

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE : HYUNDAI SONATA ENGINE
LITIGATION

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

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT

1 The parties to this litigation have entered into a Settlement Agreement, which if approved,
2 would resolve this putative class action. Plaintiffs Beth Graham and Elizabeth Mendoza have filed a
3 motion for preliminary approval of the settlement, which Defendant Hyundai Motor America (“HMA”)
4 supports. The Court has read and considered the Settlement Agreement and all exhibits thereto,
5 including the proposed Claim Form, Long Form Notice, and Pamphlet, and finds that there is sufficient
6 basis for (1) granting preliminary approval of the settlement, (2) certifying the proposed class for
7 settlement purposes, (3) appointing Plaintiffs’ counsel as Class Counsel, (4) ordering dissemination of
8 class notice, and (5) setting a schedule for final settlement approval.

9 The Court now GRANTS the motion for preliminary approval and makes the following findings
10 and orders:

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

13 2. The Court preliminarily certifies the following settlement class (“Class”) pursuant to
14 Rule 23(b)(3) of the Federal Rules of Civil Procedure:

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

17 Excluded from the Class are all claims for death, personal injury, property damage, and
18 subrogation. Also excluded from the Class are HMA; any affiliate, parent, or subsidiary
19 of HMA; any entity in which HMA has a controlling interest; any officer, director, or
20 employee of HMA; any successor or assign of HMA; any judge to whom this Action is
21 assigned, his or her spouse, and all persons within the third degree of relationship to
22 either of them, as well as the spouses of such persons.

23 “Class Vehicles” refer to all 2011, 2012, 2013, and 2014 model year Hyundai Sonata
24 vehicles factory equipped with a Theta II 2.0 liter or 2.4 liter gasoline direct injection
25 engine, which were purchased or leased in the United States, excluding the territories, or
26 abroad while a Class member was on active military duty.

27 This Class is certified with respect to the following causes of action:

28 Any claims that are based on (i) the facts alleged in any complaint filed in *In re:*
Hyundai Sonata Engine Litigation, No. 5:15-cv-1685 (N.D. Cal.), inclusive of the
underlying cases that were consolidated, and all legal claims of whatever type or
description arising out of, that may have arisen as a result of, or which could have been
brought based on, any of the facts, acts, events, transactions, occurrences, courses of

1 conduct, representations, omissions, circumstances or other matters pleaded in
2 complaints filed in *In re: Hyundai Sonata Engine Litigation*, No. 5:15-cv-1685 (N.D.
3 Cal.), inclusive of the underlying cases that were consolidated, (ii) oil consumption, oil
4 maintenance, engine repairs or replacement related to oil maintenance for the Class
5 Vehicles, or engine durability related to oil maintenance for the Class Vehicles, or
6 (iii) marketing or advertising for the oil consumption, oil maintenance, engine repairs or
7 replacement related to oil maintenance for the Class Vehicles, or engine durability
8 related to oil maintenance for the Class Vehicles. Excluding claims for (i) death,
9 (ii) personal injury, (iii) damage to tangible property other than a Class Vehicle, or
10 (iv) subrogation.

11 3. The Court appoints Eric H. Gibbs and David Stein of Gibbs Law Group LLP and Joseph
12 G. Sauder and Matthew D. Schelkopf of McCuneWright LLP to serve as settlement Class Counsel, and
13 Beth Graham and Elizabeth Mendoza as class representatives for the settlement class

14 4. The Court directs HMA to fulfill its notice duties and responsibilities specified in this
15 Order and the Settlement Agreement.

16 5. The Court finds that the requirements of Rule 23 of the Federal Rules of Civil Procedure
17 are met. Joinder of all members of the Class in a single proceeding would be impractical, if not
18 impossible, because of their numbers and dispersion. In considering the proposed settlement class,
19 common issues exist among Class members and predominate over questions affecting only individual
20 Class members; in particular, each Class member's claims depend on whether the engine installed in
21 their vehicles is defective. Plaintiffs' claims are typical of those of the Class, as Plaintiffs own Class
22 Vehicles and complain of the same engine defect that forms the basis of all Class members' claims.
23 Plaintiffs and their counsel will fairly and adequately protect the interests of the Class; Plaintiffs have
24 no interests antagonistic to those of the Class, and have retained counsel experienced and competent to
25 prosecute this matter on behalf of the Class. Finally, a class settlement is superior to other available
26 methods for a fair resolution of the controversy and manageable as a class action for settlement
27 purposes.

28 6. The Court preliminarily approves the proposed settlement, finding that its terms appear
sufficiently fair, reasonable, and adequate to warrant dissemination of notice of the proposed settlement
to the Class. The Court finds that the settlement contains no obvious deficiencies, falls within the range
of possible approval, and that the parties entered into the settlement in good faith, following arms-
length negotiations between their respective counsel with the assistance of a neutral mediator.

1 7. The Court hereby approves the form and procedure for disseminating notice of the
2 proposed settlement to the Class set forth in the Settlement Agreement. The Court finds that the notice
3 to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due,
4 and sufficient notice to the Class in full compliance with the requirements of applicable law, including
5 the Due Process Clause of the United States Constitution.

6 8. By September 28, 2016 (the “Notice Date”), HMA shall provide all reasonably
7 identifiable Class members with a long form notice and a claim form by direct U.S. mail. The long
8 form notice shall be substantially in the form of the document attached as **Exhibit A** to this Order,
9 which has been revised as directed by the Court at the hearing on June 23, 2016, and the telephonic
10 conference on July 1, 2016. The claim form shall be substantially in the form of the document attached
11 as Exhibit B to the Settlement Agreement. For the purposes of determining the names and addresses of
12 all Class members, HMA agrees to provide, to the extent it has not already done so, all names and
13 addresses of Class Vehicle owners, along with Class Vehicle VINs, to R.L. Polk & Company, or a
14 similar third-party entity, who shall be authorized to use that information to obtain the names and most
15 current addresses of Class Vehicle owners through state agencies. HMA shall also conduct an address
16 search through the United States Postal Service’s National Change of Address database to update the
17 address information for Class Vehicle owners. For each individual notice that is returned as
18 undeliverable, HMA shall use its best efforts to conduct an advanced address search using HMA’s
19 customer database information regarding the Class Vehicle owner to obtain a deliverable address.
20 HMA shall also provide each Class member for whom it maintains an email address a hyperlink to the
21 settlement website and electronic versions of the long form notice and a claim form.

22 9. HMA shall maintain a settlement website, subject to the approval of Class Counsel,
23 which will contain: (i) instructions on how to obtain reimbursements; (ii) a mechanism by which Class
24 members can submit Claims; (iii) instructions on how to contact HMA for assistance with their Claims;
25 (iv) the Long Form Notice; (v) the Pamphlet; (vi) the Claim Form; (vii) the Settlement Agreement;
26 (viii) any orders issued by the Court approving or disapproving of the proposed settlement; and (ix) any
27 other information the Class Representatives and HMA determine is relevant to the settlement.

1 10. HMA shall maintain a dedicated toll free telephone number for Class members to call.
2 HMA shall be prepared, through its customer service department, to respond to questions regarding the
3 status of submitted Claims, how to submit a Claim, and other aspects of this settlement.

4 11. By no later than December 1, 2016, HMA shall provide Class Counsel with the total
5 number of notices sent to Class members by U.S. mail and email, along with the numbers of notices
6 returned as undeliverable.

7 12. HMA shall comply with the requirements of 28 U.S.C. § 1715(b) and serve notice of the
8 proposed settlement upon the appropriate federal official and the appropriate State official of each State
9 in which a Class member resides.

10 13. As set forth in the Settlement Agreement, HMA shall bear all costs of Class notice and
11 settlement administration.

12 14. By no later than December 1, 2016, HMA shall provide an affidavit for the Court, with a
13 copy to Class Counsel, attesting that notice was disseminated in a manner consistent with the
14 Settlement Agreement.

15 15. A hearing on entry of final approval of the settlement, an award of fees and expenses to
16 Class Counsel, and service awards to the Class Representatives shall be held at 2:00 p.m. on
17 December 15, 2016, in Courtroom 3 of the United States District Court for the Northern District of
18 California, 280 South 1st Street, San Jose, California. At the final approval hearing, the Court will
19 consider: (a) whether the settlement should be approved as fair, reasonable, and adequate for the Class,
20 and judgment entered on the terms stated in the settlement; and (b) whether Plaintiffs' application for
21 an award of attorney fees and expenses to Class Counsel and service awards to Class Representatives
22 ("Fee Application") should be granted.

23 16. Any Class member shall have the right to opt out of the Class and the settlement by
24 mailing or delivering a written request for exclusion to HMA's counsel at the address set forth in the
25 Long Form Notice. Any request for exclusion must be postmarked or delivered not later than
26 November 7, 2016. Any request for exclusion shall (i) state the Class member's full name and current
27 address, (ii) provide the model year and Vehicle Identification Number ("VIN") of his/her/its Class
28 Vehicle(s) and the approximate date(s) of purchase or lease, and (iii) specifically and clearly state

1 his/her/its desire to be excluded from the settlement and from the Class. Failure to comply with these
2 requirements and to timely submit the Request for Exclusion will result in the Class member being
3 bound by the terms of the settlement. Any repairs performed pursuant to the Extended Warranty
4 provided by the Settlement Agreement during the notice period shall preclude the Class members who
5 received such repairs from opting out of the Class. Any Class member who submits a timely request
6 for exclusion may not file an objection to the settlement and shall be deemed to have waived any rights
7 or benefits under the settlement. HMA shall report the names of all Class members who have
8 submitted a request for exclusion to Class Counsel on a weekly basis, beginning on October 28, 2016.

9 17. Counsel for the parties shall file memoranda, declarations, or other statements and
10 materials in support of the request for final approval of the parties' settlement no later than
11 September 28, 2016.

12 18. Class Counsel shall file an application for an award of attorneys' fees and costs and for
13 service awards to the named Plaintiffs ("Fee Application") no later than September 28, 2016.

14 19. Any Class member who wishes to object to the Settlement must, no later than
15 November 7, 2016, submit a written notice of objection to HMA's counsel and Class Counsel at the
16 addresses set forth in the Long Form Notice. To state a valid objection, an objecting Class member
17 must provide the following information in his, her, or its written objection: (i) his/her/its full name,
18 current address, and current telephone number; (ii) the model year and VIN of his/her/its Class
19 Vehicle(s); (iii) a statement of the objection(s), including all factual and legal grounds for the position;
20 (iv) copies of any documents the objector wishes to submit in support; and (v) sign and date the
21 objection. In addition, any Class member objecting to the settlement shall provide a detailed list of any
22 other objections submitted by the objector, or the objector's counsel, to any class action settlements
23 submitted in any court, whether state, federal, or otherwise, in the United States in the previous five
24 years. If the Class member or his or her counsel has not made any such prior objection, the Class
25 member shall affirmatively so state in the written materials provided with the objection. If the
26 objecting Class member intends to appear, in person or by counsel, at the final approval hearing, the
27 objecting Class member must so state in the objection as specified above by November 7, 2016, or
28 separately send a Notice of Intent to Appear to HMA's counsel and Class Counsel at the addresses set

1 forth in the Long Form Notice by November 28, 2016. To submit a valid Notice of Intent to Appear,
2 the Notice must provide the following information in his, her, or its Notice: (i) his/her/its full name,
3 current address, and current telephone number; (ii) the model year and VIN of his/her/its Class
4 Vehicle(s); (iii) identities of any attorneys who will appear on behalf of him, her, or it; and (iv) sign the
5 Notice. Any Class member who does not state his or her intention to appear in accordance with the
6 applicable deadlines and other specifications, or who has not filed an objection in accordance with the
7 applicable deadlines and other specifications, will be deemed to have waived any objections to the
8 settlement and can be barred from speaking or otherwise presenting any views at the final approval
9 hearing.

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

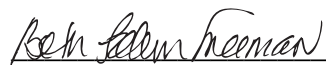
18 21. These procedures and requirements for objecting are intended to ensure the efficient
19 administration of justice and the orderly presentation of any Class member's objection to the Settlement
20 Agreement, in accordance with the due process rights of all Class members.

21 22. No later than December 1, 2016, the parties shall file any reply in support of final
22 approval of the settlement and Plaintiffs shall file any reply in support of the Fee Application.

23 23. The Court reserves the right to adjust the date of the final approval hearing and related
24 deadlines. In that event, the revised hearing date or deadlines shall be posted on the settlement
25 website(s) referred to in the long form notice, and the parties shall not be required to re-send or re-
26 publish notice to the Class.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: July 7, 2016



BETH LABSON FREEMAN
United States District Court Judge