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16  
17 **UNITED STATES DISTRICT COURT FOR THE**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN JOSE DIVISION**

20 IN RE : HYUNDAI SONATA ENGINE  
21 LITIGATION

22 Case No. 5:15-cv-1685-BLF

23 **PLAINTIFFS' NOTICE OF MOTION**  
24 **AND MOTION FOR PRELIMINARY**  
25 **APPROVAL OF CLASS ACTION**  
26 **SETTLEMENT**

27 Date: June 23, 2016  
28 Time: 9:00 A.M.  
Judge: Hon. Beth Labson Freeman  
Courtroom: 3

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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on June 23, 2016, at 9:00 a.m. before the Honorable Beth Labson Freeman in Courtroom 3, 5th Floor of the United States District Court for the Northern District of California, San Jose Division, located at 280 South 1st Street, San Jose, California 95113, Plaintiffs Elizabeth Mendoza and Beth Graham will and hereby do move for an order of the Court to preliminarily approve the settlement; certify the proposed settlement class under Rule 23(b)(3); appoint Elizabeth Mendoza and Beth Graham as class representatives; appoint interim class counsel (Eric H. Gibbs and David Stein of Gibbs Law Group and Matthew D. Schelkopf and Joseph G. Sauder of McCuneWright LLP) to serve as counsel for the certified class under Rule 23(g); order dissemination of class notice pursuant to the notice plan set forth in the Settlement Agreement; and set a schedule for final settlement approval.

Plaintiffs' motion is based on this notice; the accompanying Memorandum of Points and Authorities; Declaration of Eric H. Gibbs and all attachments thereto (including the settlement agreement); and Proposed Order Granting Preliminary Approval of Class Settlement; and all other papers filed and proceedings had in this action.

DATED: April 14, 2016

Respectfully submitted,

By: /s/ Eric H. Gibbs

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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

This litigation began early last year, after Hyundai Sonata owners began contacting Plaintiffs' counsel and complaining that their engines had failed and Hyundai had refused to cover the repairs under warranty. Further research confirmed that these engine failures were not isolated incidents. In fact, hundreds of Sonata owners had reported engine failures online. A significant number of the engine failures first occurred within the 2011 model year, but engine failures soon began to mount in the 2012 model year as well, and it appeared that 2013-14 Sonatas (which were equipped with similar Theta II engines) might have problems as well. The engine failures manifested through a range of symptoms: a check-engine light for some drivers, and others heard loud a knocking sound from the engine compartment; some drivers experienced sudden engine seizure and resulting stalling while driving; in a few instances, the engines would even start smoking, and in at least one case a fire broke out in the engine compartment. Most of the time, Hyundai dealers declined to replace the Sonata's engine under the factory 10 year/100,000 mile powertrain warranty.<sup>1</sup> The dealers typically cited the driver's maintenance habits, whether it be failing to regularly change the oil, using a non-OEM oil filter, or failing to keep service records. In some cases, the dealers' warranty decisions appeared justified, as they found no oil on the dipstick after the engine failed, but these Sonata owners insisted they changed their oil regularly.

Under these circumstances, proving that each Sonata owners' engine failure was the result of a common defect and unrelated to individual driving or maintenance habits can be extremely challenging. But by front-loading their efforts, working with automotive experts, and engaging Hyundai in early negotiations, Plaintiffs' counsel were able to negotiate early relief for all 2011-2014 Sonata owners. Under the proposed settlement, Hyundai will reimburse Sonata owners who paid for engine block replacements or repairs within 10 years and 120,000 miles of the vehicle's original sale or lease, including rental car and towing expenses incurred as a result of the engine failures. Hyundai will also compensate Sonata owners for loss of resale value if they suffered an engine failure but sold or traded

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<sup>1</sup> Hyundai provides a shorter duration powertrain warranty of 5 years/60,000 miles to second and subsequent purchasers.

1 in their vehicles rather than paying to replace the engine. And for those individuals who have yet to  
2 suffer any engine issues, in addition to the class notice, Hyundai will mail Sonata owners a color  
3 pamphlet to notify them of the alleged engine defect and encourage them to bring their vehicles to their  
4 local dealership for a free engine inspection to evaluate and prevent possible engine failure. For those  
5 Sonatas with over 120,000 miles at the time of notice, an initial 90-day window will provide coverage  
6 of needed engine replacements and repairs regardless of mileage. Future engine replacements or  
7 repairs will be covered under an extended 10-year, 120,000-mile warranty.

8 A copy of the parties' settlement agreement is attached to the accompanying declaration of Eric  
9 H. Gibbs as **Exhibit 1**. Before the parties undertake the expensive and time-consuming process of  
10 notifying Sonata owners of the proposed settlement and soliciting any objections, Plaintiffs request that  
11 the Court review the settlement agreement and identify any issues that might lead it to deny final  
12 approval. If no such issues exist, Plaintiffs ask that the Court preliminarily approve the settlement;  
13 certify the proposed settlement class under Rule 23(b)(3); appoint interim class counsel (Eric H. Gibbs  
14 and David Stein of Gibbs Law Group and Matthew D. Schelkopf and Joseph G. Sauder of  
15 McCuneWright LLP) to serve as counsel for the certified class under Rule 23(g); order dissemination  
16 of class notice pursuant to the notice plan set forth in the Settlement Agreement; and set a schedule for  
17 final settlement approval.

## 18 **II. OVERVIEW OF THE LITIGATION AND PROPOSED SETTLEMENT**

### 19 **A. The Litigation and Settlement Negotiations**

20 This litigation involves two consolidated class actions, both of which alleged that the 2011-2014  
21 model year Hyundai Sonata was sold with a defective engine. *Mendoza v. Hyundai Motor Co., Ltd.*,  
22 No. 5:15-cv-1685 (N.D. Cal.), ECF No. 1; *Graham v. Hyundai Motor Am., Inc.*, No. 5:15-cv-2071  
23 (N.D. Cal.), ECF No. 1. Plaintiff Mendoza filed her suit on April 14, 2015. (*Mendoza* Compl., ECF  
24 No. 1.) She alleged that her 2011 Hyundai Sonata began to exhibit a loud knocking noise in the engine  
25 and that her Hyundai dealership told her one of the pistons had blown out. (*Id.*, ¶ 19.) The dealership  
26 refused to cover the necessary engine repairs under warranty—leaving Ms. Mendoza to pay a local  
27 mechanic \$3,000 to replace her engine. (*Id.*, ¶¶ 20-21.) Plaintiff Graham, who filed suit on May 7,  
28 2015, also suffered an engine failure. (*See* *Graham* Compl., ECF No. 1.) While Ms. Graham's



1 husband was driving their 2011 Sonata in rush-hour traffic, the engine seized and turned off. (*Id.*)  
2 Fortunately, Mr. Graham was able to coast to the side of the highway and call a tow truck. (*Id.*)  
3 Hyundai eventually agreed to pay for part of the needed engine repair as a “goodwill gesture,” but Ms.  
4 Graham still had to pay \$2,000 for the engine repair, \$800 for a rental car while her Sonata was being  
5 repaired, and about \$150 for towing and the initial diagnosis. (*Id.*, ¶ 24.)

6 Before filing suit, Plaintiffs’ counsel reviewed over one hundred complaints from Sonata  
7 owners, spoke with dozens of these Sonata owners and reviewed their repair documentation, and paid  
8 expert consultants to help assess the range of symptoms and possible causes. (Gibbs Decl., ¶ 3.) Based  
9 on their respective investigations, Plaintiffs’ counsel believed that the engine failures experienced by  
10 Ms. Mendoza, Ms. Graham, and hundreds of other Sonata owners were related. They alleged that a  
11 common defect in the vehicles’ rotating assembly—in particular, the lubrication channels within the  
12 connecting rods and other parts of the assembly—was responsible for the various symptoms and  
13 eventual engine failures experienced by Sonata owners. (*Mendoza* Compl., ¶¶ 49-57; *Graham* Compl.,  
14 ¶¶ 11-15.) That defect can lead to irregular engine noises, illumination of the low-oil or check-engine  
15 lights, engine stalls while driving, and permanent engine seizures. (*Mendoza*, ¶¶ 49-60; *Graham*, ¶¶ 9-  
16 21.) And when the defect manifests, it typically requires replacement of the “short block” engine,  
17 which costs several thousand dollars, though in some instances mechanics have performed other  
18 repairs, such as replacing the vehicle’ battery, starter, or its much more expensive “long block” engine.  
19 (Gibbs Decl., ¶ 4.)

20 By selling Sonata vehicles without disclosing that the engines were defective, Plaintiffs  
21 contended that Hyundai violated California’s consumer protection statutes and common law.  
22 (*Mendoza*, ¶¶ 88-159; *Graham*, ¶¶ 38-50.) Plaintiffs also alleged that Hyundai breached its warranty  
23 obligations, as Hyundai frequently blamed owners for causing the engine failures by not properly  
24 maintaining or servicing their vehicles. (*Mendoza*, ¶¶ 68, 88-159; *Graham*, ¶¶ 38-50.) According to  
25 Plaintiffs’ complaints, this allowed Hyundai to shift the cost of repairs—often thousands of dollars  
26 each—to drivers and, in some instances, caused vehicle owners to sell or trade in their vehicles at  
27 losses because they couldn’t afford the repairs. (*Mendoza*, ¶ 75; *Graham*, ¶ 14.)  
28

1 After coordinating the two proceedings, Plaintiffs began discussing the merits of their case with  
2 Hyundai. (Gibbs Decl. at ¶ 4.) Based on their conversations with class members and the likelihood  
3 that engine failures would continue to mount, counsel knew that time was of the essence for Sonata  
4 owners and expended a considerable amount of time convincing Hyundai to address this issue sooner  
5 rather than later. In the summer and fall of 2015, counsel for the parties met in person and by  
6 telephone to discuss the merits and potential for resolution. (*Id.* at ¶ 4-6.) As part of those meetings, an  
7 engineering representative from Hyundai was present, allowing for candid and highly informed  
8 discussions regarding Plaintiffs' allegations and Hyundai's defenses. (*Id.* at ¶ 5.) During this process,  
9 Plaintiffs continued to confer with their own automotive consultant about the information they were  
10 learning. (*Id.* at ¶ 5.) And as the parties continued their discussions, it became clear that there was  
11 significant potential for resolution of the litigation. (*Id.* at ¶ 5.)

12 The first step of the parties' negotiated resolution occurred in September 2015, when Hyundai  
13 agreed to conduct a voluntary recall of 470,000 vehicles, roughly half of vehicles at issue—the 2011  
14 and 2012 model year Sonatas. (*Id.* at ¶ 6.) As Hyundai acknowledges in the Settlement Agreement,  
15 this recall "represents part of the consideration to the Class in exchange for the settlement of this  
16 Action," though pursuant to federal law the recall will be overseen by the National Highway Traffic  
17 Safety Administration ("NHTSA"). (Gibbs Decl., Ex. 1, Settlement Agreement, Sec. II.B.1, hereinafter  
18 "Settlement.") The recall warns drivers of the potential danger caused by the engine defect, notifies  
19 drivers of the availability of inspections and repairs, and offers both an extended warranty and  
20 reimbursements for prior repair costs. (Gibbs Decl. at ¶ 6.)

21 The remainder of the parties' negotiated resolution was reached after formal mediation before  
22 Hon. James P. Kleinberg (Ret.) of JAMS, which took place on October 29, 2015. (*Id.* at ¶ 7.) At the  
23 mediation, the parties were able to reach agreement on a large majority of the terms of the eventual  
24 settlement. (*Id.* at ¶ 7.) During the months that followed, the parties continued to negotiate the final  
25 details of the benefits to the proposed class and the mutual releases, and finalized the supporting  
26 documents such as the class notice and claim form. (*Id.* at ¶ 8.) Most recently, the parties reached an  
27 agreement as to a reimbursement of Plaintiffs' attorney's fees and costs, as well as modest service  
28 awards to the class representatives. (*Id.* at ¶ 12.) The details of the settlement follow below.

1           **B.       Overview of the Proposed Settlement**

2                   **1.       The Proposed Settlement Class**

3           The parties' settlement contemplates relief for the following proposed settlement class:

4           All owners and lessees of a Class Vehicle who purchased or leased the Class Vehicle in  
5           the United States, excluding the territories, or abroad while on active military duty

6 (Settlement, Sec. I.D.) The term "Class Vehicles," used throughout the settlement agreement and in the  
7 class definition, refers to "all 2011, 2012, 2013, and 2014 model year Hyundai Sonata vehicles factory  
8 equipped with a Theta II 2.0 liter or 2.4 liter gasoline direct injection engine, which was purchased or  
9 leased in the United States, excluding the territories, or abroad while a Class member was on active  
10 military duty." (*Id.*, Sec. 1.F.) Excluded from the Class are any claims for death, personal injury,  
11 property damage, and subrogation; Defendants and all affiliates, related entities, and personnel; and any  
12 judge to whom this action is assigned as well as their relations. (*Id.*, Sec. I.D.)

13           This proposed settlement class is broader than the class initially proposed in the *Mendoza*  
14 complaint (which defined class vehicles to include only 2011-2012 vehicles), and narrower than that  
15 proposed in the *Graham* complaint (which defined class vehicles to include 2011-2015 vehicles). (*See*  
16 *Mendoza*, ¶ 1; *Graham*, ¶ 26.) Most of the engine failures experienced to date have occurred in 2011  
17 and 2012 Sonatas, which is why the recall is directed at those vehicles. (Gibbs Decl. at ¶ 3.) The 2015  
18 Sonata underwent material engine changes prior to its release and, as a result, is not expected to have  
19 similar problems. (*Id.* at ¶ 10.) But the 2013 and 2014 Sonatas were released before these engine  
20 changes were made, and as more of those vehicles reach 60,000 to 90,000 miles, Plaintiffs anticipate  
21 that they too will experience engine failures and so have negotiated for them to be treated the same as  
22 the 2011 and 2012 model years. (*Id.* at ¶ 10.) The benefits described below will therefore be available  
23 to all class members, regardless of whether they own vehicles covered by the NHTSA-supervised  
24 recall.

25                   **2.       Warning Drivers About Stalling**

26           The settlement contains a variety of measures to ensure class members are adequately warned  
27 about possible engine failure, which can be particularly hazardous if it occurs without warning or while  
28 in traffic. Under the settlement, Hyundai will be responsible for bearing the full cost of these notices:

- 1       ▪ Recall Notices: As part of the NHTSA recall process, owners and lessees of the 2011-  
2       2012 Class Vehicles have been sent notices by mail pursuant to the recall initiated in  
3       September 2015, warning of engine stalling and encouraging class members to obtain  
4       vehicle inspections. (Gibbs Decl. at ¶ 6, Ex. 2.)
- 5       ▪ Class Notice by Direct Mail: Hyundai will pay to disseminate a long form notice,  
6       which warns about potential engine stalling and encourages class members to  
7       schedule the free inspection provided by the settlement. (*See* Long Form Notice,  
8       Settlement, Ex. A.) The notice will be sent by direct U.S. mail, and Hyundai will use  
9       the services of R.L. Polk & Company (or a similar third-party entity) to obtain the  
10      names and most current addresses of Class Vehicle owners through state agencies.  
11      (Settlement, Sec. IV.C.1.)
- 12      ▪ Class Notice by Email: Hyundai will also provide the class notice by email to all  
13      class members for whom it possesses email addresses. (*Id.*, Sec. IV.C.2.)
- 14      ▪ Color Pamphlet to be Kept with the Owner's Manual: After final approval of the  
15      settlement (and all appellate rights expire or are exhausted), Hyundai will mail and  
16      email class members a color pamphlet designed to be kept with the owner's manual.  
17      (*Id.*, Secs. IV.C.6-7.) The pamphlet warns of the risk of engine seizure and stalling,  
18      encourages drivers to obtain inspections and repairs (as needed), and reminds them of  
19      various settlement benefits to which they are entitled. (*Id.*, Sec. IV.C.6.) The  
20      pamphlets will also be at dealerships in conjunction with the distribution by mail and  
21      email, and dealerships will disseminate them to any class members who come in for  
22      maintenance and servicing. (*Id.*, Secs. IV.C.7-8.)
- 23      ▪ Website and Phone: Finally, the settlement requires Hyundai to maintain a dedicated  
24      settlement website and toll free telephone number to provide additional information  
25      and answer questions about the settlement. (*Id.*, Secs. IV.C.3-4.)
- 26  
27  
28

1                   **3.       Warranty Extension for Free Inspections and Repairs:**

2                   Under the settlement, *all* current owners and lessees of Class Vehicles can receive a free engine  
3 inspection and, if necessary, a short block engine repair. (Settlement, Secs. II.A.1-11.) This benefit  
4 comes in two forms.

5                   First, Hyundai will be extending its Powertrain Warranty to cover short block engines for a 10-  
6 year and 120,000-mile period (whichever ends first). (*Id.*, Secs. I.J., II.A.1.) This is a 20,000-mile  
7 expansion of the original warranty for those class members who purchased or leased the vehicles new  
8 and still own them. For those individuals who are second or subsequent owners, this settlement results  
9 in an additional 5 years and 60,000 miles, above and beyond their original 5 year/60,000 mile warranty.  
10 And unlike the original Powertrain Warranty, the full duration of the extended warranties negotiated for  
11 original and subsequent owners under the settlement are transferrable to subsequent owners. (*Id.*, Sec.  
12 II.A.3.)

13                   Second, although it is expected that most Class Vehicles will still be within the 10-year,  
14 120,000-mile period, *all* class members will be permitted to bring their vehicles to a Hyundai retailer  
15 for free inspections during the 90-day period following dissemination of the class notice. (*Id.*, Sec.  
16 II.A.1) Any vehicle determined to need a short block repair based on that inspection will receive free  
17 repairs under the extended warranty—regardless of mileage or current length of ownership. (*Id.*)

18                   In addition, the settlement provides protections to ensure the extended warranty benefits are  
19 provided in good faith, as intended by the parties to the settlement. As noted above, Plaintiffs alleged  
20 in their complaints that some class members were denied free warranty repairs on the grounds that they  
21 had failed to properly maintain or service their vehicles. (*See Mendoza Compl.*, ¶¶ 5-7; *Graham*  
22 *Compl.*, ¶ 2.) Under the settlement, this can no longer happen; extended warranty inspections and  
23 repairs may not be denied on those grounds. (Settlement, Sec. II.A.6.) Only in “limited exceptional  
24 neglect circumstances,” may Hyundai deny coverage under the extended warranty and it must report  
25 any such denials to Class Counsel. (*Id.*)

26                   The extended warranty also specifies that all costs associated with repairs will be covered.  
27 Class members will not be charged for replacement parts, labor, or diagnoses. (*Id.*, Sec. II.A.2.) Class  
28 members will not need to forego repairs due to transportation needs either, as the proposed settlement

1 requires Hyundai to make free loaner vehicles available (or else reimburse rental car costs) for class  
2 members obtaining repairs under the extended warranty. (*Id.*, Sec. II.A.5.) Finally, the settlement  
3 contains a convenient dispute resolution process if any Class member wishes to contest a dealership's  
4 warranty decision. (*Id.*, Sec. III.6.) Class members will have the right to participate in a BBB  
5 alternative dispute resolution process, for which all fees and expenses (other than attorney's fees) will  
6 be borne by Hyundai. (*Id.*)

#### 7 **4. Reimbursements for Past Vehicle Repairs:**

8 Class members have generally spent money on two types of repairs due to the alleged defect.  
9 Most have paid for short block engine repairs, which is the Hyundai-recommended repair. (Gibbs  
10 Decl. at ¶ 4.) But some have paid for other repairs in an effort to resolve engine noise, oil light  
11 illumination, vehicle non-starting, or stalling. (*Id.*) Those repairs have included replacement of the  
12 long block engine, the battery, and/or the starter. (*Id.*) The proposed settlement reimburses class  
13 members for both types of repairs—in full—provided certain conditions are met, with the primary  
14 condition being that the repair was performed within the period covered by the extended settlement  
15 warranty, *i.e.*, within the earlier of 10 years and 120,000 miles of the Class Vehicle's original sale or  
16 lease. (Settlement, Sec. II.C.1.)

17 The proposed settlement contains a number of terms to ensure the claims process is streamlined.  
18 First, the negotiated Claim Form is a single page (front and back), which requires that most class  
19 members do nothing more than write their VIN, check the box(es) corresponding to the type of  
20 reimbursement they are seeking, write in the dollar amount, and sign and date the form. (*See* Claim  
21 Form, Settlement, Ex. B.) Second, the Claim Forms can be submitted—at the class members' option—  
22 by mail, email, or through the settlement website. (*Id.*) Third, few supporting documents (and in some  
23 cases *no* supporting documents) are required from class members. (*Id.*; Settlement, Sec. II.C.2.) For  
24 repairs to the short block at a Hyundai dealership, for example, Hyundai will take on the burden of  
25 accessing information that shows the date, nature, and cost of the repair. (*Id.*) All a class member will  
26 need to demonstrate is that he or she incurred the cost, for example, by submitting a cancelled check or  
27 a credit card bill. (*Id.*) Class members who paid by cash and who do not have any documentation can  
28 simply attest that they paid by cash and have no documentation to provide. (*Id.*) Other repairs will

1 require only slightly more documentation. For example, for repairs at non-Hyundai dealerships, class  
2 members will need to provide documentation showing the date, nature, and price they paid for the  
3 repairs, since Hyundai cannot access records from independent repair facilities. (*See* Settlement, Secs.  
4 I.M, II.C.2.; Claim Form, Settlement, Ex. B.) And while short block repairs will be deemed to fall  
5 within the scope of the settlement, the supporting records (whether provided by the class member or  
6 accessed directly by Hyundai) will need to show the reason why other repairs were made—for instance,  
7 if a class member seeks reimbursement for replacing a vehicle’s battery, documentation will need to  
8 show the replacement was tied to engine-related symptoms and was not just a run-of-the-mill dead  
9 battery. (Settlement, Sec. 1.M.)

#### 10 **5. Reimbursements for Rental Cars and Towing Services**

11 Class members who incurred rental car or towing expenses reasonably related to a reimbursable  
12 repair will be entitled to a full reimbursement of those expenses as well. (Settlement, Sec. II.D.1.)  
13 Class members seeking this type of reimbursement will go through the same streamlined claims  
14 process. Along with a completed claim form, they will need to provide a receipt or other  
15 documentation that shows the expense was incurred for a rental car or towing service and that it was  
16 incurred around the time of the Class member’s qualifying repair. (*Id.*)

#### 17 **6. Compensation for Trade-Ins and Sales**

18 Some class members have reported that they could not afford to replace the engines in their  
19 Sonata, and so they sold or traded-in the vehicles for reduced value rather than paying for the repairs.  
20 (Gibbs Decl. at ¶ 4.) The settlement contemplates that these class members will be able to make a  
21 claim for compensation from Hyundai. (Settlement, Sec. II.D.3). They will need to submit a Claim  
22 Form with documentation showing their Class Vehicle was diagnosed with an engine failure prior to  
23 receiving notice of the settlement (or the recall, if applicable to their vehicle), and that they sold or  
24 trade-in the Class Vehicle without first obtaining the recommended engine-block repair. (*Id.*) Class  
25 members will then be contacted by Hyundai, which will evaluate the class member’s transaction and  
26 propose compensation for any effect on the fair market value of the Class Vehicle at the trade-in or  
27 sale. (*Id.*) The amount of compensation will consider the class member’s sale or trade-in transaction as  
28 a whole, and Hyundai will not be permitted to deny compensation due to a vehicle’s service or

1 maintenance history (again, other than in instances of exceptional neglect). (*Id.*) Finally, any class  
2 member who is not pleased with the compensation offer will have the right to the same free BBB  
3 process outlined in the extended settlement warranty subsection above. (*Id.*)

#### 4 **7. Attorney Fees, Costs, and Service Awards**

5 After reaching agreement on all other essential terms of the Settlement, the parties separately  
6 negotiated Plaintiffs' counsel's claims for attorney fees and reimbursement of litigation expenses, as  
7 well as the Class Representatives' right to service awards. (Gibbs Decl. at ¶ 12.) Subject to the Court's  
8 approval, HMA will not oppose, undermine, or solicit others to oppose or undermine an award of  
9 attorneys' fees and costs up to, but not to exceed, the total combined sum of \$795,000.00. (*Id.*;  
10 Settlement, Sec. V.2.)

#### 11 **8. Mutual Release**

12 In exchange for the benefits provided under the settlement, class members will release Hyundai  
13 and its related entities from all known and unknown claims related to the engine defect alleged or that  
14 could have been alleged in the litigation. (Settlement, Secs. I.N., VI.) Hyundai will in turn release  
15 Plaintiffs and Plaintiffs' counsel from any claims related to this litigation or settlement. (*Id.*, Secs. I.O,  
16 VI.) The settlement agreement and release do not release claims for death, personal injury, damages to  
17 tangible property other than a Class Vehicle, or subrogation. (*Id.*, Sec. VI.)

### 18 **III. ARGUMENT**

#### 19 **A. The Settlement Merits Preliminary Approval**

20 The purpose of preliminary approval is to afford the Court an opportunity to review the  
21 proposed settlement before the parties engage in the costly and time-consuming process of  
22 disseminating class notice. *See* Newberg on Class Actions § 13:10 (5th ed.). Preliminary approval  
23 affords the proposed settlement a presumption of fairness at the final approval stage, and so the Court  
24 should grant Plaintiffs' motion only if it concludes the parties' settlement is procedurally and  
25 substantively worthy of final approval. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079-80  
26 (N.D. Cal. 2007). The procedural component of preliminary approval requires the Court to confirm (i)  
27 "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations,"  
28 and (ii) "does not improperly grant preferential treatment to class representatives or segments of the



1 class,” while the substantive component requires the Court to confirm (iii) the settlement “has no  
2 obvious deficiencies” and “falls within the range of possible approval.” *Ruch v. AM Retail Grp., Inc.*,  
3 No. 14-CV-05352-MEJ, 2016 WL 1161453, at \*7 (N.D. Cal. Mar. 24, 2016) (quoting *In re Tableware*,  
4 484 F. Supp. 2d at 1079). Plaintiffs respectfully submit that each of these requirements are met here  
5 and that their proposed settlement merits Court approval.

6 **1. The Settlement is the Product of Serious, Informed, Non-Collusive**  
7 **Negotiations**

8 As a starting point, the Court should assure itself the settlement was not the product of collusion  
9 among the negotiating parties. *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 947 (9th  
10 Cir. 2011) (vacating and remanding a settlement approval order because the district court had not  
11 considered possible collusion); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)  
12 (considering and rejecting objectors’ argument that settlement was product of collusion where  
13 allegations in the complaint preceded settlement by one year and there was no other evidence of  
14 collusion). To that end, courts look to whether the proposed settlement is a product of arm’s length  
15 negotiations, performed by counsel well versed in the type of litigation at issue.

16 In this instance, neither the process used by the parties to negotiate the settlement nor the  
17 settlement’s terms indicate a collusive deal. The attorneys this Court appointed to serve as Interim  
18 Class Counsel have litigated many automotive defect class actions and have a strong understanding of  
19 what type of settlement might be fair, reasonable, and adequate given the strengths and weaknesses of  
20 particular cases. (Gibbs Decl. at ¶ 10-11.) In addition, this settlement was negotiated in consultation  
21 with automotive experts and with the assistance of a well-respected mediator, Hon. James P. Kleinberg  
22 (Ret.). (*Id.* at ¶ 17.) See *G. F. v. Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 4606078, at \*13  
23 (N.D. Cal. July 30, 2015) (“[T]he assistance of an experienced mediator in the settlement process  
24 confirms that the settlement is non-collusive.”) (internal quotations omitted).

25 In addition, as discussed in greater detail below, the settlement’s terms are favorable to the  
26 Class and on par with the relief Plaintiffs demanded in their complaints. (*Graham Compl.*, ¶ 3) This  
27 strongly suggests that Class benefits were not traded for individual benefits. Likewise, the proposed  
28 attorney fee and cost reimbursements for Plaintiffs’ counsel suggest no collusion—the awards, if

1 approved, represent the amount of time and expense counsel actually devoted to this litigation. (Gibbs  
2 Decl., ¶ 11.) Had the fee amount been litigated rather than negotiated, a multiplier could have been  
3 awarded and the fees substantially higher. *Sadowska v. Volkswagen Grp. of Am.*, No. CV 11-00665,  
4 2013 WL 9600948, at \*9 (C.D. Cal. Sept. 25, 2013) (approving negotiated fee award 1.37 times the  
5 lodestar and noting that “[m]ultipliers can range from 2 to 4 or even higher.”).

6 **2. The Settlement Does Not Improperly Grant Preferential Treatment to Class**  
7 **Representatives or Segments of the Class.**

8 Next, the Court should examine whether the settlement agreement provides preferential  
9 treatment to any settlement class member. This analysis turns, among other things, on whether there is  
10 any disparity among what class members are poised to receive and, if so, whether the settlement  
11 “compensates class members in a manner generally proportionate to the harm they suffered on account  
12 of [the] alleged misconduct.” *Altamirano v. Shaw Indus., Inc.*, No. 13-CV-00939-HSG, 2015 WL  
13 4512372, at \*8 (N.D. Cal. July 24, 2015) (finding no preferential treatment); *accord G. F. v. Contra*  
14 *Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 4606078, at \*13-14 (N.D. Cal. July 30, 2015) (analyzing  
15 whether the settlement singles out particular class members or whether it instead “appears uniform”).

16 Here, Plaintiffs are seeking certification of a single class of vehicle owners and lessees, and all  
17 members of the proposed class are entitled to the same benefits. All class members who do not exclude  
18 themselves from the settlement will be automatically provided an extended warranty of the same 10-  
19 year, 120,000-mile duration, with every class member given a 90-day grace period for free inspections  
20 and repairs following the dissemination of the class notice. All class members will be entitled to full  
21 reimbursement of vehicle repairs, rental cars, and towing if they meet the criteria discussed above. And  
22 all class members who traded-in or sold their vehicles after receiving a repair estimate they could not  
23 afford to pay will be entitled to compensation under the process outlined above. The dollar amounts of  
24 these reimbursements may vary, but those differences reflect the differing amounts that class members  
25 paid for repairs and related expenses. In other words, each class member will be paid proportionate to  
26 the harm they suffered.

27 Finally, although Ms. Mendoza and Ms. Graham will receive an additional \$2,500 through the  
28 settlement, the extra payment is in recognition for the service they performed on behalf of the entire

1 class. “[T]he Ninth Circuit has recognized that service awards to named plaintiffs in a class action are  
 2 permissible,” *Ruch*, 2016 WL 1161453 at \*12 (internal quotations omitted), and the service awards  
 3 contemplated here are lower than “typical incentive awards in the Ninth Circuit, where \$5,000 is  
 4 presumptively reasonable.” *Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST, 2016 WL 362395,  
 5 at \*10 (N.D. Cal. Jan. 29, 2016)

6 **3. The Settlement has no Obvious Deficiencies and Falls Within the Range of**  
 7 **Possible Approval.**

8 To assess whether a settlement is “fundamentally fair, adequate and reasonable,” and thus  
 9 within the range of possible judicial approval, courts typically assess the following factors:

- 10 i. the strength of the Plaintiffs’ case;  
 11 ii. the risk, expense, complexity, and likely duration of further litigation;  
 12 iii. the risk of maintaining class action status throughout the trial;  
 13 iv. the amount offered in settlement;  
 14 v. the extent of discovery completed and the stage of the proceedings;  
 15 vi. the experience and views of counsel;  
 16 vii. the presence of a governmental participant; and  
 17 viii. the reaction of the class members to the proposed settlement.

18 *Churchill Vill.*, 361 F.3d at 575. The final factor, the reaction of the class, cannot be fully evaluated  
 19 until notice has been disseminated, but in Plaintiffs’ view, the other factors confirm this settlement to  
 20 be advantageous to the class and worthy of judicial approval.

21 **i. The Strength of the Plaintiffs’ Case**

22 If the litigation were to proceed, Plaintiffs believe they could demonstrate that all 2011-2014  
 23 Hyundai Sonatas were sold with a common defect that renders them prone to sudden engine failure.  
 24 Plaintiffs also expect that they could present evidence suggesting that Hyundai knew about the engine  
 25 problems before Class Vehicles were released to the public, and that Sonata engines can and do fail  
 26 even if the vehicles are properly maintained. Plaintiffs would thus be in a position to mount a  
 27 formidable case that Hyundai violated California consumer protection laws, breached California and  
 28 federal warranty laws, and engaged in fraud by failing to disclose a known defect. Nevertheless,

1 Plaintiffs' counsel are seasoned in automobile defect class litigation, and recognize that even were they  
2 able to make such a factual showings, their case could fail on liability, or at least be whittled down in  
3 terms of overall liability.

4 For example, Hyundai might have a colorable defense that it did not conceal material  
5 information about the engines because it did not discover the problem until after it had sold many of the  
6 Class Vehicles. Hyundai might also argue that it covered many engine repairs under warranty or  
7 through goodwill, and that those repairs not covered were fairly denied because the dealership's  
8 inspection revealed that the engine oil was exceedingly low. Finally, if the case were to proceed to trial  
9 and if Plaintiffs were to prevail both at trial and on appeal, a class wide recovery would likely come no  
10 earlier than late 2018. And any damage award at that time would need to be distributed to class  
11 members based on vehicle ownership records that would then be several years older; class members  
12 would also likely need to locate receipts for repairs that would be equally old, significantly reducing the  
13 overall recovery. In other words, a victory at trial, coming several years from now, would likely not  
14 deliver results superior to the settlement before the Court.

15 **ii. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

16 Almost all class actions involve a high level of risk, expense, and complexity, which is one  
17 reason that judicial policy so strongly favors resolving class actions through settlement. *Linney v.*  
18 *Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (affirming district court's approval of  
19 settlement and certification of class). If the parties had been unable to resolve this case through  
20 settlement, the litigation would likely have been protracted and costly. Plaintiffs' counsel have  
21 frequently litigated automotive defect class actions that have taken several years to resolve, with one  
22 requiring more than 58,000 attorney hours over five years before it resolved for cash reimbursements  
23 through a claims-made process. (Gibbs Decl. at ¶ 11.) Before ever approaching a trial in this case, the  
24 parties likely would have briefed a motion to dismiss, class certification (along with a potential Rule  
25 23(f) appeal), and summary judgment, in addition to expending considerable resources on electronic  
26 discovery, depositions, and expert witnesses. It is therefore unlikely that the case would have reached  
27 trial before late 2017, with post-trial activity to follow. By that time, many more class members would  
28 have sold their vehicles, losing the very powertrain warranty that is being extended under the settlement

1 for both original and subsequent owners. The passage of time would also pose a risk to class members  
2 because of the potential for engine seizure or stalling, which they will now be notified about and able to  
3 address through free inspections and repairs.

4 **iii. The Risk of Maintaining Class Action Status Through Trial**

5 Were litigation to continue, Plaintiffs would face risk at the class certification stage. “The value  
6 of a class action ‘depends largely on the certification of the class,’ and [] class certification undeniably  
7 represents a serious risk for plaintiffs in any class action lawsuit.” *Acosta v. Trans Union, LLC*, 243  
8 F.R.D. 377, 392 (C.D. Cal. 2007) (quoting *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55  
9 F.3d 768, 817 (3d. Cir. 1995)). Plaintiffs believe that this case is appropriate for class certification in  
10 the litigation context, despite the varying symptoms and maintenance habits that Hyundai would be  
11 sure to raise in opposition. However, class certification proceedings are highly discretionary, and there  
12 is always a risk that the Court would deny certification altogether or decline to certify a nationwide  
13 class. *See Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 590 (9th Cir. 2012).

14 **iv. The Amount Offered In Settlement**

15 While continued litigation offers the uncertainty of class certification and the diminishing  
16 returns associated with the passage of time, the proposed settlement would provide class members with  
17 virtually everything Plaintiffs asked for in their complaints. Hyundai is warning affected drivers of the  
18 risk of engine stalling and providing a lengthy warranty extension that will allow all vehicles owners  
19 free inspections and necessary repairs. (Settlement, Sec. II.A.1.) Hyundai is also reimbursing class  
20 members for past repair expenses in full—including those incurred for rental cars and towing services  
21 in connection with obtaining repairs—with only minimal documentation requirements and a  
22 streamlined claims process. (*Id.*, Sec. II.C.2.) And any class members who sold or traded-in their  
23 vehicles after receiving a sizable engine repair estimate instead of having the vehicle repaired will be  
24 entitled to a compensation process. (*Id.*, Sec. II.D.3.) This combination of settlement benefits matches  
25 or exceeds what has been provided in settlements in comparable automotive class actions. (Gibbs Decl.  
26 at ¶ 11.)

1                   **v.       The Extent of Discovery Completed and the Stage of Proceedings**

2           Before initiating this litigation, Plaintiffs' counsel devoted substantial time and energy to  
3 investigating the underlying facts and developing their allegations. This included a review of a variety  
4 of number of publicly available sources of technical information, interviews of drivers, and  
5 consultation with automotive experts. (Gibbs Decl. at ¶ 3.) Plaintiffs' counsel also retained an  
6 automotive expert to conduct a tear down and analysis of a failed Sonata engine. (*Id.*) Those efforts  
7 allowed Plaintiffs to plead fairly detailed complaints that reflect a solid understanding of the technology  
8 and vehicles at issue. Then, in the course of negotiating the settlement, the parties engaged in  
9 confirmatory discovery that provided greater insight into the data and conclusions that Hyundai had  
10 provided regarding the vehicles at issue. (*Id.* at ¶ 9.) The discovery included both raw data and  
11 analysis relating to potentially relevant warranty claims, customer complaints, goodwill payments, and  
12 field service reports. (*Id.*) It also included some of the same materials that were prepared internally to  
13 brief Hyundai executives about the alleged engine defect and root cause analysis. (*Id.*) In addition to  
14 obtaining and reviewing the confirmatory discovery, Plaintiffs' counsel had the opportunity to conduct  
15 a full interview of the Hyundai engineer most familiar with the data and analysis. (*Id.*) Based on  
16 counsel's experience litigating auto defect cases, the information they received was sufficient to  
17 evaluate the fairness of the proposed settlement for the class. (*Id.*) Consequently, in the course of  
18 resolving this litigation, Plaintiffs had a reasonably good sense of the strength and weakness of their  
19 case and were well-situated to make an informed decision regarding settlement.

20                   **vi.       The Experience and Views of Counsel**

21           Co-Lead Interim Class Counsel Eric H. Gibbs and David Stein have successfully litigated many  
22 consumer class actions against automotive companies, including:

- 23           • *Parkinson v. Hyundai Motor Am.*, No. 8:06-cv-0345 (C.D. Cal.)
- 24           • *Sugarman v. Ducati North America, Inc.*, No. 10-cv-05246 (N.D. Cal.)
- 25           • *Browne v. Am. Honda Motor Co., Inc.*, No. CV 09-06750-MMM (C.D. Cal.)
- 26           • *Velasco v. Chrysler Group LLC*, No. 2:13-cv-08080 (C.D. Cal.)
- 27           • *Yaeger v. Subaru of Am., Inc.*, No. 1:14-cv-04490 (D.N.J.) (final approval pending)

28           (See 09/04/15 Gibbs Decl. [ECF No. 34-1], ¶ 6, Ex. A.)

1 Co-Lead Interim Class Counsel Matthew D. Schelkopf and Joseph G. Sauder of McCuneWright  
2 LLP have also prosecuted a number of consumer class actions against automotive companies,  
3 including:

- 4 • *Henderson v. Volvo Cars of N. Am., LLC*, No. 2:09-cv-04146 (D.N.J.)
- 5 • *Whalen v. Ford Motor Co.*, No. 13-3072 (N.D. Cal.)
- 6 • *Lax v. Toyota Motor Corp.*, No. 3:14-cv-01490 (N.D. Cal.)
- 7 • *Davitt v. Honda North America Inc.*, No. 2:13-cv-00381 (D.N.J.)
- 8 • *Neale v. Volvo Cars of N. Am., LLC*, No. 2:10-cv-04407 (D.N.J.)
- 9 • *Yaeger v. Subaru of Am., Inc.*, No. 1:14-cv-04490 (D.N.J.) (final approval pending)

10 (See 09/04/15 Schelkopf Decl. [ECF No. 34-3], ¶ 6, Ex. A)

11  
12 Based on their experience in similar cases, and their familiarity with the strengths and  
13 weaknesses of this particular case, Plaintiffs' counsel believes the proposed settlement to be in the best  
14 interests of the class and respectfully request that the Court approve it.

15 **vii. The Presence of a Governmental Participant**

16 The only connection with governmental entities in this litigation is Hyundai's voluntary recall  
17 of the 2011 and 2012 Hyundai Sonatas, which was overseen by the NHTSA. As discussed above, the  
18 settlement in this case provides the same level of benefits to class members irrespective of whether they  
19 own 2011 or 2012 Sonatas, and are thus within the scope of the recall, or whether they own 2013 or  
20 2014 vehicles, and are outside the recall's scope. In the end, all class members will be receiving similar  
21 notice of the alleged defect and be given the opportunity to present their vehicles at Hyundai  
22 dealerships for free engine inspections and necessary repairs. Finally, to the extent that the NHTSA  
23 might have eventually initiated an investigation into the later model year Sonata vehicles, a great  
24 benefit of the parties' settlement is that it avoids the protracted process of a multistage NHTSA  
25 investigation that can take years to complete. *See generally In re Gen. Motors Corp. Pickup Truck*  
26 *Fuel Tank Products Liab. Litig.*, MDL 961, 1993 WL 204116, at \*3 (E.D. Pa. June 10, 1993) (the  
27 NHTSA proceedings can take several years to conclude).

1                   **viii. The Reaction of Class Members**

2                   The class has yet to be notified of the settlement and given an opportunity to object, so it is  
3 premature to assess this factor. Before the final approval hearing, the parties will provide the Court  
4 with any objections they receive after notice is disseminated.

5                   **C. The Proposed Settlement Satisfies Rule 23**

6                   **1. The Settlement Class Meets The Requirements of Rule 23(a).**

7                   In connection with granting preliminary approval, the Court should also confirm that the  
8 proposed settlement class meets the requirements of Rule 23. *See Amchem Prods. v. Windsor*, 521 U.S.  
9 591, 620 (1997); Manual for Complex Litigation, § 21.632. The prerequisites for class certification  
10 under Rule 23(a) are (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of  
11 representation, each of which is satisfied here. Fed. R. Civ. P. 23(a); *Hanlon v. Chrysler Corp.*, 150  
12 F.3d 1011, 1019 (9th Cir. 1998).

13                   The parties' proposed settlement class, set forth in section I.D of the settlement agreement,  
14 encompasses nearly one million Class Vehicles and so readily satisfies the numerosity requirement.  
15 *See Hanlon*, 150 F.3d at 1019 ("The prerequisite of numerosity is discharged if 'the class is so  
16 numerous that joinder is impracticable.'") (quoting Fed. R. Civ. P. 23(a)(1)).

17                   The proposed settlement class also satisfies the commonality requirement of Rule 23(a), which  
18 requires that class members' situations "share a common issue of law or fact, and [be] sufficiently  
19 parallel to insure a vigorous and full presentation of all claims for relief." *Wolin v. Jaguar Land Rover*  
20 *N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) (internal quotations omitted). Each of the settlement  
21 class members purchased or leased a 2011-2014 model year Hyundai Sonata vehicles factory equipped  
22 with a Theta II 2.0 or 2.4 liter gasoline direct injection engine, and their legal claims involve the same  
23 alleged defect. (Settlement, Sec. I.F.) The common issues that their claims share include (i) whether  
24 the Class Vehicle engines are defective; (ii) whether the defect can cause stalling and other engine  
25 related symptoms; (iii) whether Hyundai knew of the defect but failed to disclose the problem and its  
26 consequences to consumers; (iv) whether a reasonable consumer would consider the defect and its  
27 consequences to be material; and (v) whether Hyundai's conduct violates the CLRA, the California  
28 UCL, and other statutes. *See Mendoza Compl.*, ¶ 83; *Graham Compl.*, at ¶ 29.



1 The final requirements of Rule 23(a)—typicality and adequacy—are satisfied by the proposed  
2 representative Plaintiffs. Like the other members of the settlement class, Plaintiffs each purchased or  
3 leased a 2011-2014 Hyundai Sonata equipped with a Theta II 2.0 liter or 2.4 liter engine, and thus  
4 suffered the same or similar alleged injury—namely, they were sold a defective vehicle that has  
5 required or will require a repair to make the vehicle safe. *See Wolin*, 617 F.3d at 1175 (“Typicality can  
6 be satisfied despite different factual circumstances surrounding the manifestation of the defect.”). In  
7 addition, Plaintiffs are adequate class representatives with no conflicts of interest and are represented  
8 by qualified and competent counsel. *Hanlon*, 150 F.3d at 1020.

9 **2. The Settlement Class Meets The Requirements Of Rule 23(b)(3).**

10 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class  
11 certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or (3).”  
12 *Hanlon*, 150 F.3d at 1022. Here, the proposed settlement class is maintainable under Rule 23(b)(3), as  
13 common questions predominate over any questions affecting only individual members and class  
14 resolution is superior to other available methods for a fair resolution of the controversy. *Id.* Settlement  
15 class members’ claims depend primarily on whether the engine installed in their vehicles is defective,  
16 and thus raise just the sort of predominantly common questions courts have found to justify class  
17 treatment. *See, e.g., Wolin*, 617 F.3d at 1173 (allegedly defective alignment geometry); *Hanlon*, 150  
18 F.3d at 1022-1023 (allegedly defective rear liftgate latches); *Chamberlan v. Ford Motor Co.*, 223  
19 F.R.D. 524, 526 (N.D. Cal. 2004) (allegedly defective engine intake manifolds).

20 Similarly, there can be little doubt that resolving all settlement class members’ claims through a  
21 single class action is superior to a series of individual lawsuits. “From either a judicial or litigant  
22 viewpoint, there is no advantage in individual members controlling the prosecution of separate actions.  
23 There would be less litigation or settlement leverage, significantly reduced resources and no greater  
24 prospect for recovery.” *Hanlon*, 150 F.3d at 1023. Finally, in the settlement context, there can be no  
25 objection here that class proceedings would present the sort of intractable management problems that  
26 sometimes override the collective benefits of class actions, “for the proposal is that there be no trial.”  
27 *Amchem*, 521 U.S. at 620.

1           **D.     The Court Should Order Dissemination of Class Notice As Proposed By the Parties**

2                   **1.     The Settlement Provides the Best Method of Notice Practicable Under the**  
3                   **Circumstances.**

4           The federal rules require that before finally approving a class settlement, “[t]he court must  
5 direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed.  
6 R. Civ. P. 23(e)(1). Where the settlement class is certified pursuant to Rule 23(b)(3), the notice must  
7 also be the “best notice that is practicable under the circumstances, including individual notice to all  
8 members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

9           The parties have agreed on a notice plan that provides individual notice by U.S. Mail. (*See*  
10 Settlement, Sec. IV.C.1.) Hyundai will employ the services of R.L. Polk & Company, or a similar  
11 third-party entity, to utilize the most current address data from state agencies to send notice to the  
12 Class. (*Id.*) For each individual notice that is returned as undeliverable, Hyundai shall conduct an  
13 advanced address search using Hyundai’s customer database information regarding the Class Vehicle  
14 owner to obtain a deliverable address. (*Id.*) The notice will direct class members to the dedicated  
15 settlement website and toll-free phone number. (*Id.*, Secs. IV.C.3-4.) Hyundai will also provide email  
16 notifications for each class member for which Hyundai possesses email addresses. (*Id.*, Sec. IV.C.2.)

17           Additionally, following the exhaustion or expiration of any appeals regarding the settlement  
18 agreement, class members will receive a second notice by U.S. Mail in the form of a color-printed  
19 pamphlet to be kept with the vehicles’ owner’s manuals. The insert will prominently warn of the risk  
20 that Class Vehicles may suffer engine stalling while driving; list all warning signs known by Hyundai  
21 to potentially precede such an engine seizure or stall, such as engine knocking and illumination of the  
22 Class Vehicle’s oil lamp; recommend that any class member who has not already done so should  
23 promptly present their Class Vehicle to an authorized Hyundai dealership for a free inspection and (if  
24 appropriate) a free repair; and describe the warranty and reimbursement benefits provided by this  
25 settlement. (Settlement, Secs. I.J, IV.C.7.) The insert will also be provided to all Hyundai authorized  
26 dealerships in hard copy and electronic form and be distributed to any person who presents a Class  
27 Vehicle for any maintenance or service, whether or not it is engine related. (*Id.*, IV.C.8.)

1 Plaintiffs request that the Court approve this method of notice as the best practicable under the  
2 circumstances. *See, e.g., Rannis v. Recchia*, 380 F. App'x. 646, 650 (9th Cir. 2010) (finding mailed  
3 notice to be the best notice practicable where reasonable efforts were taken to ascertain class members  
4 addresses).

5 **2. The Proposed Form of Notice Adequately Informs Class Members of Their**  
6 **Rights in Connection with the Settlement.**

7 The notice provided to class members should “clearly and concisely state in plain, easily  
8 understood language” the nature of the action; the class definition; the class claims, issues, or defenses;  
9 that the class member may appear through counsel; that the court will exclude from the class any  
10 member who requests exclusion; the time and manner for requesting exclusion; and the binding effect  
11 of a class judgment on class members. Fed. R. Civ. P. 23(c)(2)(B). The form of notice proposed by the  
12 parties complies with those requirements. The notice sent to all class members through U.S. Mail will  
13 explain the terms of the settlement, the class definition, the underlying litigation, Hyundai’s defenses,  
14 and the fact that class members may appear through counsel; detail the process for requesting exclusion  
15 from the settlement; and disclose the binding effect of the settlement on class members if they do not  
16 request exclusion from the Court. (*See* Long Form Notice, Settlement, Ex. A.)

17 Plaintiffs believe that this is the most effective way to alert class members to the existence of  
18 the settlement and convey detailed information about the settlement approval process, and accordingly  
19 ask that the Court approve the proposed forms of notice. *See Schaffer v. Litton Loan Servicing, LP*, No.  
20 CV 05-07673-MMM, 2012 WL 10274679, at \*8-9 (C.D. Cal. Nov. 13, 2012) (approving a similar  
21 notice plan).

22 **3. Notice of the Settlement Will Be Provided to Appropriate Federal and State**  
23 **Officials.**

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

1           **E.       The Court Should Set a Schedule for Final Approval**

2           The next steps in the settlement approval process are to schedule a final approval hearing, notify  
 3 the class of the settlement and hearing, allow class members an opportunity to file any objections or  
 4 comments regarding the settlement, and allow the parties to conduct appropriate objector discovery.  
 5 *See, e.g.*, Final Order and Judgment, *Milano v. Interstate Battery Sys. of Am., Inc.*, No. 4:10-CV-02125  
 6 (N.D. Cal. July 5, 2012) (ECF No. 106) (noting that objector repudiated his objection in deposition  
 7 testimony); *In Re: MagSafe Apple Power Adapter Litig.*, No. 5:09-CV-01911-EJD, 2015 WL 428105,  
 8 at \*2 (N.D. Cal. May 29, 2012) (objector depositions authorized to inquire into objectors' membership  
 9 in the class and ability to post an appellate bond).

10           Toward these ends, the parties have provided the Court with a proposed order that provides for  
 11 the following schedule:

|  |                               |
|--|-------------------------------|
| 12   Hyundai to complete mailing of class notice:  | 90 days after entry of order  |
| 13   Parties to final approval papers and Class<br>14   Counsel to file a fee application: | 90 days after entry of order  |
| 15   Deadline for class members to opt-out or object<br>16   to the settlement             | 120 days after entry of order |
| 17   Replies in support of final approval and fee<br>18   application:                     | 150 days after entry of order |
| 19   Hyundai to file affidavit attesting that notice was<br>20   disseminated as ordered:  | 150 days after entry of order |
| 21   Final Approval hearing:   | 165 days after entry of order |

22  
 23           **IV.       CONCLUSION**

24           For the foregoing reasons, the parties respectfully request that the Court enter the accompanying  
 25 Proposed Order granting preliminary approval of the proposed settlement, certifying the settlement  
 26 class, appointing Beth Graham and Elizabeth Mendoza as class representatives, appointing Plaintiffs'  
 27 attorneys as Class Counsel, directing dissemination of class notice, and setting a hearing for the  
 28 purpose of deciding whether to grant final approval of the settlement.

1 DATED: April 14, 2016,

Respectfully submitted,

2 By: /s/ Eric H. Gibbs

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