Notice of the proposed settlement to the Class. The Court finds that the Settlement Agreement contains no obvious deficiencies and that the parties entered into the Settlement Agreement in good faith, following arm's-length negotiation between their respective counsel.

3. The Court appoints Hagens Berman Sobol Shapiro LLP and McCuneWright, LLP as settlement class counsel and Nicole Marie Hunter, E. Brandon Bowron, Kaylene Brady,

Travis Brissey, Colnett Brubaker, Ronald Burkard, Adam Cloutier, Steven Craig, John Dixon, Erin Fanthorpe, Eric Hadesh, Michael Keeth, John Kirk MacDonald, Michael Mandahl, Nicholas McDaniel, Mary Moran-Spicuzza, Steve Perry, Gary Pincas, Brandon Potter, Thomas Purdy, Rocco Renghini, Michelle Singleton, Ken Smiley, Gregory M. Sonstein, Roman Starno, Gayle Stephenson, Andres Villicana, and Richard Williams as class representatives.

4. The Court hereby approves the form and procedures for disseminating notice of the proposed settlement to the Class as set forth in the Settlement Agreement. The Court finds that the notice to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to the Class in full compliance with the requirements of applicable law.

5. For purposes of identifying current and former owners and lessees of Class Vehicles, R.L. Polk & Company is hereby authorized to provide the names and most current addresses of such owners and lessees to HMA and/or KMA or their designee(s). Any governmental agency in possession of names or addresses of current and former Class Vehicle owners or lessees is hereby authorized and directed to release that information to R.L. Polk & Company upon request.

6. As set forth in the Settlement Agreement, HMA and KMA shall bear all costs and expenses in connection with providing notice to the Class and administering the proposed settlement.

7. Any Class Member shall have the right to opt out of the Class and the settlement by sending a written request for exclusion from the Class to the address listed in the Notice postmarked no later than the deadline provided for such exclusion as set forth in the Notice. To be effective, the request for exclusion must: include the Class Member's name, address,

telephone number, the Class Member's Vehicle Identification Number (VIN), and signature and state his or her desire to "opt-out" or be "excluded" from the proposed settlement in *In Re: Hyundai and KIA Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx) (C.D. Cal.). Any Class Member who does not submit a timely and valid request for exclusion shall be subject to and bound by the Settlement Agreement and every order or judgment entered concerning the Settlement Agreement.

8. Any Class Member who intends to object to final approval of the settlement and/or the amount of attorneys' fees must send a letter, postmarked no later than the deadline provided for such objection to the Court, Class Counsel, and Defense Counsel, as set forth in the Notice. The letter should state that the Class Member "objects" to the proposed settlement in *In Re: Hyundai and KIA Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx) (C.D. Cal.). Each objection must include the Class Member's name, address, telephone number, the Class Member's Vehicle Identification Number (VIN) and signature and the basis for the objection.

9. Any Class Member wishing to speak at the Fairness Hearing must send a letter postmarked no later than the deadline for such notice of intention to appear stating his or her desire to appear in person, or through counsel, at the Fairness Hearing to the Court, Class Counsel, and Defense Counsel, as set forth in the Notice. The letter should state that it is a "Notice of Intention to Appear in *In Re: Hyundai and KIA Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx)." Such notice of intention to appear must include the Class Member's name, address, telephone number, the Class Member's Vehicle Identification Number (VIN) and signature.

10. The Court will hold a Fairness Hearing addressing the final approval of the Settlement Agreement, an award of fees and expenses to Class Counsel, and incentive payments

to the class representatives, before the undersigned judge at the U.S. District Court, Central District of California, 255 East Temple Street, Los Angeles, CA, 90012-3332. At the Fairness Hearing, the Court will consider: (i) whether the settlement should be approved as fair, reasonable, and adequate for the class; (ii) whether a judgment granting approval of the settlement and dismissing the lawsuit with prejudice should be entered; and (iii) whether Class Counsel's application for attorneys' fees and expenses should be granted.

11. The following schedule shall govern the class action settlement proceedings:

(i) HMA and KMA must cause individual notice, substantially in the form attached to the Settlement Agreement as Exhibit __ (proposed Class Notice), to be mailed via first-class mail to all reasonably identifiable Class Members, on or before _____.

(ii) Class Members must mail any letter objecting to the proposed settlement on or before _____.

(iii) Class Members must mail any letter electing to exclude themselves from the Class on or before _____.

(iv) Class Members wishing to appear at the Fairness Hearing must mail any letter stating their intent to appear on or before _____.

(v) The parties shall submit motions for final approval of the proposed settlement, including any exhibits or attachments thereto, on or before _____.

(vi) The Fairness Hearing shall be held on _____.

The dates established for items (ii), (iii), (iv) and (vi) shall be included in the Notice mailed to Class Members.

12. Plaintiffs shall file, on or before _____, a motion for attorneys' fees and expenses. HMA and KMA shall file any responses to the motion on or before _____, and, if necessary, Plaintiffs shall file a reply brief in support of its motion on or before _____.

DATED: _____

Hon. George H. Wu
U.S. District Court Judge