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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In re: Hyundai and Kia Engine Litigation	8:17-cv-00838-JLS-JDE Related Cases: 8:17-cv-01365-JLS-JDE 8:17-cv-02208-JLS-JDE 2:18-cv-05255-JLS-JDE 8:18-cv-00622-JLS-JDE 8:18-cv-02223-JLS-JDE

PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: December 13, 2019
Time: 10:30 a.m.
Hon. Josephine L. Staton
Courtroom: 10A

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NOTICE OF MOTION

PLEASE TAKE NOTICE that on December 13, 2019, at 10:30 a.m. before Honorable Josephine L. Staton in Court 10A, 10th Floor, of the United States District Court for the Central District of California, located at Ronald Reagan Federal Building and United States Courthouse, 411 W. Fourth St., Santa Ana, CA, 92701, Plaintiffs Cara Centko, Jenn Lazar, Christopher Stanczak, Rose Creps, James Kinnick, Wallace Coats, Maryanne Brogan, Andrea Smolek, Danny Dickerson, Robert Fockler, Amy Franklin, Donald House, Dave Loomis, Joseph McCallister, Arron Miller, Ricky Montoya, Lynn North, Mark Rice, Reid Schmitt, James Smith, and Chris Stackhouse 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 Plaintiffs as class representatives; appoint the undersigned attorneys as Class Counsel; order dissemination of the class notice pursuant to the notice plan set forth in the Settlement Agreement; and set a schedule for final settlement approval.

Plaintiffs' unopposed motion is based on this notice; the accompanying Memorandum of Law; the Declarations of Matthew D. Schelkopf and Steve W. Berman and all attachments thereto (including the Settlement Agreement); the Proposed Order Granting Preliminary Approval of the Class Action Settlement; and all other papers filed and proceedings had in this Action.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on October 10, 2019.

Dated: October 10, 2019

Respectfully submitted,

By:/s/ *Matthew D. Schelkopf*

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I. INTRODUCTION

After more than a year of settlement negotiations and discovery, the Parties have resolved this consumer class action in which Plaintiffs allege the Class Vehicles[1] suffer from premature engine failure. Plaintiffs allege Defendants knew of a material defect in the Settlement Class Vehicles, but failed to disclose the defect at the point of sale. Under the proposed settlement, Settlement Class Members may receive a range of benefits, including reimbursement for certain out-of-pocket repairs and costs, a Lifetime Warranty extension, goodwill payments, a rebate, and reimbursement for sold or traded-in Settlement Class Vehicles with a failed engine.

Because the proposed settlement provides substantial benefits to Settlement Class Members while avoiding the risks and costs of protracted litigation, Plaintiffs respectfully request this Court grant their unopposed Motion for Preliminary Approval of the Class Action Settlement.

II. FACTUAL BACKGROUND

A. Plaintiffs' Allegations and Pre-Litigation Investigation

This class action lawsuit was first commenced on May 10, 2017. It was filed after an extensive pre-suit investigation by Plaintiffs' counsel that began on or about February 2, 2017. This investigation included speaking with members of the potential class, reviewing documents provided by class members, reviewing Hyundai and Kia engine designs with automotive experts, and investigating potential legal claims applicable to the class.

B. History of the Litigation

On May 10, 2017, Plaintiffs Cara Centko and Jenn Lazar filed the proposed nationwide class action lawsuit *Centko and Lazar v. Kia Motors America, Inc.*, No. 8:17-cv-00838 (C.D. Cal.). On August 8, 2017, Plaintiffs Christopher Stanczak and Rose

[1] The capitalized terms used in this Memorandum are defined in Section I of the Settlement Agreement. The Settlement Agreement and its exhibits are attached as Exhibit 1 to the Declaration of Matthew D. Schelkopf ("Schelkopf Decl."). The list of Settlement Class Vehicles in this case are also listed in Section II(D), *infra*.

Creps filed the proposed nationwide class action lawsuit *Stanczak and Creps v. Kia Motors America, Inc. et al.*, No. 8:17-cv-1365 (C.D. Cal.). On December 19, 2017, Plaintiffs James Kinnick and Wallace Coats filed the proposed nationwide class action lawsuit *Kinnick and Coats v. Hyundai Motor Co., et al*., No. 8:17-cv-02208 (C.D. Cal.). On January 23, 2018, Plaintiff Maryanne Brogan filed the proposed nationwide class action lawsuit *Brogan v. Hyundai Motor America, et al.*, No. 8:17-cv-00622 (C.D. Cal). On April 16, 2018, Plaintiff Andrea Smolek filed the proposed nationwide class action lawsuit *Smolek v. Hyundai Motor America, et al.*, No. 2:18-cv-05255 (C.D. Cal.). On August 7, 2018, the Court ordered these cases consolidated as *In re: Hyundai and Kia Engine Litigation*, No. 8:17-cv-00838 (C.D. Cal.) (ECF No. 85.).

On September 4, 2018, Kia Motors America, Inc. and Hyundai Motor America, Inc. and Hyundai Motor Company, Ltd. filed separate motions to dismiss Plaintiffs' claims. (ECF Nos. 86-89.) On October 9, 2018, Plaintiffs filed oppositions to Defendants' motions to dismiss. (ECF Nos. 93-94.) Shortly thereafter, the Court entered the parties' request to continue the hearing date on Defendants' motions to dismiss to allow the parties to explore the opportunity for settlement. (ECF Nos. 97, 98.)

On December 14, 2018, Plaintiffs Fockler, House, Loomis, Miller, Moore, Rice, and Smith, along with other plaintiffs not subject to this proposed settlement, filed the proposed nationwide class action lawsuit *Flaherty v. Hyundai Motor Co., et al.*, No. 18-cv-02223 (C.D. Cal.), alleging similar claims to those in *In re: Hyundai and Kia Engine Litigation*. *Flaherty* was amended twice, on January 10, 2019, and May 1, 2019, to add Plaintiffs Dickerson, McCallister, Montoya, Franklin, North, Schmitt, and Stackhouse, along with other plaintiffs not subject to this proposed settlement.

On April 22, 2019, plaintiffs in a separate lawsuit pending in the Northern District of California moved to transfer and coordinate or consolidate this Action with *Musgrave v. Hyundai Motor America, Inc.*, No. 4:18-cv-07313-YGR (N.D. Cal.) as well as others in the Central District of California. The Judicial Panel on Multidistrict Litigation denied that motion on August 1, 2019.

C. Settlement

After this Court entered the consolidation order on August 7, 2018, counsel in the consolidated cases met and conferred with counsel for Defendants on multiple occasions, including with an engineering representative from HMA and KMA present, regarding the allegations in the consolidated action, the potential defenses of HMA and KMA, and potential resolution. These meetings between counsel culminated in a mediation session before Honorable Ronald M. Sabraw (Ret.) of JAMS on December 21, 2018, where the parties settled in principle. Counsel, including counsel in *Flaherty*, continued settlement discussions over the next several months, which resulted in additional modifications and enhancements to the proposed settlement.

In order to confirm that the proposed Settlement Agreement is fair, reasonable, and adequate, Plaintiffs' counsel deposed two Hyundai Motor Co., Ltd. employees, both of whom traveled from South Korea for their deposition. With the aid of an experienced translator, the depositions spanned two days and covered hundreds of pages of documents produced by Defendants during confirmatory discovery.

D. Terms of the Settlement Agreement

If approved, the settlement will provide substantial benefits to the following Class: All owners and lessees of a Class Vehicle who purchased or leased the Class Vehicle in the United States, including those that were purchased while the owner was abroad on active U.S. military duty, but excluding those purchased in the U.S. territories and/or abroad. The Class Vehicles include: all 2011-2018 and certain 2019 model year Hyundai Sonata vehicles, all 2013-2018 and certain 2019 Hyundai Santa Fe Sport vehicles, all 2014-2015, 2018, and certain 2019 Hyundai Tucson vehicles, all 2011-2018 and certain 2019 Kia Optima vehicles, all 2011-2018 and certain 2019 Kia Sorento vehicles, and all 2011-2018 and certain 2019 Kia Sportage vehicles originally equipped with or replaced

with a genuine Theta II 2.0 liter or 2.4 liter gasoline direct injection engine within OEM specifications.[2]

1. Lifetime Warranty Coverage for Engine Short Block

First, effective on the notice date, the Class Vehicles will receive a Lifetime Warranty, which covers all costs associated with inspections and repairs, including the costs associated with replacement parts, labor, diagnoses, and mechanical or cosmetic damage to the Class Vehicles caused by the engine malfunction upon completion of the Knock Sensor Detection System ("KSDS") software update. For 90 days immediately following the notice date, all Class Vehicles that have not received a recall inspection[3] will be eligible for free inspections and, if necessitated by the free inspections, short block assembly repairs, irrespective of the Class Vehicles' mileage, duration of ownership, or any prior repairs.

Defendants will also provide a comparable class of loaner vehicle to Class members during any repairs under the Lifetime Warranty. If no loaner vehicle is reasonably available through Defendants' authorized dealerships, reimbursement of up to $40 per day for reasonable rental car expenses will be provided until the repairs are completed.

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[2] Excluded from the Class (and not released by this settlement) are all claims for death, personal injury, property damage (other than damage to a Class Vehicle that is the subject of a Qualifying Repair), and subrogation. Also excluded from the Class are (a) HMA and KMA; any affiliate, parent, or subsidiary of HMA or KMA; any entity in which HMA or KMA has a controlling interest; any officer, director, or employee of HMA or KMA;(b) any successor or assign of HMA or KMA; any judge to whom this Action is assigned, his or her spouse, and all persons within the third degree of relationship to either of them, as well as the spouses of such persons; (c) individuals and/or entities who validly and timely opt-out of the settlement; (d) consumers or business that have purchased Class Vehicles previously deemed a total loss (i.e., salvage) (subject to verification through Carfax or other means); and (e) current or former owners of a Class Vehicles that previously released their claims against HMA, HMC, KMC, and KMA in an individual settlement with respect to the issues raised in the Action (for the purpose of clarity, individual owners of 2011-2014 Hyundai Sonatas who released claims against HMA and HMC in the settlement reached in *Mendoza v. Hyundai Motor Company Ltd., et. al.*, Case No. 15-cv-01685-BLF (C.D. Cal.) are not excluded from the claims of the Class).

[3] Previous recall campaigns are discussed *infra*.

Should any disputes about coverage under the Lifetime Warranty occur, they will be resolved through the Better Business Bureau's ("BBB") alternative dispute resolution process. Class Counsel shall have the right to participate in the BBB proceedings. All costs and fees associated with the BBB alternative dispute resolution process will be borne by Defendants, excluding any attorneys' fees, unless the mediator or arbitration finds that the Claimant's claims were brought in bad faith.

2. Recall and Product Improvements

In prior litigation, Hyundai recalled certain model year 2011-2012 Hyundai Sonata vehicles in September 2015 through the National Highway Transportation Safety Administration (NHTSA) Campaign Number 15V-568 and recalled certain model year 2013-2014 Hyundai Sonata and Santa Fe Sport vehicles in March 2017 through NHTSA Campaign 17V-226. In December 2018 and January 2019, Defendants issued a subsequent recall of those same vehicles to inspect and confirm proper reinstallation of the fuel tube to address car engines at risk of fire, through NHTSA Campaign numbers 18V93400 (as to HMA) and 18V907000 (as to KMA). Also, as of January 2019, Defendants represent that they had each initiated product improvement campaigns in which knock sensor technology could be added through a free software update to the Class Vehicles.

As part of the settlement, Defendants represent that these recalls and product improvements represent part of the consideration to the Class.

3. Repair Reimbursements

For any Class member that obtained a Qualifying Repair for a Class Vehicle before receiving notice of the settlement, the Class member will be eligible for full reimbursement by Defendants, regardless of whether the Class member was an original owner, lessee, or subsequent purchaser, or whether the repair was completed before or after the recall campaigns identified in the preceding section. To receive reimbursement, the Class member must submit a completed Claim Form within 90 days after the notice

date with proof of the repair expense that reflects that the work was conducted to address the repair.[4]

For reimbursement claims from repairs performed at authorized Hyundai or Kia dealerships, Defendants shall take all reasonably available steps to acquire from the dealerships the information reasonably necessary to approve the claim (i.e. the date, nature, and cost charged for the repair). Defendants represent that they should be able to acquire that information in many instances, except for proof that cost for the repair was paid by the Class member. Thus, Class members will likely only need to substantiate the cost for the repair through a repair receipt, credit card receipt, credit card statement, or any other receipt or statement showing a payment to the authorized dealership. If the Class member does not have a repair receipt, the Class member may attest under the penalty of perjury that they do not have a receipt. Repair reimbursements shall be provided regardless of whether the repairs were performed at an authorized Hyundai or Kia dealership, or by a third-party.

Reimbursements for repairs shall be provided even if warranty coverage was initially denied for allegedly failing to properly service or maintain the Class Vehicle. Class members who presented their Class Vehicle to an authorized dealership and were denied in-warranty repair prior to receiving notice of this settlement, and then obtained their repair elsewhere are eligible for an additional $140 goodwill payment. Repair reimbursements will be denied if Exceptional Neglect is shown.[5]

[4] Class members that were members of the prior settlement class of 2011-2014 Hyundai Sonatas in *Mendoza* are also eligible for reimbursements for repairs that arose after the claims period expired in that settlement.

[5] "Exceptional Neglect" means (a) when the vehicle clearly evidences a lack of maintenance or care for a significant period of time of not less than one (1) year, such that the vehicle appears dilapidated, abandoned, and/or beyond repair unless such lack of maintenance was due to a Loss Event; or (b) failure of a Class member to have the KSDS installed pursuant to the KSDS Product Improvement Campaign by a Hyundai or Kia dealer within 60 days from notice date, or within 60 days of mailing of KSDS campaign notice, whichever is later. Diagnostic costs associated with establishing Exceptional Neglect will be borne by Defendants.

4. Other Repair-Related Reimbursements

In addition to reimbursements for Qualifying Repairs, Class members may submit claims to receive full reimbursement of any towing expenses or other out-of-pocket expenses reasonably related to obtaining a repair, and up to $40 per day for rental car expenses if a loaner vehicle was not originally provided by Defendants. Class members will not be able to submit claims for any alleged lost wages or other consequential damages. If a Class member was previously reimbursed in full or in part for rental car or towing expenses, they are not entitled to reimbursement for any portion of the expense for which they were already reimbursed.

5. Inconvenience Due to Repair Delays

If a Class member is or was inconvenienced by delays of more than 60 days when obtaining a repair from an authorized Hyundai or Kia dealership, the Class member may submit a claim for a goodwill payment based on the length of delay. Class members are eligible for goodwill payments of $50 for delays lasting between 61 and 90 days, and $25 for each additional 30-day period of delay or fraction thereof. If so elected, Class members can receive their compensation in the form a dealership service card valued at 150% of the amount that would otherwise be paid, which can only be used at authorized Hyundai dealerships (for Hyundai Class Vehicles) or Kia dealerships (for Kia Class Vehicles) in payment toward parts, service, or merchandise.

6. Loss of Value for Sold or Traded-In Vehicles

Class members that experienced a Loss Event before receiving notice of the settlement may submit a claim to recover for the loss. To submit a claim, the Class Vehicle must have experienced an engine seizure, stall, engine noise, engine compartment fire, or illumination of the oil lamp diagnosed as requiring repair of the engine block, and the Class member must have sold or traded-in the Class Vehicle without first procuring the recommended repair. The Claim must be submitted within 90 days of the Notice Date and contain a proof of sale or trade-in and value received for sale or trade-in as well as any additional proof of the Loss Event. After submitting a

completed and approved Claim Form, the Class member is entitled to reimbursement of the baseline Black Book value (i.e., wholesale used vehicle value) of the sold or traded-in Class Vehicle at the time of loss plus an additional $140 goodwill payment, minus the actual amount received from the sale or trade-in. If a Class member was reimbursed in full or in part in connection with a sale or trade-in, they are not entitled reimbursement under the settlement for that portion of the expense for which they were previously reimbursed.

If a Class member contends that the actual damages incurred exceed the reimbursement provided, the Class member can provide written notice to Hyundai or Kia requesting alternative dispute resolution through the BBB. The costs of the BBB administered alternative dispute resolution will be borne by Hyundai or Kia, excluding attorneys' fees, unless the mediator or arbitrator determines the Class member's claims were brought in bad faith.

7. Loss of Vehicle by Engine Fire

Class members that suffered a Loss Event due to an engine fire directly caused by a Class Vehicle's failure arising from a vehicle condition that would have otherwise been addressed by a Qualifying Repair is eligible to receive payment by HMA (for Hyundai Class Vehicles) or KMA (for Kia Class Vehicles) of the maximum Black Book value (i.e., private party/very good) of the Class Vehicle at the time of loss plus an additional $140 goodwill payment, minus actual value received (if any). A claim for such an event must be submitted within 90 days of the Notice Date or within 90 days of the engine fire occurrence. In addition, the completed Claim Form must contain proof of the Loss Event and documentation establishing that the fire originated from the engine compartment and was unrelated to any sort of collision.

If a Class member contends the actual damages incurred exceed the reimbursement provided, the Class member can provide written notice to Hyundai or Kia requesting alternative dispute resolution through the BBB. The costs of the BBB administered alternative dispute resolution will be borne by Hyundai or Kia, excluding attorneys' fees,

unless the mediator or arbitrator determines the Class member's claims were brought in bad faith.

8. Rebate Program

If a Class member loses faith in their Class Vehicle as a result of this settlement, the Class member may present a claim for a rebate after selling the Class Vehicle in an arm's length transaction if (a) the Class member experienced an engine failure or engine component fire and (b) purchased a replacement Hyundai vehicle (for Hyundai Class members) or Kia vehicle (for Kia Class members).

A rebate is also available to any Class member who, after the notice date, experiences an engine failure or fire in a Class Vehicle, loses faith in their Class Vehicle, and completes all other steps to qualify for the rebate, including the purchase of a replacement Hyundai or Kia vehicle and submission of a claim within 90 days of the engine failure or fire.

The amount of the rebate shall be calculated as actual loss by comparing sales documentation to the maximum Black Book value (i.e., private party/very good) of the Class Vehicle at the time of the KSDS campaign launch up to the following amounts: (a) for model year 2011-2012 Class Vehicles: $2,000; (b) for model year 2013-2014 Class Vehicles: $1,500; (c) for model year 2015-2016 Class Vehicles: $1,000; (d) for model year 2017-2019 Class Vehicles: $500.

III. ARGUMENT

A. The Settlement Merits Preliminary Approval.

The Court must determine "'whether a proposed settlement is fundamentally fair, adequate, and reasonable,' recognizing that '[i]t is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness.'" *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (*quoting Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). Preliminary approval of a settlement and notice to the proposed class is appropriate where "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class,

and falls with the range of possible approval…" *Collins v. Cargill Meat Sols. Corp.*, 274 F.R.D. 294, 301-02 (E.D. Cal. 2011) (*quoting In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).

1. The Settlement is the Product of Serious, Informed, Arm's-Length Negotiations by Experienced Counsel.

First, the settlement was not the result of collusion among the negotiating parties. *See In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011) (vacating and remanding a settlement approval order because the district court had not considered possible collusion); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (considering and rejecting objectors' argument that settlement was product of collusion where allegations in the complaint preceded settlement by one year and there was no other evidence of collusion). Courts look to whether the proposed settlement is a product of arm's length negotiations, performed by counsel well versed in the type of litigation at issue. *See* A. CONTE & H.B. NEWBERG, NEWBERG ON CLASS ACTIONS § 11:41 ("NEWBERG") (a proposed settlement is entitled to "an initial presumption of fairness" when the settlement has been "negotiated at arm's length by counsel for the class"); *See Hughes v. Microsoft Corp.*, Nos. C98–1646C, 2001 WL 34089697, at *7 (W.D. Wash. Mar. 26, 2001) ("A presumption of correctness is said to attach to a class settlement reached in arms-length negotiations between experienced capable counsel after meaningful discovery." (*quoting* MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.42 ("MANUAL (THIRD)")).

Here, neither the litigation and settlement process nor the substance of the settlement indicate any collusion. The settlement was only achieved after months of arm's-length negotiations among the parties, including in-person meetings between Plaintiffs' counsel and Hyundai representatives to discuss claims and settlement possibilities, confirmatory discovery, and mediation before Hon. Ronald M. Sabraw (Ret.) of JAMS. (Schelkopf Dec. ¶ 14; Berman Decl. ¶¶ 7, 10.) *See, e.g., G. F. v. Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 4606078, at *13 (N.D. Cal. July 30, 2015)

("[T]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.") (internal quotations omitted). In the consolidated action, the Parties briefed two motions to dismiss before the settlement negotiations began. In confirmatory discovery, Defendants produced and Plaintiffs' counsel reviewed thousands of pages of internal documents relating to the Class Vehicles' engine design, engineering, manufacturing, and pre- and post-production testing. (Schelkopf Decl. ¶ 15; Berman Decl. ¶ 6.) Plaintiffs' counsel then took the depositions of two Hyundai executives that traveled from Korea to testify over the course of two days. (Schelkopf Decl. ¶ 15; Berman Decl. ¶ 6.) Plaintiffs' counsel for the consolidated action and for *Flaherty* were in frequent, separate contact by phone and email with Defendants' counsel during this time to discuss substantive settlement issues and ongoing discovery efforts. (Berman Decl. ¶ 6.) Plaintiffs' counsel have represented consumers in a number of significant class actions against Hyundai and Kia, several of which resulted in successful, court-approved settlements. (Schelkopf Decl. ¶¶ 3, 11; Berman Decl. ¶ 10.) As outlined above, the settlement's terms are favorable to the settlement class and on par with the relief Plaintiffs' demanded in their respective complaints.

Finally, although Defendants have agreed to separately pay an award of attorneys' fees and costs, the Parties have yet to negotiate them in order to avoid any perceived conflict of interest with the Class members and the settlement relief. (Berman Decl. ¶ 11.) Waiting to negotiate fees until confirmatory discovery and settlement negotiations have concluded is generally preferable to avoid risk or appearance of collusion. *See* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.7 ("MANUAL (FOURTH)") ("Separate negotiation of the class settlement before an agreement on fees is generally preferable."); *see also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 334-35 (3d Cir. 1998) (affirming final approval of class settlement and fee award where "[t]here [was] no indication the parties began to negotiate attorneys' fees until after they had finished negotiating the settlement agreement.").

The settlement was thoroughly negotiated and results in a fair outcome for Class members. The Court should preliminarily approve the proposed settlement.

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

Whether the settlement agreement provides preferential treatment to any settlement class member turns on whether there is any disparity among what class members are poised to receive and, if so, whether the settlement "compensates class members in a manner generally proportionate to the harm they suffered on account of [the] alleged misconduct." *Altamirano v. Shaw Indus., Inc.*, No. 13-CV-00939-HSG, 2015 WL 4512372, at *8 (N.D. Cal. July 24, 2015) (finding no preferential treatment); *accord Contra Costa Cty.*, 2015 WL 4606078, at *13-14 (analyzing whether the settlement singles out particular class members or whether it instead "appears uniform").

Here, Plaintiffs are seeking certification of a single class of vehicle owners and lessees, and all members of the proposed class may, individual circumstances permitting, make a claim for the various remedies offered under the settlement. This ensures Class members are compensated in kind for the harm they suffered. For example, a Class member with a vehicle engine fire may be eligible for more compensation (e.g., reimbursements, goodwill payments, etc.) than a Class member that has not suffered an engine malfunction (e.g., Lifetime Warranty). This means Class members are proportionately made whole.

Likewise, the Class representatives will not receive preferential treatment or compensation disproportionate to their respective harm and contribution to the case under this proposed settlement. They are permitted to make claims for relief under the settlement terms like any other Class member, and while the Parties have not yet agreed on service awards for these Class representatives, Plaintiffs seek less than $5,000 for each. *See Ruch v. AM Retail Grp., Inc.*, No. 14-CV-05352-MEJ, 2016 WL 1161453, at *12 (N.D. Cal. Mar. 24, 2016) (internal quotations omitted) (permitting service awards to class representatives); *see also Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST,

2016 WL 362395, at *10 (N.D. Cal. Jan. 29, 2016) (finding $5,000 service awards are "presumptively reasonable").

3. The Settlement Has No Obvious Deficiencies.

Courts employ a "threshold of plausibility" standard intended to identify conspicuous defects. *Kakani v. Oracle Corp.*, No. C 06-06493 WHA, 2007 WL 1793774, at *6 (N.D. Cal. June 19, 2007). Unless the Court's initial examination "disclose[s] grounds to doubt its fairness or other obvious deficiencies," the Court should order that notice of a formal fairness hearing be given to Class members under Rule 23(e). *West v. Circle K Stores, Inc.*, No. CIV. S-04-0438 WBS GGH, 2006 WL 1652598, at *11 (E.D. Cal. June 13, 2006) (citation omitted); MANUAL (FOURTH) § 21.632, at 321-22. Because the proposed settlement here meets the requirements required for preliminary approval, as detailed herein, it is not obviously defective.

4. The Settlement Falls Within the Range of Possible Approval.

In determining whether to grant preliminary approval, district courts must consider several factors, including: "the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement." *Staton*, 327 F.3d at 959 (internal citation and quotation marks omitted). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982).

i. The Strength of Plaintiffs' Case

The crux of Plaintiffs' claims are that Defendants sold Class Vehicles with Theta II GDI engines that were manufactured under the same negligent processes and oversight, rendering these engines prone to sudden and catastrophic failure. Such engine failure puts

the vehicle at risk of an engine fire. Engine failures and fires are expensive, destructive, and dangerous to consumers and other drivers. The engine defect here can manifest in any of the Class Vehicles, necessitating recalls and implementation of the KSDS for early engine wear detection. Defendants claim to have improved their design and manufacturing processes to reduce and potentially eliminate the problem in later model years. But without the knock sensor technology, it is impossible to identify and repair those Class Vehicles that will manifest the defect beforehand, even if it is a small percentage of the Class Vehicle population. Plaintiffs expect to present evidence suggesting that Defendants each knew about the dangerous safety defect before Class Vehicles were made available for purchase, and that the Class Vehicles' engines can and do fail even if they are properly maintained. Plaintiffs are positioned to mount a formidable case that Defendants violated numerous state consumer protection statutes, breached state and federal warranty laws, and engaged in fraud by failing to disclose a known safety defect that put consumers in avoidable danger and caused them to incur expensive and lengthy repairs.

Nevertheless, Plaintiffs' counsel are seasoned in automobile defect class litigation, and recognize that even were they able to make such factual showings, their case could fail on liability, or at least be whittled down in terms of overall liability. For example, Defendants may argue they did not conceal material information about the engines because they did not discover the problem until after they had sold many of the Class Vehicles. They may raise the fact that not all Class Vehicles will ever even manifest the engine defect, and that Defendants developed the KSDS to notify Class members before the defect manifests to prevent future engine failure or fire. Defendants might also argue they covered many engine repairs under warranty or through goodwill, and that those repairs not covered were fairly denied because the dealership's inspection revealed the engine oil was exceedingly low. Finally, if the case were to proceed to trial, and if Plaintiffs were to prevail both at trial and on appeal, any such recovery would not be made available for years. And any damage award at that time would need to be

distributed to Class members based on vehicle ownership records that would then be several years older. Class members would also likely need to locate receipts for repairs that would be equally old, significantly reducing the overall recovery. Additionally, many of the benefits of implementing the Lifetime Warranty for the Class Vehicles would be diminished, as would the overall value of Class Vehicles that would by that time be years older and even possibly sold by Class members seeking to mitigate damages before warranty expiration. In other words, a victory at trial, coming several years from now, would likely not deliver results superior to the settlement before the Court now.

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

Class actions typically entail a high level of risk, expense, and complexity, which is one reason that judicial policy so strongly favors resolving class actions through settlement. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (affirming district court's approval of settlement and certification of class). If the Parties were unable to resolve this case through settlement, the litigation would likely be protracted and costly. Plaintiffs' counsel frequently litigate automotive defect class actions that take several years to resolve, and some have gone on for over a decade with appeals. Before ever approaching trial in this case, the Parties likely would finish briefing the motions to dismiss, conduct discovery on and brief class certification (along with a potential Rule 23(f) appeal), and brief summary judgment and *Daubert* motions, in addition to expending considerable resources on electronic discovery, depositions, and expert witnesses. It is unlikely the case would reach trial before late 2020, with post-trial activity to follow. By that time, many more Class members will have sold their vehicles, losing the very powertrain warranty being extended indefinitely under the settlement for both original and subsequent owners. The passage of time would also pose a risk to Class members because of the potential for engine seizure or stalling, which they will now be notified about and able to address through free inspections and repairs.

The proposed settlement balances these costs, risks, and potential for delay with its benefits, achieving a settlement that is fair and desirable to the Class. *See* NEWBERG §

11:50 ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results."); *accord Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004).

iii. The Risk of Maintaining Class Action Status Through Trial

A litigation class has not been certified here, and there are a few other class cases involving the same defect and vehicles brought by firms that were not included in the settlement negotiations. If this litigation continued without settlement, Plaintiffs may face significant risk at the class certification stage. *See Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 392 (C.D. Cal. 2007) ("The value of a class action 'depends largely on the certification of the class,' and [] class certification undeniably represents a serious risk for plaintiffs in any class action lawsuit.") (*quoting In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 817 (3d Cir. 1995). Plaintiffs believe this case is appropriate for class certification and they could marshal evidence in support of such a motion. Class certification proceedings, however, are highly discretionary and require a finding that it is manageable. *See, e.g., Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 987 (9th Cir. 2011).

iv. The Amount or Type of Relief Offered in Settlement

The proposed settlement provides Class members with virtually everything Plaintiffs sought in their complaints. Defendants are warning affected drivers of the risk of engine stalling and providing a Lifetime Warranty extension that will allow all Class Vehicles free inspections and necessary repairs. Defendants are also reimbursing Class members for past repair expenses in full, including those incurred for rental cars and towing services in connection with obtaining repairs, with only minimal documentation requirements and a streamlined claims process. Certain Class members are eligible for additional goodwill payments for engine failures or fires and/or delays in repairs. And any Class members who sold or traded-in their vehicles after receiving a sizable engine repair estimate instead of having the vehicle repaired will be entitled to compensation.

Class members that experienced the defect, lost faith in their Class Vehicle, and purchased a replacement Hyundai or Kia can also file a claim for rebate of varying value. The settlement even provides a mechanism for Class members to seek additional actual damages or review of warranty denials through BBB administered alternative dispute resolution, with the costs to be borne by Defendants.

The settlement offers an excellent result for the Class. Even though it is unlikely that trial would produce a better result than that achieved by the proposed settlement, the settlement need not be the best possible outcome in order to meet the fair and adequate standard. *See Officers for Justice*, 688 F.2d at 628 ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.") (*citing Flinn v. FMC Corp.*, 528 F.2d 1169, 1173-74 (4th Cir. 1975)).

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

This factor necessitates an evaluation of whether "the parties have sufficient information to make an informed decision about settlement." *Linney*, 151 F.3d at 1239. Discovery can be both formal and informal. *See Clesceri v. Beach City Investigations & Protective Servs., Inc.*, No. CV-10-3873-JST (RZx), 2011 WL 320998, at *9 (C.D. Cal. Jan. 27, 2011).

Before filing the initiating complaint, Class Counsel devoted substantial time and energy to investigating the underlying facts and developing the factual and legal allegations. This included a review of several publicly available sources of technical information, interviews of class members, analyses of the allegedly defective engines, and consultation with automotive experts. (Schelkopf Decl. ¶ 13; Berman Decl. ¶ 6.) The Parties then engaged in confirmatory discovery that provided greater insight into the data and conclusions Defendants provided regarding the Class Vehicles, including a supervised tear-down inspection of one named plaintiff's vehicle by Kia representatives and the deposition of two Korean engineers with knowledge of the design and manufacture of the Class Vehicle's' engines. Separately, counsel for the *Flaherty*

Plaintiffs inspected Class Vehicle engines, conducted extensive research via publicly available documents, spoke to hundreds of Class members, and engaged an expert to investigate the defect and provide guidance before filing suit and throughout the negotiations. (Berman Decl. ¶ 6.)

Document discovery included data and analysis relating to relevant warranty claims, customer complaints, goodwill payments, and field service reports. It also included materials that were prepared by Defendants internally regarding the nature and scope of the alleged engine defect and root cause analysis. Based on Class Counsel's substantial experience litigating automotive defect cases, the information they received was sufficient to evaluate the fairness of the proposed settlement for the class. (Schelkopf Decl. ¶¶ 11, 16; Berman Decl. ¶ 6.) In the course of resolving this litigation, Plaintiffs had a reasonably good sense of the strength and weakness of their case and were well-situated to make an informed decision regarding settlement. (Schelkopf Decl. ¶¶ 12-16; Berman Decl. ¶ 5.)

vi. The Experience and Views of Counsel

Class Counsel believes the Settlement is fair, reasonable, and adequate based on their extensive experience litigating class actions. At the preliminary approval stage, "[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008). Class Counsel's experience is discussed in their respective declarations. *See* Schelkopf Decl. ¶¶ 4-11; Berman Decl. ¶¶ 2-3, 9-10.

vii. The Presence of a Governmental Participant

The only connection with governmental entities in this litigation are Defendants' voluntary recalls of certain Class Vehicles, described in Section II(D)(2), *supra*, which was overseen by NHTSA. While NHTSA might have eventually initiated an investigation into all of the Class Vehicles, a great benefit of the Parties' settlement is that it avoids the protracted process of a multistage NHTSA investigation that can take years to complete. *See generally In re Gen. Motors Corp. Pickup Truck Fuel Tank Products Liab. Litig.*,

MDL 961, 1993 WL 204116, at *3 (E.D. Pa. June 10, 1993) (noting NHTSA proceedings can take several years to conclude).

viii. The Reaction of Class Members

Finally, the Class has yet to be notified of the settlement and given an opportunity to object, so it is premature to assess this factor. Before the final approval hearing, the Parties will provide the Court with any objections they receive after notice is disseminated, and reserve the right to address the substance of any of the objections in their final approval papers. But granting preliminary approval and directing notice to Class members where the Class has not been certified before settlement may actually enhance Class members' opt-out rights. *See In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 205-06 (S.D.N.Y. 1995) (explaining that "because the right to exclusion [from the class] is provided simultaneously with the opportunity to accept or reject the terms of a proposed settlement," class members have a more concrete basis upon which to decide what they will sacrifice by opting out).

B. <u>The Settlement Class Satisfies Rule 23.</u>

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

In granting preliminary approval, the Court should also confirm the proposed settlement class meets the requirements of Rule 23. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); MANUAL (FOURTH), § 21.632. The prerequisites for class certification under Rule 23(a) are numerosity, commonality, typicality, and adequacy of representation, each of which is satisfied here. Fed. R. Civ. P. 23(a); *Hanlon*, 150 F.3d at 1019.

First, Rule 23(a)(1) requires the class be "so numerous that joinder of all members is impracticable." "The Ninth Circuit has required at least fifteen members, to certify a class, and classes of at least forty members are usually found to have satisfied the numerosity requirement." *Aikens v. Malcolm Cisneros*, No. 5:17-CV-02462-JLS-SP, 2019 WL 3491928, at *3 (C.D. Cal. July 31, 2019) (quoting *Makaron v. Enagic USA*,

Inc., 324 F.R.D. 228, 232 (C.D. Cal. 2018)). Here, the proposed settlement class encompasses approximately 4.1 million Class Vehicles, satisfying numerosity.

Second, Rule 23(a)(2) requires that "there are questions of law or fact common to the class." "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011) (citation and internal quotation marks omitted). The Ninth Circuit held that "commonality only requires a significant question of law or fact." *Saenz v. Lowe's Home Centers, LLC*, No. 2:17-cv-08758-ODW-PLA, 2019 WL 1382968, at *3 (C.D. Cal. Mar. 27, 2019). "What matters to class certification ... is not the raising of common questions—even in droves—but, rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Dukes*, 564 U.S. at 350 (internal quotation marks and citation omitted). Here, the common issues include: (i) whether the Class Vehicles' engines all suffered the same risks arising from Defendants' unreasonable acts and omissions in the manufacturing and production of certain Theta II GDI engines and its components (defective engines); (ii) whether the defective engines can cause catastrophic engine failure and potentially result in engine fires; (iii) whether and when Defendants knew of the defective engines; (iv) whether a reasonable consumer would consider the defective engine and its consequences to be material; (v) whether the defective engine implicates safety concerns; and (vi) whether Defendants' conduct violates the consumer protection statutes alleged, and the terms of their warranties. Commonality is also satisfied here. *See, e.g.*, *Aikens*, 2019 WL 3491928, at *4.

Third, Rule 23(a)(3) requires "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Typicality is satisfied where the representative claims are "reasonably co-extensive with those of absent class members; [but] they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. Here, Plaintiffs' claims arise out of the same facts and circumstances as those of the Class because they each purchased a Class Vehicle that contains a defective engine and thus suffered the same injury – namely, they were sold a defective vehicle that has required or will require

a repair to make the vehicle safe. *See Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) ("Typicality can be satisfied despite different factual circumstances surrounding the manifestation of the defect."). Typicality is satisfied.

Fourth, Rule 23(a)(4) requires "the representative parties [to] fairly and adequately protect the interests of the class." There are two components to adequacy. First, the named plaintiffs and their counsel can have no conflicts of interest with other class members. Second, the named plaintiffs and their counsel must prosecute the action vigorously on behalf of the class. *See Hanlon*, 150 F.3d at 1020. Here, Plaintiffs and Class Counsel do not have any conflicts of interest with other Class members and they vigorously litigated this action and negotiated the proposed Settlement Agreement over several months, with the assistance of a respected mediator and confirmatory discovery. *See Aikens*, 2019 WL 3491928, at *4 ("Again, Plaintiff's claims arise out of the same set of facts as the claims for the proposed Class. The Court finds no sign of a potential conflict of interest between Plaintiff and the Class Members she seeks to represent. Accordingly, the Court concludes that Plaintiff is an adequate class representative."); *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at 566 (adequacy satisfied if plaintiffs and their counsel lack conflicts of interest and will prosecute the action vigorously on behalf of the class). Plaintiffs and Class Counsel easily satisfy the adequacy requirement.

2. The Settlement Class Meets the Requirements of Rule 23(b)(3).

Rule 23(b)(3) requires the Court to find "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

First, "[t]he Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation . . . [and] focuses on the relationship between the common and individual issues." *Hanlon*, 150 F.3d at 1022. Where common questions "present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication," predominance is met. *Id.*

(citing Wright, Miller & Kane, Federal Practice and Procedure § 1778 (2d Ed. 1986)). Here, the overriding questions at the core of Plaintiffs' claims are whether the Class Vehicles are similarly defective (namely, they were all equipped with Theta II GDI engines built under and using the common procedures, practices, and manufacturing/production processes), whether Defendants had a duty to disclose any resulting manufacturing/production issues, whether Defendants knowingly concealed manufacturing/production issues, and whether one (or more) of these manufacturing/production issues is a material fact. Here, confirmatory discovery indicated the Class Vehicles were outfitted with Theta II GDI engines and these engines were all subject to the same flawed manufacturing and production processes, making them prone to premature and irregular engine wear that, if not caught early, can result in catastrophic engine failure, and in some instances engine fire. Defendants became aware of these problems based on warranty claims and complaints, but failed to disclose the defect to Class members before purchase or lease. Plaintiffs' counsel's communications with Class members and named plaintiffs make clear this engine defect and its associated risks were material to Class members. These are precisely the predominately common questions courts have found to justify class treatment. *See, e.g.*, *Wolin*, 617 F.3d at 1173 (allegedly defective alignment geometry); *Hanlon*, 150 F.3d at 1022-1023 (allegedly defective rear liftgate latches); *Chamberlan v. Ford Motor Co.*, 223 F.R.D. 524, 526 (N.D. Cal. 2004) (allegedly defective engine intake manifolds).

Similarly, there can be little doubt that resolving all Class members' claims through a single class action is superior to a series of individual lawsuits involving these defective Class Vehicles. "From either a judicial or litigant viewpoint, there is no advantage in individual members controlling the prosecution of separate actions. There would be less litigation or settlement leverage, significantly reduced resources and no greater prospect for recovery." *Hanlon*, 150 F.3d at 1023. By remedying the defect via internal processes improvements (newer model years), implementing and installing the knock sensor detection system (all Class Vehicles), and providing compensation for

actual harm (vehicles suffering engine failure or fire), the settlement resolves the significant problem of the defect for all Class members.

Finally, in a settlement, "the proposal is that there be no trial," and so manageability considerations do not affect whether the proposed settlement class should be certified. *Amchem*, 521 U.S. at 620; *see also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at 557 ("manageability is not a concern in certifying a settlement class where, by definition, there will be no trial.").

The Settlement Class meets the predominance and superiority requirements of Rule 23(b)(3), and therefore should be preliminarily approved by this Court.

C. The Court Should Order Dissemination of the Class Notice.

Under the terms of the settlement, Defendants are responsible for all costs of Class notice and settlement administration. The settlement provides HMA and KMA the option of self-administering the settlement or electing to use a third-party administrator to process submitted claims. Claims can be submitted by U.S. mail, email, or through the dedicated settlement websites. Hyperlinks to the settlement websites will be posted on HMA's and KMA's respective websites.

1. The Settlement Provides the Best Method of Notice Practicable.

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

The Settlement Agreement provides that individual notice will be disseminated by U.S. mail to all reasonably identifiable Class members, which satisfies the requirements of due process. *See Sullivan v. Am. Express Publ'g Corp.*, No. SACV 09-142-JST (ANx), 2011 WL 2600702, at *8 (C.D. Cal. June 30, 2011) ("Notice by mail has been found by the Supreme Court to be sufficient if the notice is 'reasonably calculated . . . to apprise

interested parties of the pendency of the action and afford them an opportunity to present their objections.'" (*quoting Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950))). The Long Form Notice and Claim Form will be provided via U.S. mail. To identify Class members for notice, Defendants will provide all names and addresses of Class Vehicle owners, along with Class Vehicle VINs, to R.L. Polk & Company, or a similar third-party entity, who are authorized to use that information to obtain the names and most current addresses of Class members through state agencies. In addition, an address search will be conducted through the United States Postal Service's National Change of Address database to update the address information for Class members. If a notice is returned as undeliverable, best efforts will be used to conduct an advanced address search using Defendants' customer database to obtain a deliverable address.

Besides notice through U.S. mail, Defendants will also email a hyperlink to the dedicated settlement websites and an electronic version of the Long Form Notice and Claim Form. The dedicated settlement websites will contain: (i) instructions on how to obtain reimbursements; (ii) a mechanism for Class members to submit claims electronically; (iii) instructions on how to contact Defendants or their Settlement Administrators for assistance with claims; (iv) the Long Form Notice; (v) the Pamphlet; (vi) the Claim Form; (vii) the Settlement Agreement; (viii) any orders issued in this litigation approving or disapproving of the proposed settlement; and (ix) any other information the Parties determine is relevant to the settlement. Defendants or their Settlement Administrators will make the same information available to Class members through www.hyundaiusa.com/myhyundai and www.owners.kia.com via links to the dedicated settlement websites (apart from the mechanism for submitting claims).

In addition, Defendants' customer service departments will be available to respond to questions regarding the status of submitted claims, how to submit a claim, and other aspects of the settlement via a dedicated, toll-free telephone number. Defendants will also inform their authorized dealerships of the settlement so the dealerships can inform their

customers of the settlement, and provide Pamphlets to the dealerships for distribution to their customers.

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

2. The Proposed Notice Adequately Informs Class Members of their Rights.

The notice provided to Class members should "clearly and concisely state in plain, easily understood language" the nature of the action; the class definition; the class claims, issues, or defenses; that the class member may appear through counsel; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on class members. Fed. R. Civ. P. 23(c)(2)(B). The form of notice proposed by the Parties complies with those requirements. (Settlement Agreement, Exs. A, C.) The notice sent to all Class members through U.S. Mail will explain the terms of the settlement, the Class definition, the underlying litigation, and the fact that Class members may appear through counsel; detail the process for requesting exclusion from the settlement; and disclose the binding effect of the settlement on class members if they do not request exclusion from the Court.

Plaintiffs believe this is the most effective way to alert Class members to the existence of the settlement and convey detailed information about the settlement approval process, and accordingly ask the Court to approve the proposed forms of notice. *See Schaffer v. Litton Loan Servicing, LP*, No. 05-cv-07673-MMM, 2012 WL 10274679, at *8-9 (C.D. Cal. Nov. 13, 2012) (approving a similar notice plan); *see also Churchill*, 361 F.3d at 575 ("Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" (*quoting Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir.1980))).

3. Notice to Federal and State Officials

Notice of the proposed settlement will also be provided to the U.S. Attorney General and appropriate regulatory officials in all fifty states, as required by the Class Action Fairness Act, 28 U.S.C. § 1715. Defendants will provide these government officials with copies of all required materials so the states and federal government may make an independent evaluation of the settlement and bring any concerns to the Court's attention before final approval.

D. The Court Should Set a Schedule for Final Approval

Event	Date
Notice Date	90 days after entry of the preliminary approval order
Class Counsel Fee and Service Award Application	30 days after the Notice Date
Opt-Out or Objection Deadline	60 days after the Notice Date
Claim Forms Due	90 days after the Notice Date
Final Approval papers to be filed	At least 14 days prior to the Final Approval Hearing
Final Approval Hearing	At a date convenient for the Court, not less than 165 days after entry of the preliminary approval order

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the accompanying Order preliminarily approving the proposed settlement.

Dated: October 10, 2019

Respectfully submitted,

By:/s/ *Matthew D. Schelkopf*
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CERTIFICATE OF SERVICE

I, Matthew D. Schelkopf, hereby certify that on this 10th day of October, 2019, I caused the foregoing to be filed using the Court's CM/ECF system, and thereby electronically served it upon all registered ECF users in this case.

DATED: October 10, 2019 Respectfully submitted,

By: */s/ Matthew D. Schelkopf*
Matthew D. Schelkopf

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In re: Hyundai and Kia Engine Litigation	8:17-cv-00838-JLS-JDE Related Cases: 8:17-cv-01365-JLS-JDE 8:17-cv-02208-JLS-JDE 2:18-cv-05255-JLS-JDE 8:18-cv-00622-JLS-JDE 8:18-cv-02223-JLS-JDE **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, Plaintiffs Cara Centko, Jenn Lazar, Christopher Stanczak, Rose Creps, James Kinnick, Wallace Coats, Maryanne Brogan, Andrea Smolek, Danny Dickerson, Robert Fockler, Amy Franklin, Donald House, Dave Loomis, Joseph McCallister, Arron Miller, Ricky Montoya, Lynn North, Mark Rice, Reid Schmitt, James Smith, and Chris Stackhouse ("Named Plaintiffs" or "Class Representatives"), individually and as representatives of a Class defined below, and Defendants Hyundai Motor America ("HMA"), Hyundai Motor Company ("HMC"), Kia Motors Corporation ("KMC") and Kia Motors America ("KMA") (collectively the "Parties") have entered into a Settlement Agreement dated October 10, 2019, 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 "Long Form Notice"), claim form ("Claim Form"), and

pamphlet ("Pamphlet"), 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. Under the Settlement Agreement, the Class has been defined as: All owners and lessees of a Class Vehicle who purchased or leased a Class Vehicle in the United States, including those that were purchased while the owner was abroad on active U.S. military duty, but excluding those purchased in U.S. territories and/or abroad. Excluded from the claims of the Class (and not released by this Settlement) are all claims for death, personal injury, property damage (other than damage to a Class Vehicle that is the subject of a Qualifying Repair), and subrogation. Also excluded from the Class are HMA, HMC, KMC and KMA; any affiliate, parent, or subsidiary of HMA, HMC, KMC or KMA; any entity in which HMA, HMC, KMC or KMA has a controlling interest; any officer, director, or employee of HMA, HMC, KMC or KMA; any successor or assign of HMA, HMC, KMC or KMA; any judge to whom this Action is assigned, his or her spouse, and all persons within the third degree of relationship to either of them, as well as the spouses of such persons; (c) individuals and/or entities who validly and timely opt-out of the settlement; (d) consumers or businesses that have purchased Class Vehicles previously deemed a total loss (i.e., salvage or junkyard vehicles) (subject to verification through Carfax or other means); and (e) current or former owners of a Class Vehicles that previously released their claims in an individual settlement with HMA, HMC, KMC and KMA with respect to the issues raised the Action (for the purpose of clarity, individual owners of 2011-2014 Hyundai Sonatas who released claims against HMA and HMC

in the settlement reached in *Mendoza v. Hyundai Motor Company Ltd., et. al.*, Case No. 15-cv-01685-BLF (C.D. Cal.) are not excluded from the claims of the Class).

3. 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 Long Form 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.

4. The Court appoints Matthew D. Schelkopf of Sauder Schelkopf, Adam Gonnelli of The Sultzer Law Group, Bonner Walsh of Walsh PLLC, and Steve W. Berman of Hagens Berman Sobol Shapiro LLP as Class Counsel and Cara Centko, Jenn Lazar, Christopher Stanczak, Rose Creps, James Kinnick, Wallace Coats, Maryanne Brogan, Andrea Smolek, Danny Dickerson, Robert Fockler, Amy Franklin, Donald House, Dave Loomis, Joseph McCallister, Arron Miller, Ricky Montoya, Lynn North, Mark Rice, Reid Schmitt, James Smith, and Chris Stackhouse as Class Representatives.

5. 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 and sufficient notice to the Class in full compliance with the requirements of due process and applicable law.

6. For purposes of identifying current and former owners and lessees of Class Vehicles, R.L. Polk & Company, or a similar third-party entity, 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, or a similar third-party entity, upon request.

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

8. 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 Long Form Notice postmarked no later than the deadline provided for such exclusion as set forth in the Long Form Notice. To be effective, the request for exclusion must include:

(i) the Class Member's full name and current address;

(ii) the model year and Vehicle Identification Number ("VIN") of the Class Member's Class Vehicle(s) and the approximate date(s) of purchase or lease;

(iii) a clear and specific statement of the Class Member's desire to be excluded from the Settlement and from the Class.

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.

9. 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 Long Form Notice. Each objection must include:

(i) the case name and number, *In re: Hyundai and Kia Engine Litig*., No. 8:17-cv-00838 (C.D. Cal.);

(ii) the objecting Class Member's full name, current address, and current telephone number;

(iii) the model year and VIN of the objecting Class Member's Class Vehicle(s);

(iv) a statement of the objection(s), including all factual and legal grounds for the position;

(v) copies of any documents the objecting Class Member wishes to submit in support;

(vi) the name and address of the lawyer(s), if any, who is representing the objecting Class member in making the objection or who may be entitled to compensation in connection with the objection;

(vii) a statement of whether the Class member objecting intends to appear at the Final Approval Hearing, either with or without counsel;

(viii) the identity of all counsel (if any) who will appear on behalf of the Class member objecting at the Final Approval Hearing and all persons (if any) who will be called to testify in support of the objection;

(ix) the signature of the Class member objecting, in addition to the signature of any attorney representing the Class member objecting in connection with the objection, and date the objection; and

(x) a list of any other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in the United States in the previous five years (or Class member shall affirmatively state in writing that the Class member or his or her counsel has not made any such prior objection); and

(xi) a statement disclosing any consideration that the objector, or the objector's counsel (if any), or the objector's counsel's law firm (if any) has received in connection with the resolution or dismissal of

an objection to a class action settlement within the five years preceding the date that the objector files the objection.

10. If the objecting Class member intends to appear, in person or by counsel, at the final approval hearing, the objecting Class member must so state in the objection.

11. 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 for the Central District of California, Los Angeles Courthouse, 411 W. Fourth St., Santa Ana, CA 92701. 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.

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

(i) HMA, HMC, KMC and KMA must cause individual notice, substantially in the form attached to the Settlement Agreement as Exhibit A (proposed Class Notice) and Exhibit B (the Claim Form), to be mailed via first-class mail to all reasonably identifiable Class Members by _____ (within 90 days after entry of this Preliminary Approval Order).

(ii) Class Members must mail any letter objecting to the proposed settlement on or before _____ (within 60 days after the Notice Date).

(iii) Class Members must mail any letter electing to exclude themselves from the Class on or before _____ (within 60 days after the Notice Date).

(iv) The Parties shall submit motions for final approval of the proposed settlement, including any exhibits or attachments thereto, on or before _____ (14 days prior to the Fairness Hearing).

(v) The Fairness Hearing shall be held on _____ (165 days after entry of this Preliminary Approval Order).

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

13. Plaintiffs shall file, on or before _____ (30 days after the Notice Date), a motion for attorneys' fees and expenses. HMA, HMC, KMC 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 _____.

14. The Court has the authority and duty under Rule 23 of the Federal Rules of Civil Procedure to manage this class action litigation, ensure that clear and accurate notices are provided to the class, and protect the class members from information and communications about the proposed settlement or litigation that are coercive, deceptive, false, misleading, confusing, omit material information, or otherwise undermine the class action process. The Court has approved certain forms of notice that provide class members with clear, accurate, and objective information about the proposed settlement. The Court intends to carefully scrutinize any additional communications with, or information directed to, class members that are brought to its attention by a moving party, including communications or information provided by or on behalf of persons or entities who are not named parties in this litigation. *See* Manual for Complex Litigation (4th) § 21.33 ("Objectors to a class settlement or their

attorneys may not communicate misleading or inaccurate statements to class members about the terms of a settlement to induce them to file objections or to opt out."); *In re Gen. Motors Corp.Engine Interchange Litig.*, 594 F.2d 1106, 1140 n.60 (7th Cir. 1979) ("Solicitations to opt-out tend to reduce the effectiveness of (b)(3) class actions for no legitimate reason.").

15. With respect to any such communications or information, the Court intends to make specific findings based on the particular circumstances, and will take appropriate action in accordance with the standards set forth in *Gulf Oil Co. v. Bernard*, 452 U.S. 89 (1981). In order to reduce the risk of class members receiving misleading or confusing information outside the context of the forms of notice approved by the Court and to reduce the need for costly curative notice, the Court encourages any person who wishes to send or provide a written communication to multiple class members about the proposed settlement or this litigation to submit the proposed communication to the Court for review and approval prior to issuing it.

16. Since the Court has appointed Class Counsel and preliminarily certified the class, the Court also finds that the class members are represented by Class Counsel, and the ethical rule relating to communications with represented persons applies to attorney communications with the class members. *See, e.g.*, ABA Model Rule of Professional Conduct 4.2 (and the relevant counterparts in each state or jurisdiction); *see also Jacobs v. CSAA Inter-Ins.*, No. C07-00362MHP, 2009 WL 1201996, at *3 (N.D. Cal. May 1, 2009). Therefore, the Court reminds any lawyer wishing to communicate with class members to comply with applicable ethical rules. *See, e.g.*, ABA Model Rule of Professional Conduct 4.2 ("[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.").

17. In most circumstances, communications by lawyers with class members about this class action litigation or the proposed settlement must go through Class Counsel, and direct contact is prohibited. However, this Order is not intended to prevent an individual class member from proactively seeking the advice of a third-party attorney regarding his or her rights in the context of this class action during the opt-out period.

DATED: _____

_____
Hon. Josephine L. Staton
U.S. District Court Judge