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

BILLY GLENN, *et al.*,

Plaintiffs,

v.

HYUNDAI MOTOR AMERICA, *et al.*,

Defendants.

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

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

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

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## INTRODUCTION

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

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

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

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

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

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

## HISTORY OF THE LITIGATION

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

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

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

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

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

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

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

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

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

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

The details of the settlement follow below.

## OVERVIEW OF THE SETTLEMENT

### I. The proposed settlement class

The settlement contemplates certification of the following settlement class:

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

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

### II. Benefits to the settlement class

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## I. The proposed settlement merits approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1. <u>The settlement provides strong relief for the class.</u>**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4. <u>The terms of the proposed award of attorney's fees, including timing of payment, also support settlement approval.</u>**

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

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

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

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

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

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

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

The final Rule 23(e)(2) factor turns on whether the proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). "Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23(e)(2)(D), Advisory Committee's Notes.

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

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

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

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

* * *

For all these reasons, the proposed settlement merits approval.

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

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

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

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

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

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

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

**3. Plaintiffs' claims are typical of those of the class.**

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

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

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

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

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

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

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

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

Similarly, there can be little doubt that resolving all settlement class members' claims through a single class action is superior to a series of individual lawsuits. "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. Finally, in the settlement context, there can be no objection that class proceedings would present the sort of intractable management problems that sometimes override the collective benefits of class actions, "for the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

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

Before 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).

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

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 to be the best notice practicable where reasonable efforts were taken to ascertain class members addresses). The notices comply with Rule 23(c)(2)(B) in that they "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. (*See* Settlement, Exs. A, B.) The notice is also consistent with the sample provided by the Federal Judiciary Center.[2]

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

[2] *See* https://www.fjc.gov/sites/default/files/2016/ClaAct04.pdf.

## THE COURT SHOULD SET A SCHEDULE FOR FINAL APPROVAL.

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

The parties thus propose the following schedule:

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

## CONCLUSION

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

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

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Respectfully submitted,

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