

1 Steve W. Berman
2 HAGENS BERMAN SOBOL
3 SHAPIRO LLP
4 1301 Second Avenue, Suite 2000
Seattle, WA 98101

Elizabeth A. Fegan
FEGAN SCOTT LLC
150 S. Wacker Dr., 24th Floor
Chicago, IL 60606

5 Kenneth B. McClain
6 HUMPHREY FARRINGTON &
7 McCLAIN, P.C.
8 221 W. Lexington Ave., Suite 400
Independence, MO 64050

Roland Tellis
BARON & BUDD, P.C.
15910 Ventura Blvd., Suite 1600
Encino, CA 91436

9 *Plaintiffs' Consumer Class Action Leadership Committee*

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13
14 In Re: KIA HYUNDAI VEHICLE THEFT
15 MARKETING, SALES PRACTICES,
16 AND PRODUCTS LIABILITY
17 LITIGATION

Case No.: 8:22-ml-03052-JVS-KES

**CONSUMER CLASS PLAINTIFFS'
AMENDED NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

18
19
20 This document relates to:

21
22 ALL CONSUMER CLASS ACTION
23 CASES

Judge: Hon. James V. Selna
Date: October 30, 2023
Time: 1:30 p.m.
Courtroom: 10C

PLEASE TAKE NOTICE that at 1:30 p.m. on October 30, 2023, or as soon thereafter as the matter may be heard, in the courtroom of the Honorable James V. Selna, located at the Ronald Reagan Federal Building and U.S. Courthouse, 411 West 4th Street, Courtroom 10C, Santa Ana, California 92701, Consumer Class Plaintiffs¹ (“Plaintiffs”) will and hereby do move for an order of the Court to:

1. preliminarily approve the Hyundai and Kia Vehicle Theft Litigation Consumer Plaintiffs Amended Settlement Agreement (the “Settlement,” “Settlement Agreement,” or “ASA”);
2. certify the proposed Settlement Class under Rule 23(b)(3);
3. appoint Plaintiffs as class representatives;
4. appoint Steve W. Berman of Hagens Berman Sobol Shapiro LLP, Elizabeth A. Fegan of Fegan Scott LLC, Kenneth B. McClain of Humphrey Farrington & McClain, P.C., and Roland Tellis of Baron & Budd, P.C. as Class Counsel;
5. order dissemination of Settlement notice to the Class pursuant to the notice plan set forth in the Amended Settlement Agreement; and
6. set a schedule for final settlement approval.

Plaintiffs’ unopposed Motion is based on this Notice; the accompanying Memorandum of Law; the Joint Declaration of the Consumer Class Action Leadership Counsel (“Leadership Decl.”), and all attachments thereto (including the Amended Settlement Agreement); the Proposed Order Granting Consumer Class Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement; and all other papers filed and proceedings had in this Action.

This unopposed Motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on September 26, 2023.

¹ The eighty-five (85) Plaintiffs are identified in pages 10-194 of the Consolidated Amended Class Action Complaint (“CAC”). Dkt. 84.

1 Dated: September 27, 2023.

Respectfully Submitted.

2 By: /s/ Steve W. Berman

3 Steve W. Berman, Esq.

4 **HAGENS BERMAN SOBOL SHAPIRO
LLP**

5 1301 Second Avenue, Suite 2000

6 Seattle, Washington 98101

7 Telephone: 206-623-7292

8 Facsimile: 206-623-0594

Email: steve@hbsslaw.com

9 By: /s/ Elizabeth A. Fegan

10 Elizabeth A. Fegan, Esq.

11 **FEGAN SCOTT LLC**

12 150 S. Wacker Dr., 24th Floor

13 Chicago, Illinois 60606

14 Telephone: 312.741.1019

15 Fax: 312.264.0100

16 Email: beth@feganscott.com

17 By: /s/ Kenneth B. McClain

18 Kenneth B. McClain, Esq.

19 **HUMPHREY FARRINGTON & McCLAIN**

20 221 W. Lexington Ave., Suite 400

21 Independence, Missouri 64050

22 Telephone: 816.836.5050

23 Facsimile: 816.836.8966

24 Email: kbm@hfmlegal.com

25 By: /s/ Roland Tellis

26 Roland Tellis, Esq.

27 **BARON & BUDD, P.C.**

28 15910 Ventura Boulevard, Suite 1600

Encino, California 91436

Telephone: 818.839.2333

Facsimile: 214.523.5500

Email: rtellis@baronbudd.com

*Consumer Class Action Leadership Counsel
and Counsel for Plaintiffs*

TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3		
4	I. INTRODUCTION	1
5	II. FACTUAL BACKGROUND	6
6	A. Plaintiffs' Allegations concerning the Theft Prone Defect.....	6
7	B. History of the Litigation.....	7
8	C. Settlement Negotiations and the Proposed Settlement	10
9	III. THE SETTLEMENT BENEFITS FOR THE CLASS.....	11
10	A. Common Fund for Out-of-Pocket and Unreimbursed Losses	12
11	1. Total Loss of Class Vehicle	13
12	2. Damage to Class Vehicle and/or Stolen or Damaged	
13	Personal Property	14
14	3. Insurance Expenses.....	14
15	4. Other Qualifying Theft or Qualifying Theft Attempt	
16	Expenses	14
17	5. Software Upgrade Related Expenses.....	15
18	B. Anti-Theft Software Upgrade and Steering Wheel Lock	
19	Reimbursement for Eligible Class Vehicles	15
20	C. Payments for Anti-Theft Devices for Class Vehicles	
21	Ineligible for the Software Upgrade.....	16
22	IV. ARGUMENT.....	17
23	A. The proposed Settlement merits preliminary approval.....	17
24	1. The Settlement is the product of serious, informed,	
25	arm's-length negotiations by experienced Class	
26	Counsel.	18
27	2. The Settlement treats all Class members equitably.....	21
28		

1	3.	The Settlement has no obvious deficiencies.....	22
2	4.	The Settlement falls within the range of possible	
3		approval.....	22
4	a.	The strength of Plaintiffs’ case and risk,	
5		expense, complexity, and likely duration of	
6		further litigation.....	23
7	b.	The risk of maintaining class action status	
8		through trial	25
9	c.	The amount and type of relief offered in	
10		settlement.....	25
11	d.	The extent of discovery completed and the	
12		stage of the proceedings	26
13	e.	The experience and views of counsel.....	27
14	f.	The presence of a governmental participant	28
15	g.	The reaction of class members	28
16	B.	The Settlement Class should be certified.....	28
17	C.	The Court should order dissemination of Class notice.....	29
18	1.	The proposed Settlement provides the best method of	
19		notice practicable.	30
20	2.	The proposed Notice plan informs Class members of	
21		their rights.	31
22	3.	Notice to Federal and State Officials.....	32
23	V.	CONCLUSION	32

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Acosta v. Trans Union, LLC,</i> 243 F.R.D. 377 (C.D. Cal. 2007).....	17, 25
<i>Alberto v. GMRI, Inc.,</i> 252 F.R.D. 652 (E.D. Cal. 2008).....	17
<i>Altamirano v. Shaw Indus., Inc.,</i> 2015 WL 4512372 (N.D. Cal. July 24, 2015)	21
<i>Banh v. Am. Honda Motor Co.,</i> 2021 WL 3468113 (C.D. Cal. June 3, 2021).....	32
<i>Byrne v. Santa Barbara Hosp. Servs., Inc.,</i> 2017 WL 5035366 (C.D. Cal. Oct. 30, 2017)	20
<i>Callaway v. Mercedes-Benz United States LLC,</i> 2017 WL 11707445 (C.D. Cal. Nov. 29, 2017)	17, 18, 19
<i>Casey v. Doctor's Best, Inc.,</i> 2022 WL 1726080 (C.D. Cal. Feb. 28, 2022)	24
<i>Churchill Vill., L.L.C. v. Gen. Elec.,</i> 361 F.3d 566 (9th Cir. 2004)	18, 29
<i>Cisneros v. Airport Terminal Servs.,</i> 2021 WL 3812163 (C.D. Cal. Mar. 26, 2021)	22
<i>Clesceri v. Beach City Investigations & Protective Servs.,</i> 2011 WL 320998 (C.D. Cal. Jan. 27, 2011).....	26
<i>Ellis v. Costco Wholesale Corp.,</i> 657 F.3d 970 (9th Cir. 2011)	25
<i>Hanlon v. Chrysler Corp.,</i> 150 F.3d 1011 (9th Cir. 1998)	17

1	<i>Hemphill v. San Diego Ass’n of Realtors,</i>	
2	225 F.R.D. 616 (S.D. Cal. 2004)	20
3	<i>In re Hyundai & Kia Fuel Econ. Litig.,</i>	
4	926 F.3d 539 (9th Cir. 2019)	17
5	<i>In re Immune Response Sec. Litig.,</i>	
6	497 F. Supp. 2d 1166 (S.D. Cal. 2007)	19
7	<i>La Fleur v. Med. Mgmt. Int’l, Inc.,</i>	
8	2014 WL 2967475 (C.D. Cal. June 25, 2014).....	19
9	<i>Linney v. Cellular Alaska P’ship,</i>	
10	151 F.3d 1234 (9th Cir. 1998)	24, 26
11	<i>Lyter v. Cambridge Sierra Holdings,</i>	
12	2019 WL 13153197 (C.D. Cal. June 18, 2019).....	19
13	<i>Maree v. Deutsche Lufthansa AG,</i>	
14	2023 WL 2563914 (C.D. Cal. Feb. 13, 2023)	18, 19
15	<i>Marvin v. Kia America, Inc., et al.,</i>	
16	No. 2:21-cv-01146-PP (E.D. Wis.)	7, 19
17	<i>Mazza v. Am. Honda Motor Co.,</i>	
18	666 F.3d 581 (9th Cir. 2012)	25
19	<i>In re Mego Fin. Corp. Sec. Litig.,</i>	
20	213 F.3d 454 (9th Cir. 2000)	20, 27
21	<i>Moreno v. Pretium Packaging, L.L.C.,</i>	
22	2021 WL 3673845 (C.D. Cal. Aug. 6, 2021)	23
23	<i>Navarrete v. Sprint United Mgmt. Co.,</i>	
24	2021 WL 4352903 (C.D. Cal. Mar. 2, 2021)	28
25	<i>Officers for Just. v. Civ. Serv. Comm’n of</i>	
26	<i>City & Cty. of S.F.,</i>	
27	688 F.2d 615 (9th Cir. 1982)	23, 26
28	<i>In re Omnivision Techs.,</i>	
	559 F. Supp. 2d 1036 (N.D. Cal. 2007).....	25, 28

1	<i>In re Pac. Enterprises Sec. Litig.</i> ,	
2	47 F.3d 373 (9th Cir. 1995)	27
3	<i>Rannis v. Recchi</i> ,	
4	380 F. App'x 646 (9th Cir. 2010)	31
5	<i>Scolaro v. RightSourcing, Inc.</i> ,	
6	2017 WL 11630969 (C.D. Cal. Mar. 20, 2017)	20
7	<i>Shahbazian v. Fast Auto Loans, Inc.</i> ,	
8	2019 WL 8955420 (C.D. Cal. June 20, 2019)	23
9	<i>State Automobile Mutual Insurance Company et al.</i>	
10	<i>v. Hyundai Motor America et al.</i> ,	
11	No. 8:23-cv-00443 (C.D. Cal. Mar. 10, 2023)	8
12	<i>Staton v. Boeing Co.</i> ,	
13	327 F.3d 938 (9th Cir. 2003)	17, 23
14	<i>Sullivan v. Am. Express Publ'g Corp.</i> ,	
15	2011 WL 2600702 (C.D. Cal. June 30, 2011)	30
16	<i>In re Toyota Motor Corp.</i> ,	
17	Case No. 8:10-ml-02151, Dkt. No. 3556	3
18	<i>In re Toyota Motor Corp. Unintended Acceleration</i>	
19	<i>Mktg., Sales Pracs., & Prod. Liab. Litig.</i> ,	
20	2012 WL 7802852 (C.D. Cal. Dec. 28, 2012)	17, 18
21	<i>In re Toyota Motor Corp. Unintended Acceleration</i>	
22	<i>Mktg., Sales Practices, & Prods. Liab. Litig.</i> ,	
23	2013 WL 12327929 (C.D. Cal. July 24, 2013)	28
24	<i>True v. Am. Honda Motor Co.</i> ,	
25	749 F. Supp. 2d 1052 (C.D. Cal. 2010)	28
26	<i>West v. Circle K Stores, Inc.</i> ,	
27	2006 WL 1652598 (E.D. Cal. June 13, 2006)	22
28	<i>Zakikhani v. Hyundai Motor Co.</i> ,	
	2022 WL 17224701 (C.D. Cal. Oct. 20, 2022)	17
	<i>Zakikhani v. Hyundai Motor Co.</i> ,	
	2023 WL 4544774 (C.D. Cal. May 5, 2023)	22

Statutes & Rules

28 U.S.C. § 1407.....	7
28 U.S.C. § 1715.....	32
Fed. R. Civ. P. 23.....	17, 23, 28, 29, 31, 32

Other Authorities

A. Conte & H.B. Newberg, Newberg On Class Actions.....	18, 19, 20, 24
--	----------------

I. INTRODUCTION

This multi-district litigation concerns Plaintiffs’ allegations that Defendants Hyundai Motor Company (“HMC”), Hyundai Motor America (“HMA”), KIA Corporation (“KC”), and KIA America, Inc. (“KA”) (collectively “Defendants”)² produced and sold more than nine million vehicles, which they marketed as safe and reliable, while knowing the vehicles contained a safety defect that makes them highly prone to theft. Over the course of eight months, under the guidance of renowned mediator the Honorable Margaret M. Morrow (Ret.), the Parties reached a proposed settlement, and Plaintiffs moved for preliminary approval of that settlement and for class certification. In its August 16, 2023, Order Regarding Motion for Preliminary Approval and Class Certification (Dkt. No. 200, the “Order”), the Court granted the motion for class certification and denied the motion for preliminary settlement approval. The Order suggested that certain changes be made to the settlement, and for weeks following the issuance of the Order, the Parties have been negotiating amendments and have reached agreement on a proposed Settlement³ that addresses all the Court’s concerns and, as before, offers significant relief to millions of current and former owners and lessees of Class Vehicles⁴ presently amid a nationwide crime epidemic relating to their vehicles.

² Plaintiffs and Defendants are collectively referred to as the “Parties.”

³ All capitalized terms herein have the same meaning as in the Amended Settlement Agreement (“ASA”), attached to the Amended Leadership Decl. as Ex. 1.

⁴ The Class Vehicles include certain model year 2011-2022 Hyundai and Kia vehicles manufactured without an engine immobilizer that were sold in the United States (including Puerto Rico, Virgin Islands, and Guam): 2011-2022 Accent; 2011-2022 Elantra; 2013-2020 Elantra GT; 2013-2014 Elantra Coupe; 2011-2012 Elantra Touring; 2011-2014 Genesis Coupe; 2018-2022 Kona; 2020-2021 Palisade; 2011-2022 Santa Fe; 2013-2018 Santa Fe Sport; 2019 Santa Fe XL; 2011-2019 Sonata; 2011-2022 Tucson; 2012-2017, 2019-2021 Veloster; 2020-2021 Venue; 2011-2012 Veracruz; 2011-2021 Forte; 2021-2022 K5; 2011-2020 Optima; 2011-2021 Rio;

1 The key amendments contained in the Amended Settlement Agreement are
2 identified below. For the Court's convenience, attached as Exhibit A is a redlined
3 version of the Amended Settlement Agreement identifying all edits made to the
4 original Settlement Agreement.

5 1. No Common Fund credit. The Amended Settlement Agreement eliminates
6 the potential \$10,000,000 credit to the Defendants if claims do not reach
7 \$50 million. ASA §§ II.D.6-7, III.C.4-5; *see also* Order at 30 (asking for
8 potential credit to be removed).

9 2. Reimbursement that aligns estimated vehicle value with Total Loss and
10 Partial Loss recoveries. The prior Total Loss and Partial Loss⁵
11 reimbursement caps, which were based on the average value of a class
12 vehicle, have been eliminated and replaced with the following: (a) for Total
13 Loss, 60% of the Black Book value of the vehicle; and (b) for Partial Loss,
14 \$3,375 or 33% of the Black Book value of the vehicle, whichever is greater.
15 ASA § II.D.3. This sliding scale eligible claim schedule satisfies the Court's
16 directive that reimbursement amounts align with each Class Vehicle's
17 estimated value, rather than taking an average class vehicle value and
18 reducing it by 40% based on litigation risk. *See* Order at 24; *see also* Order
19 at 29 (noting concern with maximum recoveries being the same, "even
20 though some Class Members' vehicles could be worth substantially more
21 than others, therefore suffering a greater monetary loss."). This amendment
22 is equitable in that it treats all claimants equally within a claims bucket,
23

24 2011-2021 Sedona; 2021-2022 Seltos; 2011-2022 Soul; 2011-2022 Sorento; and
25 2011-2022 Sportage. ASA § I.G.

26 ⁵ Herein, "Partial Loss" is shorthand for damage to a Class Vehicle due to a
27 Qualifying Theft or Qualifying Theft Attempt (that does not result in Total Loss) and
28 for the value of personal property stolen or damaged as a result of a Qualifying Theft
or Qualifying Theft Attempt.

1 while maintaining the proportional difference between a Total Loss and
2 Partial Loss claim.⁶

3 3. Reimbursement for licensing fees, etc. Reimbursement for “[l]icensing fees,
4 sales tax paid, registration fees and other expenses directly associated with
5 the purchase of new/replacement vehicle if there was a Total Loss due to a
6 Qualifying Theft or Qualifying Theft Attempt” has been moved from the
7 “other related expense” bucket of § II.D.3.d (which is subject to a \$250 cap)
8 to the Total Loss bucket in §II.D.3.a. In other words, an eligible class
9 member’s licensing fees, sales tax, and registration fees are now added to
10 the “value” of a Total Loss vehicle reimbursed at 60%. The effect of this
11 amendment is to increase the eligible reimbursement amount for this
12 category of other expense.

13 4. Supporting expert declaration. The Court directed the Parties to “submit a
14 declaration from a qualified expert attesting to the methods of calculating
15 each subcategory or damages” and “whether the amount of damages will
16 make each Class Member whole.” With this Motion, Class Counsel submit
17 the Declaration of Edward M. Stockton in Support of Plaintiffs’ Motion for
18 Class Action Settlement Approval. Mr. Stockton is an economist who has
19 extensive experience evaluating economic harm in the retail automotive
20 context. Among many other things, Mr. Stockton opines on the impact of
21 the foregoing amendments; that the amendments directly respond to the
22 Court’s directive to tie compensation amounts to vehicle value; and likely
23 Class Member recoveries.

24
25 ⁶ The Order directed the Parties to also fashion a matrix, citing *In re Toyota Motor*
26 *Corp.*, Case No. 8:10-ml-02151, Dkt. No. 3556 at 15-18. Order at 24. The parties
27 have agreed that the Settlement Administrator “shall use a table of Black Book values
28 that estimates the value of the subject Class Vehicle based on model and model year.”
See ASA § III.C.3.

- 1 5. More limited release. Responding to the Court’s directive that releases
2 “should be limited to the facts of this case and should not encompass
3 circumstances that are not addressed by the Settlement” (Order at 25), the
4 Parties have further limited the release to claims “relating to Class Vehicles
5 and the method of theft popularized on TikTok and other social media
6 channels relating to the lack of engine immobilizers as alleged in this
7 Action” ASA § VI.1.
- 8 6. Governmental Entity and Insurance Entity claims are not released. By
9 adding definitions for “Government Entities” and “Insurance Entities” (*see*
10 ASA §§ I.N.-O.), the Amended Settlement Agreement clarifies that these
11 entities are not subject to the release (*id.* §§ I.CC., VI.2.) and are not part of
12 the Settlement Class (*id.* §§ I.E., VIII.3.). *See* Order at 25.
- 13 7. Expanded methods of payment. In response to the Court’s suggestion that
14 the Parties “consider whether the methods of disbursement should be
15 expanded to allow for direct deposits or electronic payment” (Order at 28),
16 payment options have expanded to include digital payment via ACH,
17 PayPal, Venmo, Zelle or prepaid Mastercard (with the balance on the
18 Mastercard transferable to the card holder’s bank with no fee), in addition to
19 by check. *See* ASA § III.F.
- 20 8. Class representative service payments. As requested by the Court, any
21 approved Class Representative service payments will be limited to \$1,000.
22 *See* ASA § V.1; Order at 10.
- 23 9. Opt-outs and objectors. The Court requested that the opt-out process
24 described in the long-form notice be included in the Amended Settlement
25 Agreement (Order at 12), that opt-outs need only provide “their identity and
26 ownership of the Class Vehicle” (*id.* at 30), and that objectors need not
27 28

1 provide prior litigation history (*id.*). The Parties have made these
2 amendments. *See* ASA § VIII.2., 5.; § IX.2.

3 * * *

4 In sum, the proposed Settlement provides substantial benefits to Class
5 members in the form of a non-reversionary common fund of \$80,000,000, which may
6 be increased up to \$145,000,000 based on approved claims, to compensate Class
7 members for losses arising from the thefts and attempted thefts of their Class
8 Vehicles and certain other expenses related to obtaining the free anti-theft Software
9 Upgrade.

10 For eligible Class Vehicles, the proposed Settlement also provides a free anti-
11 theft Software Upgrade that remedies the alleged defect and reimbursement (paid
12 separately from the Common Fund). For Class Vehicles ineligible for the Software
13 Upgrade, the proposed Settlement provides tens of millions or more in cash payments
14 to Class members for their purchase of equivalent anti-theft systems (also paid
15 separately from the Common Fund).

16 This proposed Settlement secures an *immediate* solution to a real-word
17 problem when success at trial would otherwise be years away. Based on their
18 extensive investigatory efforts, Class Counsel are well informed as to the strength and
19 weakness of Plaintiffs' claims and, given their significant experience litigating
20 automobile class actions, believe the proposed Settlement is in the Class's best
21 interests. The proposed Settlement falls well within the range of being fair,
22 reasonable, and adequate to support provisional certification of the Class and notice
23 to Class members. Accordingly, Plaintiffs respectfully request that this Court grant
24 the Settlement preliminary approval.

II. FACTUAL BACKGROUND

A. Plaintiffs’ Allegations concerning the Theft Prone Defect

Plaintiffs allege Defendants knowingly sold more than nine million Hyundai and Kia Class Vehicles that do not contain vital safety components that, in connection with other design flaws, eschew Federal Motor Vehicle Safety Standards (“FMVSS” or “Safety Standards”) promulgated by the National Highway Traffic Safety Administration (“NHTSA”). Dkt. 84, CAC ¶¶ 7-8. Specifically, that each Class Vehicle suffers from a series of design flaws that allow thieves to steal it in less than ninety seconds, including: (i) the steering columns do not contain adequately secure collars or casings, allowing easy access to the ignition assembly; (ii) the ignition lock cylinders do not have a locking mechanism and can be easily removed with minimal force, and in so doing, leaves the ignition switch intact; (iii) the exposed ignition switch can be started with any set of pliers, or the current generation of thieves’ tool of choice, a USB connector; and (iv) the Class Vehicles do not contain engine immobilizers (collectively, the “Theft Prone Defect” or the “Defect”). *Id.* ¶¶ 8, 1291-95, 1304-05, 1307-11, 1314-19. An engine immobilizer is an anti-theft device that can prevent vehicles from starting unless a verified code is received by a transponder module that controls the engine. *Id.* ¶ 4. This anti-theft device prevents the vehicle from being “hotwired” or started by any means other than an authorized key. *Id.*

Class Vehicles were sold with traditional “insert-and-turn” key ignition systems, as opposed to “push-to-start” ignitions, and do not contain engine immobilizers. *Id.* ¶ 1291. Thieves can quickly identify Hyundai and Kia vehicles that lack engine immobilizers by peering through vehicle windows and spotting traditional ignitions. *Id.* Because there are no alarms on the back windows, thieves can enter the vehicles without setting off alarms and easily pull off steering wheel casings. *Id.* ¶¶ 1292-1293. Finally, thieves can expose the ignition switch with

1 minimal force, using a screwdriver or USB cable to start the car with a turn. *Id.* ¶¶
2 1294-1295.

3 Plaintiffs allege that, because of the Theft Prone Defect, Class Vehicles are at
4 increased risk of theft or forced entry. *Id.* ¶¶ 1, 7, 1401. While the alleged Theft Prone
5 Defect existed and has plagued Class members since the first Class Vehicles were
6 sold, beginning in 2020, a group of teenagers in Milwaukee, who dubbed themselves
7 the “Kia Boyz,” discovered the alleged Defect and began to post videos showing how
8 to steal Class Vehicles in a matter of seconds. *Id.* ¶ 9. Shortly thereafter, thefts and
9 attempted thefts of Class Vehicles skyrocketed. *Id.* ¶¶ 1354-1384. Class Vehicles
10 have been frequently stolen and used to commit crimes or taken for high speed “joy
11 rides,” causing injury to people and property alike. *Id.* ¶¶ 1357, 1370, 1401, 1403.

12 **B. History of the Litigation**

13 Milwaukee, Wisconsin was among the first cities impacted by the epidemic of
14 Class Vehicle thefts, and there the first case related to the alleged Theft Prone Defect
15 was filed, *Marvin v. Kia America, Inc., et al.*, No. 2:21-cv-01146-PP (E.D. Wis.). As
16 the incidence of thefts quickly spread throughout the country, beginning in July 2022,
17 dozens of class actions were filed nationwide based on Defendants’ omission of
18 antitheft devices in Class Vehicles. Amended Leadership Decl. ¶ 6. On August 31,
19 2022, a group of plaintiffs moved for consolidation pursuant to 28 U.S.C. § 1407.
20 MDL No. 3052 (“JPML Dkt.”), Dkt. 1; Amended Leadership Decl. ¶ 12. On
21 December 13, 2022, the Judicial Panel on Multidistrict Litigation (“JPML”) issued an
22 order transferring related actions from fourteen District Courts to this Court for
23 consolidation and pre-trial coordination. Amended Leadership Decl. ¶ 15. To date,
24 seventy-nine cases from more than two-dozen District Courts are currently pending in
25 this MDL.

26 Shortly after the MDL was established, the JPML conditionally transferred
27 related cases filed by the cities of Seattle, Washington and Columbus, Ohio alleging
28

1 public nuisance caused by the Theft Prone Defect. Additional actions on behalf of the
2 cities of Cincinnati, Ohio, Cleveland, Ohio, Buffalo, New York, and Madison,
3 Wisconsin, among others, have also been filed. *See* JPML Dkts. 142, 154, 159.
4 Additionally, on March 10, 2023, a group of insurance plaintiffs (the “Insurer Class
5 Plaintiffs”) filed a class action complaint on behalf of similarly situated insurance
6 companies, and on March 21, 2023, the case was transferred to the MDL proceeding.
7 *See State Automobile Mutual Insurance Company et al. v. Hyundai Motor America et*
8 *al.*, No. 8:23-cv-00443 (C.D. Cal. Mar. 10, 2023) (Dkt. 1, 16).

9 On December 22, 2022, the Court appointed Mr. Berman, Ms. Fegan, and Mr.
10 McClain as Initial Conference Counsel, tasked with conferring and obtaining
11 consensus regarding the most pressing issues affecting the case. Dkt. 2 at 2. On
12 January 30, 2023, Initial Conference Counsel and Defendants submitted their Joint
13 Preliminary Report outlining their respective positions regarding, *inter alia*, an
14 appropriate leadership structure for plaintiffs’ counsel, plans for discovery, and
15 various anticipated issues in the litigation. Dkt. 40. On February 9, 2023, the Court
16 appointed Mr. Berman, Ms. Fegan, Mr. McClain, and Mr. Tellis to the Plaintiffs’
17 Consumer Class Action Leadership Committee. Dkt. 50 at 3. The Court also
18 appointed Jeffrey Goldenberg, Amanda K. Klevorn, and Tiffany Marko Yiatras to the
19 Fact Discovery Committee, and Jason S. Rathod, Michael F. Ram, and Matthew D.
20 Schelkopf to the Expert Discovery Committee. *Id.*

21 Immediately upon their appointment to the Plaintiffs’ Consumer Class Action
22 Leadership Committee, Class Counsel began a comprehensive effort to draft a
23 consolidated complaint that details the factual, regulatory, and legal issues relating to
24 the alleged Theft Prone Defect. Amended Leadership Decl. ¶ 21. Counsel conducted
25 an extensive investigation concerning the underlying Defect and spoke with hundreds
26 of putative Class members and potential class representatives. *Id.*

1 On April 10, 2023, Plaintiffs filed their Consolidated Amended Consumer
2 Class Action Complaint (“CAC”). Dkt. 84. The CAC includes eighty-five Plaintiffs
3 who purchased or leased vehicles across the United States and asserts claims under
4 the laws of all 50 states. CAC ¶¶ 37-1206, 1536-4817. In general, Plaintiffs assert
5 claims for (1) violation of state consumer protection statutes, (2) breach of implied
6 warranty, (3) fraud by omission and concealment, and (4) unjust enrichment. *Id.* ¶¶
7 1536-4817.

8 The Parties submitted an agreed Protocol for the Production of Documents and
9 Electronically Stored Information (“ESI”) and Privilege Logs, a Proposed Stipulated
10 Protective Order, and a Joint Stipulation Regarding Foreign Discovery on April 5,
11 2023. Dkt. 79. The Parties exchanged initial disclosures on April 14, 2023. Amended
12 Leadership Decl. ¶ 24. On April 19, 2023, Plaintiffs served HMA and KA with their
13 First Set of Requests for Production of Documents. *Id.*

14 On May 1, 2023, Defendants moved to dismiss the CAC. Dkt. 95. In
15 accordance with the Court’s March 13, 2023 Order (Dkt. 70), this motion addressed
16 the laws of California, Florida, Missouri, Pennsylvania, Texas, and New York.
17 Plaintiffs immediately analyzed the motion and began working on their opposition.
18 Amended Leadership Decl. ¶ 25. Class Counsel continued to litigate the case to be
19 sure they were fully informed of the strength and weakness of their positions and the
20 risks they faced at class certification and trial, even while settlement negotiations
21 continued.

22 On May 18, 2023, the Parties notified the Court that they reached a settlement
23 in principle resulting in a fully executed Memorandum of Understanding. *See* Dkt.
24 107. On May 19, 2023, the Court stayed all deadlines in the Consumer Plaintiffs’
25 cases that are unrelated to settlement approval. Dkt. 111.

C. Settlement Negotiations and the Proposed Settlement

Throughout the litigation, the Parties have engaged in simultaneous, dual tracks. As Plaintiffs litigated the merits of their claims, they also negotiated a potential settlement with Defendants to bring expedited relief to millions of vulnerable Class members. In late 2022, while consolidation was pending before the JPML, the Parties began these settlement discussions. Amended Leadership Decl. ¶ 13. On November 15, 2022, a mediation session was conducted before the Honorable Margaret M. Morrow (Ret.). *Id.* ¶ 14. Although the mediation was productive, the Parties did not reach a resolution.

After the Court appointed Mr. Berman, Ms. Fegan, and Mr. McClain as Initial Conference Counsel on December 22, 2022 (Dkt. 2), the Parties reinitiated settlement discussions. *Id.* ¶ 17. These negotiations continued over the next month, and the Parties exchanged multiple drafts of a memorandum of understanding. *Id.* ¶¶ 19, 22-23. Under the guidance of Judge Morrow, the Parties participated in additional mediation sessions on April 4 and 5, 2023. *Id.* ¶¶ 22-23. The Parties did not leave the mediation sessions with an agreement, but they continued working toward that goal, while actively litigating. *Id.* ¶ 23.

On May 18, 2023, the Parties notified the Court they had reached a settlement in principle and executed a Memorandum of Understanding (“MOU”). *See* Dkt. 107. The general terms of the MOU, which are memorialized in the Settlement Agreement, were publicly disseminated by the Parties in press releases and widely covered in the media. Leadership Decl. ¶¶ 27-28. In addition to the benefits for Class members, the MOU entitles Plaintiffs to confirmatory discovery to obtain information necessary to support the Settlement terms, including the nature and scope of the Software Upgrade, and provides that Defendants will pay all costs and expenses for class notice and claims administration. *Id.* ¶ 29.

1 Shortly after the Parties executed the MOU, they began negotiating and
2 drafting the Settlement Agreement and Plaintiffs went to work on confirmatory
3 discovery. *Id.* ¶¶ 30. On May 18, 2023, Plaintiffs served Defendants with their first
4 set of Requests for Production of Documents (the “Confirmatory RFPs”). *Id.* ¶ 31.
5 The Confirmatory RFPs sought documents relating to, *inter alia*: (1) Defendants’
6 investigation about the theft risk in Class Vehicles; (2) Defendants’ interactions with
7 NHTSA concerning the alleged Defect; (3) the development, efficacy, and roll-out of
8 the Software Upgrade remedy; (4) insurance coverage for Class Vehicles; and (5)
9 Defendants’ efforts to mitigate the risk of theft in Class Vehicles. Plaintiffs have been
10 reviewing responsive documents produced by Defendants. *Id.*

11 After the Court issued its Order, the Parties began additional negotiations
12 aimed at satisfying the directives of the Order. These talks took approximately six
13 weeks and ultimately concluded with executing an Amended Settlement Agreement.
14 Amended Leadership Decl. ¶ 33. The Parties will also be prepared should the Court
15 hold an evidentiary hearing regarding the function and performance of the Software
16 Upgrade.

17 **III. THE SETTLEMENT BENEFITS FOR THE CLASS**

18 If approved, the proposed Settlement will provide substantial benefits to the
19 following Settlement Class:⁷ All persons or entities who purchased or leased a Class
20

21 ⁷ Excluded from the Class are Defendants; any affiliate, parent, or subsidiary of
22 Defendants; any entity in which Defendants has a controlling interest; any officer,
23 director, or employee of Defendants; any successor or assign of Defendants; any
24 judge to whom this Action is assigned, his or her spouse, and all persons within the
25 third degree of relationship to either of them, as well as the spouses of such persons.
26 In addition, excluded from the Class are individuals and/or entities who validly and
27 timely opt-out. Also excluded from the Class are subrogated Insurance Entities,
28 Government Entities with claims in MDL No. 8:22-ml-03052, and consumers and
businesses, including insurers, that have purchased or otherwise obtained title for
Class Vehicles previously deemed a total loss (i.e., salvage or junkyard vehicles)
(subject to verification through Carfax or other means) and current or former owners

1 Vehicle in the United States (including Puerto Rico, Virgin Islands, and Guam). ASA
2 § I.E. The proposed Settlement creates a common fund of up to \$145 million for
3 certain out-of-pocket losses arising from the theft or attempted theft of a Class
4 Vehicle and other expenses arising from obtaining the Software Upgrade, a free anti-
5 theft Software Upgrade for eligible Class Vehicles and reimbursement for the
6 purchase of steering wheel locks made before the Software Upgrade was available,
7 and tens of millions or more in cash payments to Class members whose Class
8 Vehicles are ineligible for the Software Upgrade for their purchase of steering wheel
9 locks and other anti-theft systems for their Class Vehicles. *Id.* § II.A-D.

10 Any disputes that arise from a Settlement claim determination will be resolved
11 by the Settlement Administrator,⁸ and for added oversight, Class Counsel have the
12 right to participate in these appeals, review, and comment on all appeals, obtain
13 information and documents necessary to the appeals, and confer with the Settlement
14 Administrator regarding appeal determinations. *Id.* §§ II.F., III.C.6, III.D.5, III.E.2.
15 The cost of appeals will be borne by Defendants. *Id.* § III.D.5.

16 **A. Common Fund for Out-of-Pocket and Unreimbursed Losses**

17 Defendants will establish a non-reversionary common fund of \$80 million to
18 \$145 million to pay Class members for certain out-of-pocket losses related to the
19 alleged Theft Prone Defect, including those arising from the Qualifying Theft or
20 Qualifying Theft Attempt⁹ of Class Vehicles. *Id.* § II.D. If all approved claims total
21

22 of Class Vehicles that previously released their claims in an individual settlement
23 with one or more Defendants with respect to the issues raised in the Action. ASA §
24 I.E.

25 ⁸ The Parties agreed to jointly propose a Settlement Administrator for the Court's
26 approval. After evaluating proposals from various candidates, the Parties selected
27 Angeion Group, LLC as the Settlement Administrator, subject to Court approval.
28 ASA § III.A.

⁹ "Qualifying Theft" means the theft of a Class Vehicle through forcible entry and
breach of the ignition system, and "Qualifying Theft Attempt" means an attempted

1 less than \$80,000,000, these claims will receive a *pro rata* increase. *Id.* § II.D.6. If all
2 approved claims exceed the “maximum” of \$145,000,000, payments will decrease
3 *pro rata. Id.*

4 Class members may seek payment for certain losses related to Qualifying
5 Thefts or Qualifying Theft Attempts, including total loss of Class Vehicles up to 60%
6 of the Black Book value of the vehicle, damage to Class Vehicles and personal
7 property up to the greater of \$3,375 or 33% of the Black Book value of the vehicle,
8 insurance expenses up to \$375, and other related expenses up to \$250 per incident. *Id.*
9 § II.D.3. These benefits are available to Class members for each qualifying theft or
10 attempted theft occurrence they experienced. *Id.* § II.D.4. Class members with Class
11 Vehicles eligible for the Software Upgrade may also seek reimbursement from the
12 common fund for lost income and childcare expenses up to \$250 to obtain the
13 Software Upgrade and for the purchase of new key fobs up to \$350 per fob (limited to
14 two fobs per Class Vehicle) where necessary to implement the Software Upgrade. *Id.*
15 § II.D.5.

16 **1. Total Loss of Class Vehicle**

17 Class members may be paid up to 60% of the Black Book value of the vehicle
18 plus licensing fees, sales tax paid, registration fees, and other expenses directly
19 associated with the purchase of a new or replacement vehicle for each Total Loss of a
20 Class Vehicle due to a Qualifying Theft or Qualifying Theft Attempt. *Id.* § II.D.3.a. A
21 “Total Loss” means any of the following: (a) the Class Vehicle was wrecked,
22 destroyed, or damaged so badly (excluding pre-existing damage) that it is objectively
23 uneconomical to repair it (*i.e.*, repair costs would be at least 70% of the fair market
24 value of the Class Vehicle, as measured by the Black Book value for a comparable
25 private party vehicle in average condition); (b) the Class member’s disposal (through
26
27 theft of a Class Vehicle through forcible entry and either an attempted dismantling of
28 the steering column or an attempted breach of the ignition system. ASA § I.AA.

1 sale or donation) of the Class Vehicle for less than 30% of the fair market value of
2 the Class Vehicle, as measured by the Black Book value for a comparable private
3 party vehicle in average condition; (c) the Class Vehicle was declared a Total Loss by
4 an insurer, but the Class member was still not made whole by the insurance
5 payments, as measured by the Black Book value (private party/average condition)
6 minus total insurance settlement or payment received; or (d) it has been at least three
7 months since the Qualifying Theft and the Class Vehicle has not been recovered. *Id.*
8 § I.II. A Class member may demonstrate through objectively reliable documentation
9 that the Class Vehicle was not recovered after being stolen, which unless rebutted by
10 Defendants, will be treated as a “Qualifying Theft.” *Id.* § I.AA. If before entry of a
11 final approval order, Defendants resolve the Insurer Class Plaintiffs’ subrogation
12 claims, the Parties will convene to discuss whether and by how much the Total Loss
13 cap should be increased. *Id.* § II.D.3.a.

14 **2. Damage to Class Vehicle and/or Stolen or Damaged Personal**
15 **Property**

16 Class members may be paid up to \$3,375 or 33% of the Black Book value of
17 the vehicle, whichever is greater, per incident for damage to a Class Vehicle and/or
18 the value of personal property stolen or damaged due to a Qualifying Theft or
19 Qualifying Theft Attempt. *Id.* § II.D.3.b. As with the Total Loss Claims, if
20 Defendants resolve the Insurer Class Plaintiffs’ subrogation claims, the Parties will
21 convene to discuss increasing this cap. *Id.*

22 **3. Insurance Expenses**

23 Class members may be paid up to \$375 for paid insurance deductibles and
24 increased insurance premiums for policies that include theft coverage resulting from a
25 Qualifying Theft or Qualifying Theft Attempt. *Id.* § II.D.3.c.

26 **4. Other Qualifying Theft or Qualifying Theft Attempt Expenses**

27 Class members may be paid up to \$250 total per incident for the following out-
28

1 of-pocket expenses related to a Qualifying Theft or Qualifying Theft Attempt: (i) car
2 rental, taxi, ride share, or public transportation expenses not otherwise covered by
3 insurance; (ii) towing costs necessary to transport the stolen Class Vehicle to or from
4 a police or city storage facility, repair facility or other location necessary to inspect,
5 repair, sell, or dispose of a stolen Class Vehicle, including a junkyard or storage
6 facility; and (iii) costs associated with speeding tickets, red light tickets, or other
7 penalties or fines incurred arising from a stolen Class Vehicle. *Id.* § II.D.3.d.

8 **5. Software Upgrade Related Expenses**

9 Class members with Class Vehicles eligible for the Software Upgrade may be
10 paid up to \$250 total for lost income and childcare costs resulting from
11 implementation of the Software Upgrade. *Id.* § III.D.5.b. They may also be
12 reimbursed for the purchase of OEM-issued key fobs (up to \$350 per fob; limited to
13 two key fobs per Class Vehicle) necessary for implementation the Software Upgrade.
14 *Id.* § III.D.5.a.

15 **B. Anti-Theft Software Upgrade and Steering Wheel Lock Reimbursement** 16 **for Eligible Class Vehicles**

17 Class members with eligible Class Vehicles may obtain a free Software
18 Upgrade to address the lack of an engine immobilizer. *Id.* § II.A.1. The Software
19 Upgrade is designed to prevent Class Vehicles that are locked using a key fob from
20 starting without the key being present by the method of theft popularized on TikTok
21 and other social media channels. *Id.* § II.A.2. The Software Upgrade will be
22 implemented on eligible Class Vehicles presented to an authorized Hyundai or Kia
23 dealership. *Id.* § II.A.3. Following installation, the dealer will affix decals to the Class
24 Vehicle indicating it has additional anti-theft protection. *Id.* § II.A.4. To date, more
25 than 6.9 million Class Vehicles, or approximately seventy-five percent, are eligible
26 for the Software Upgrade. Defendants warrant the Software Upgrade will work as
27 designed for the life of the Class Vehicle. ASA § II.A.2.

1 Further, Defendants will issue a nationwide press campaign promoting the
2 Software Upgrade and discussing its availability and effectiveness at preventing
3 vehicle thefts, to include publication on social media platforms. They will also
4 implement a driver awareness and instructional campaign regarding the Software
5 Upgrade, and Class Counsel may confer with Defendants about the campaign's form
6 and content. *Id.* § II.A.6.

7 Class members with Class Vehicles eligible for the Software Upgrade may
8 seek reimbursement up to \$50 per Class Vehicle for the purchase of a steering wheel
9 lock made at least thirty days before the Software Upgrade became available for their
10 Class Vehicle. *Id.* § II.B.1. This Settlement benefit will be paid by Defendants
11 separate from the common fund and it has no aggregate cap. *Id.* § II.B.2.

12 **C. Payments for Anti-Theft Devices for Class Vehicles Ineligible for the**
13 **Software Upgrade**

14 Class members with Class Vehicles that are ineligible to receive the Software
15 Upgrade may seek reimbursement of up to \$300 per Class Vehicle for the purchase of
16 a steering wheel lock, a glass breakage alarm or similar anti-theft system (including
17 installation), or another aftermarket modification designed to deter or prevent theft so
18 long as that purchase was made when the Class Vehicle was ineligible for the
19 Software Upgrade.¹⁰ *Id.* §§ I.Z., II.C.1. Any Class member who received a steering
20 wheel lock provided by Defendants (either from HMA or KA (for example, shipped
21 directly or through a dealer) or through a law enforcement department) may submit a
22 reimbursement claim up to \$250 for the purchase and installation of a glass breakage
23 alarm or similar anti-theft system (including installation), or another aftermarket
24 modification designed to deter or prevent theft. *Id.* § II.C.2. Critically, there is no cap

25
26 ¹⁰ If the Class Vehicle becomes eligible to receive the Software Upgrade, as of thirty
27 (30) days after the postmarked date of the mail notice notifying the Class member of
28 such eligibility, no Qualifying Purchase made after that date will be reimbursable
under the Settlement. ASA § II.C.1.

1 on the amount of reimbursement claims that Defendants are obligated to pay under
2 this provision of the proposed Settlement, and these payments will not be made from
3 the Common Fund. Based on the total number of eligible Class Vehicles, this benefit
4 may provide up to tens of millions or more in additional cash payments to Class
5 Members.

6 **IV. ARGUMENT**

7 **A. The proposed Settlement merits preliminary approval.**

8 As the Ninth Circuit recognizes, there is a “strong judicial policy that favors
9 settlements, particularly where complex class action litigation is concerned.” *In re*
10 *Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019)¹¹; *Zakikhani v.*
11 *Hyundai Motor Co.*, 2022 WL 17224701, at *3 (C.D. Cal. Oct. 20, 2022). Under Rule
12 23(e), the Court must determine “‘whether a proposed settlement is fundamentally
13 fair, adequate, and reasonable,’ recognizing that ‘[i]t is the settlement taken as a
14 whole, rather than the individual component parts, that must be examined for overall
15 fairness.’” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (quoting *Hanlon*
16 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (overruled on other grounds)).

17 “At the preliminary approval stage, a court cannot fully assess some of these
18 factors, so a full fairness analysis is unnecessary.” *Callaway v. Mercedes-Benz United*
19 *States LLC*, 2017 WL 11707445, at *5 (C.D. Cal. Nov. 29, 2017) (Selna, J.) (citing
20 *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008)). “Instead, a court
21 simply needs to ensure that the settlement is **potentially** fair because a court will
22 make a final determination regarding its adequacy at a hearing on final approval,
23 which occurs after any class member has had an opportunity to object or opt-out.” *Id.*
24 (citing *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007)); *see also*
25 *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Pracs., & Prod.*
26

27 ¹¹ Cleaned up to omit internal citations and quotations and emphasis added
28 throughout, unless otherwise indicated.

1 *Liab. Litig.*, 2012 WL 7802852, at *6 (C.D. Cal. Dec. 28, 2012) (Selna, J.) (“the
2 Court initially determines whether the proposed settlement seems fair on its face and
3 is worth submitting to the class members”).

4 Accordingly, when considering preliminary approval the Court must assess
5 whether “(1) the proposed settlement appears to be the product of serious, informed,
6 noncollusive negotiations, (2) has no obvious deficiencies, (3) does not improperly
7 grant preferential treatment to class representatives or segments of the class, and (4)
8 falls within the range of possible approval.” *Callaway*, 2017 WL 11707445, at *5; *see*
9 *In re Toyota Motor Corp. Unintended Acceleration*, 2012 WL 7802852, at *6 (court’s
10 role in preliminary approval is “‘limited to the extent necessary to reach a reasoned
11 judgment that the agreement is not the product of fraud or overreaching by, or
12 collusion between, the negotiating parties, and that the settlement, taken as a whole,
13 is fair, reasonable and adequate to all concerned.’”).

14 **1. The Settlement is the product of serious, informed, arm’s-length**
15 **negotiations by experienced Class Counsel.**

16 This first factor asks the Court to “consider whether the settlement is a product
17 of collusion and whether sufficient discovery has been taken or investigation
18 completed to enable counsel and the court to act intelligently.” *Maree v. Deutsche*
19 *Lufthansa AG*, 2023 WL 2563914, at *7 (C.D. Cal. Feb. 13, 2023)).

20 Neither the litigation and settlement process nor the substance of the proposed
21 Settlement here indicate any collusion. The proposed Settlement was achieved
22 through arm’s-length negotiations conducted by counsel experienced in complex
23 automobile class actions over the course of nearly eight months, under the guidance
24 of an experienced mediator. *See* A. Conte & H.B. Newberg, *Newberg On Class*
25 *Actions* § 11:41 (“NEWBERG”) (A proposed settlement is entitled to “an initial
26 presumption of fairness” when the settlement has been “negotiated at arm’s length by
27 counsel for the class.”); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th
28

1 Cir. 2004) (rejecting objectors’ argument that settlement was the product of collusion
2 where allegations in the complaint preceded settlement by one year and there was no
3 other evidence of collusion); *La Fleur v. Med. Mgmt. Int’l, Inc.*, 2014 WL 2967475,
4 at *4 (C.D. Cal. June 25, 2014) (“Settlements reached with the help of a mediator are
5 likely noncollusive.”); *Callaway*, 2017 WL 11707445, at *6 (“The extensive
6 mediation process demonstrates to the Court that the proposed settlement is the
7 product of serious, informed, noncollusive negotiations.”).

8 Before agreeing to the proposed Settlement, Plaintiffs were well-informed as to
9 the underlying facts and the strength of their case, which allowed for meaningful
10 negotiations. Plaintiffs conducted substantial pre- and post-filing investigations,
11 which are evinced by the comprehensive CAC. *See* Amended Leadership Decl. ¶¶ 11,
12 21, 354. *See Maree*, 2023 WL 2563914, at *9 (“[W]hile formal discovery is an
13 important factor, it is not necessary to properly grant preliminary approval. What is
14 required at this stage is that ‘sufficient discovery has been taken or investigation
15 completed to enable counsel and the Court to act intelligently.’” (quoting NEWBERG §
16 11.41)). Plaintiffs also understood the strengths and weaknesses of their claims,
17 which were a topic of discussion throughout the mediations and briefed in
18 Defendants’ motion to dismiss the CAC, as well as the motions filed in the *Marvin*
19 action. *See Lyter v. Cambridge Sierra Holdings*, 2019 WL 13153197, at *5 (C.D. Cal.
20 June 18, 2019) (finding the parties sufficiently informed where they engaged in
21 significant informal discovery and adversarial motion practice, including motion to
22 dismiss); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal.
23 2007) (finding parties had “clear view of the strengths and weaknesses of their cases”
24 even though settlement reached before discovery stay was lifted). Further, after
25 executing the MOU, Plaintiffs continued their investigations into the alleged Defect
26 and began confirmatory discovery. *See* Amended Leadership Decl. ¶¶ 30-31, 35-36.
27 The foregoing work provided Class Counsel sufficient information to negotiate a
28

1 highly favorable settlement on behalf of the Class. *See In re Mego Fin. Corp. Sec.*
2 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (“significant investigation, discovery and
3 research” provides parties with sufficient information to make informed settlement
4 decisions); *Byrne v. Santa Barbara Hosp. Servs., Inc.*, 2017 WL 5035366, at *8 (C.D.
5 Cal. Oct. 30, 2017) (“[t]he parties must...have engaged in sufficient investigation of
6 the facts to enable the court to intelligently make an appraisal of the settlement”) (citation omitted).

8 Additionally, Class Counsel have represented consumers in many significant
9 class actions, including actions against Hyundai and Kia. Amended Leadership Decl.
10 ¶ 38. *See Hemphill v. San Diego Ass’n of Realtors*, 225 F.R.D. 616, 621 (S.D. Cal.
11 2004) (“As a general principle, ‘the courts respect the integrity of counsel and
12 presume the absence of fraud or collusion in negotiating the settlement, unless
13 evidence to the contrary is offered.’” (quoting NEWBERG § 11.51)). The proposed
14 Settlement’s terms are favorable to the Class and on par with the relief Plaintiffs
15 demanded. *See CAC* ¶ 13 (“Plaintiffs seek equitable relief in the form of an adequate
16 remedy for the Theft Prone Defect, an appropriate curative notice regarding the
17 existence the Theft Prone Defect, recovery of damages, a repair under state
18 consumer-protection statutes and implied warranties, and reimbursement of all
19 expenses associated with the repair or replacement of the Class Vehicle and damage
20 caused by the Theft Prone Defect”).

21 Finally, there is no clear sailing provision in the Settlement Agreement. *See*
22 *ASA* § V. Plaintiffs will move for an award of attorneys’ fees totaling up to 25% of
23 the common fund’s value, plus actual out-of-pocket litigation expenses, and \$1,000
24 service awards for each Class Representative, which Defendants may oppose at any
25 level. *See id.* § V.1 and 4. This eliminates any actual or perceived conflict of interest
26 with Class members regarding the fee award, which will be decided by the Court. *See*
27 *Scolaro v. RightSourcing, Inc.*, 2017 WL 11630969, at *7 (C.D. Cal. Mar. 20, 2017)

(Selna, J.) (finding no signs of collusion or self-interest where attorneys' fees capped at 25% and settlement did not include a clear sailing agreement). The proposed Settlement was thoroughly negotiated by experienced counsel and results in a fair outcome for Class members. The Court should preliminarily approve it.

2. The Settlement treats all Class members equitably.

Whether a settlement provides preferential treatment to any 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.*, 2015 WL 4512372, at *8 (N.D. Cal. July 24, 2015) (finding no preferential treatment). Here, all Class members that incurred losses arising from the theft or attempted theft of their Class Vehicle may seek reimbursement for these losses, and all Class members are afforded a remedy for the alleged Theft Prone Defect (for some that will be the Software Upgrade, for others it will be cash payments for the cost of similar anti-theft systems). Eligible Class members are also reimbursed for various other out-of-pocket costs, like the purchase of a steering wheel lock before the Software Upgrade became available. Thus, the benefits are proportionate to the harm each Class member suffered because of the alleged Defect.

In the Order, the Court raised concerns with the potential inequity of Total Loss and Partial Loss claims capped at an absolute amount that does not consider the disparate values of each Class Vehicle. Order at 24, 29-30. The Amended Settlement Agreement fully addresses this concern by amending the claim caps so that each Class member will receive the same proportional recovery for the same types of damages incurred.

Likewise, the Class Representatives will not receive preferential treatment or compensation disproportionate to their respective harm and contribution to the case.

1 They can make claims under the proposed Settlement like any other Class member
2 for their eligible losses. Plaintiffs will seek \$1,000 service awards for each Class
3 Representative in recognition of their dedication to the prosecution of the case, which
4 included consulting with counsel and providing documents and other information
5 about the case, reviewing the complaint, communicating with counsel about case
6 developments, and reviewing and discussing the proposed Settlement with counsel.
7 *See Cisneros v. Airport Terminal Servs.*, 2021 WL 3812163, at *9 (C.D. Cal. Mar.
8 26, 2021) (“Courts have generally found that \$5,000 incentive payments are
9 reasonable.”); *Zakikhani v. Hyundai Motor Co.*, 2023 WL 4544774, at *9-10 (C.D.
10 Cal. May 5, 2023) (awarding \$2,500 to plaintiffs not involved in dispositive motion
11 practice or formal discovery). In support of final approval, Plaintiffs will detail their
12 efforts to assist in the litigation.

13 **3. The Settlement has no obvious deficiencies.**

14 Unless the Court’s initial examination “discloses grounds to doubt [the
15 proposed Settlement’s] fairness or other obvious deficiencies,” the proposed
16 Settlement should be preliminarily approved. *West v. Circle K Stores, Inc.*, 2006 WL
17 1652598, at *11 (E.D. Cal. June 13, 2006) (noting examples of obvious deficiencies,
18 like “unduly preferential treatment of class representatives or segments of the class,
19 or excessive compensation of attorneys”). As discussed *supra*, the proposed
20 Settlement offers Class members fair and proportionate relief, and attorneys’ fees will
21 be considered and awarded by the Court. Because the proposed Settlement has no
22 obvious deficiencies, preliminary approval is warranted.

23 **4. The Settlement falls within the range of possible approval.**

24 In determining whether to grant preliminary approval, district courts must
25 consider several factors, including: “the strength of plaintiffs’ case; the risk, expense,
26 complexity, and likely duration of further litigation; the risk of maintaining class
27 action status throughout the trial; the amount offered in settlement; the extent of
28

1 discovery completed, and the stage of the proceedings; the experience and views of
2 counsel; the presence of a governmental participant; and the reaction of the class
3 members to the proposed settlement.” *Staton*, 327 F.3d at 959; *see also* Fed. R. Civ.
4 P. 23(e). “The relative degree of importance to be attached to any particular factor
5 will depend upon and be dictated by the nature of the claims advanced, the types of
6 relief sought, and the unique facts and circumstances presented by each individual
7 case.” *Officers for Just. v. Civ. Serv. Comm’n of City & Cty. of S.F.*, 688 F.2d 615,
8 625 (9th Cir. 1982); *see also Moreno v. Pretium Packaging, L.L.C.*, 2021 WL
9 3673845, at *1 (C.D. Cal. Aug. 6, 2021) (“Each factor does not necessarily apply to
10 every class action settlement, and others may also be considered.”).

11 **a. The strength of Plaintiffs’ case and risk, expense, complexity,**
12 **and likely duration of further litigation**

13 While Plaintiffs believe their case and claims are strong, they recognize the
14 considerable risks inherent in litigation and unique difficulties presented by the facts
15 at issue here. *See Shahbazian v. Fast Auto Loans, Inc.*, 2019 WL 8955420, at *6
16 (C.D. Cal. June 20, 2019) (recognizing “the uncertainty and risks inherent in
17 litigation and potential appeals”). Among other challenges, this litigation concerns
18 dozens of vehicle models, some of which were designed and sold over a decade ago,
19 and establishing Defendants’ knowledge of the alleged Theft Prone Defect at the time
20 of sale through records that old presents considerable difficulties. The case also
21 presents novel and untested theories of liability that may not withstand dispositive
22 motions or challenges on appeal. For instance, Plaintiffs’ claims are based in part on
23 the interpretation and application of FMVSS No. 114, which has never been tested in
24 a courtroom or applied by NHTSA in the manner alleged by Plaintiffs. Further, the
25 involvement of criminal third-party acts raises novel questions regarding causation
26 and the specter of unique fact questions that would be difficult to overcome at class
27 certification.

1 Class actions typically entail a high level of risk, expense, and complexity,
2 which is one reason that judicial policy so strongly favors their resolution through
3 settlement. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)
4 (affirming district court's approval of settlement and class certification). Class
5 Counsel are all well experienced in complex class actions, including automotive
6 defect actions, which take many years to resolve and are highly unpredictable. Nearly
7 all the consumer cases in this MDL were filed within the last twelve months and are
8 nowhere near trial. While Class Counsel have engaged in informal discovery and
9 started confirmatory discovery, the amount of discovery necessary for class
10 certification and trial (in the absence of the proposed Settlement) would be
11 substantial. In addition to discovery expenses, the Parties would incur significant
12 expenses and attorney time relating to experts, class certification, dispositive motions,
13 and pre-trial preparations. By the time Plaintiffs' claims are presented to a jury,
14 which likely would not occur until mid-2025 at the earliest, many more Class
15 members will have suffered vehicle thefts and damages, sold their vehicles, and
16 otherwise lost the benefits offered under the proposed Settlement. Even if Plaintiffs
17 are successful at trial, there are likely to be appeals, further delaying relief to Class
18 members. *See Casey v. Doctor's Best, Inc.*, 2022 WL 1726080, at *8 (C.D. Cal. Feb.
19 28, 2022) (observing that even if plaintiff prevailed at every stage, the possibility of
20 lengthy appeals evidenced substantial risk of further litigation). Delayed relief would
21 also increase difficulties with claims administration as Class members may be harder
22 to identify and required claim documentation harder to locate.

23 This Settlement balances these costs, risks, and potential for delay with its
24 benefits, achieving relief that is desirable to the Class. *See* NEWBERG § 11:50 ("In
25 most situations, unless the settlement is clearly inadequate, its acceptance and
26 approval are preferable to lengthy and expensive litigation with uncertain results.").

b. The risk of maintaining class action status through trial

A litigation class has not been certified here. If this litigation continued without settlement, Plaintiffs face risk at the class certification stage. *See Acosta*, 243 F.R.D. at 392 (“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.”). Plaintiffs believe this case warrants class certification and they would marshal evidence in support of such a motion. Class certification proceedings, however, are highly discretionary. *See Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 987 (9th Cir. 2011). Proceeding with a class certification motion here also risks the Court rejecting nationwide relief. *See Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 594 (9th Cir. 2012), *overruled on other grounds* (finding California’s choice-of-law rules precluded nationwide consumer class).

Litigation following successful class certification is equally plagued by risks. *See In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2007) (discussing risk of continued litigation following class certification). It is highly uncertain whether the Class would obtain a better outcome through continued litigation and trial. In fact, there is a risk that the Class would receive less or even nothing at trial, and even if Plaintiffs prevailed at trial, the recovery could take years to reach Class members. Much of the prospective anti-theft benefits for the Class Vehicles (e.g., the Software Upgrade and reimbursements for anti-theft devices) would be diminished by delay. Put simply, should Plaintiffs succeed at trial, it is unlikely that Class members would receive relief superior to the proposed Settlement.

c. The amount and type of relief offered in settlement

The proposed Settlement creates a common fund of \$80 million to \$145 million from which Class members can recover cash payments for out-of-pocket losses arising from theft incidents. It also provides remedies for the alleged Theft Prone Defect, including a Software Upgrade and tens of millions or more in cash

1 payments for the installation of anti-theft devices in Class Vehicles, to prevent future
2 injuries due to the Defect. Class members will therefore receive practically all the
3 relief Plaintiffs sought in their complaints, while avoiding the risks of continued
4 litigation. This factor weighs in favor of preliminary approval. *See Officers for Just.*,
5 688 F.2d at 628 (“It is well-settled law that a cash settlement amounting to only a
6 fraction of the potential recovery will not *per se* render the settlement inadequate or
7 unfair.”).

8 One additional beneficial outcome offered by the proposed Settlement is the
9 extent to which it incentivizes and promotes installation of the Software Upgrade and
10 other anti-theft systems in the Class Vehicles, which is key to slowing the theft
11 incidents. The proposed Settlement offers cash reimbursements for expenses incurred
12 in obtaining the Software Upgrade, and it requires the Software Upgrade
13 automatically be installed in Class Vehicles brought to dealerships, even where the
14 Class member is unaware of it and otherwise brings in their Class Vehicle for other
15 repairs and routine maintenance. Likewise, the proposed Settlement incentivizes and
16 assists Class members with Class Vehicles ineligible for the Software Upgrade to
17 purchase other anti-theft products by making them reimbursable, thereby further
18 discouraging thieves from targeting all Class Vehicles.

19 **d. The extent of discovery completed and the stage of the**
20 **proceedings**

21 This factor contemplates whether “the parties have sufficient information to
22 make an informed decision about settlement.” *Linney*, 151 F.3d at 1239. In class
23 actions, the parties may obtain sufficient information through formal or informal
24 discovery. *See Clesceri v. Beach City Investigations & Protective Servs.*, 2011 WL
25 320998, at *9 (C.D. Cal. Jan. 27, 2011) (citing *Linney*, 151 F.3d at 1239).

26 Before filing complaints and the creation of this MDL, and continuing through
27 settlement negotiations, Class Counsel devoted substantial time to investigating the
28

1 underlying facts and developing the factual and legal allegations. This included a
2 review of publicly available sources of technical information, hundreds of interviews
3 with putative Class members, technical analyses relating to the design of the steering
4 wheel columns and ignition assemblies in the Class Vehicles, and consultation with
5 automotive experts. Amended Leadership Decl. ¶¶ 11, 21, 35. Further, Plaintiffs
6 began confirmatory discovery, which will allow them to verify the fairness of the
7 Settlement benefits and obtain information and testimony from Defendants with
8 knowledge of the alleged Defect and proposed remedies, including the Software
9 Upgrade, before final approval. ASA at 2; Amended Leadership Decl. ¶ 36.

10 Based on Class Counsel’s substantial experience litigating automotive defect
11 cases, the information received was sufficient to evaluate the fairness of the proposed
12 Settlement. Amended Leadership Decl. ¶ 37. While resolving this litigation, Plaintiffs
13 had a strong understanding of the strength and weakness of their case and were well-
14 situated to make an informed decision regarding settlement. *Id. See In re Mego Fin.*
15 *Corp.*, 213 F.3d at 459 (finding plaintiffs had “sufficient information to make an
16 informed decision about [the] settlement” where formal discovery had not been
17 completed but Class Counsel had “conducted significant investigation, discovery and
18 research, and presented the court with documentation supporting those services”).

19 **e. The experience and views of counsel**

20 While the Court should not blindly accept the views of counsel, “[p]arties
21 represented by competent counsel are better positioned than courts to produce a
22 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac.*
23 *Enterprises Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Class Counsel believes the
24 proposed Settlement is fair, reasonable, and adequate based on their extensive
25 experience litigating class actions, and specifically automotive defect class actions.
26 See Amended Leadership Decl. ¶¶ 4, 38-39. At the preliminary approval stage, “[t]he
27
28

1 recommendations of plaintiffs' counsel should be given a presumption of
2 reasonableness." *In re Omnivision Techs.*, 559 F. Supp. 2d at 1043.

3 **f. The presence of a governmental participant**

4 This factor looks to "the views of [] governmental participants" regarding the
5 proposed Settlement. *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1082
6 (C.D. Cal. 2010). While several municipalities have filed suit in this MDL for
7 damages they allegedly sustained, to Class Counsel's knowledge, none seek
8 economic losses by consumers, rather they purport to seek damages incurred by
9 public entities. Moreover, while these governmental participants are aware of the
10 proposed Settlement, which was disclosed in May 2023, none have objected to it.
11 Accordingly, this factor favors approval. *See In re Toyota Motor Corp. Unintended*
12 *Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, 2013 WL 12327929, at
13 *18 (C.D. Cal. July 24, 2013) (finding settlement "bears the silent imprimatur of
14 government approval because despite receiving notice, no state or federal official has
15 filed an objection to the proposed settlement.").

16 **g. The reaction of class members**

17 Notice has not yet gone out to the Class, nor have Class members had the
18 opportunity to object, so it is premature to assess this factor. *See Navarrete v. Sprint*
19 *United Mgmt. Co.*, 2021 WL 4352903, at *11 (C.D. Cal. Mar. 2, 2021) (noting lack
20 of evidence concerning this factor "is not uncommon at the preliminary approval
21 stage"). Before the final approval hearing, the Parties will submit declarations
22 addressing any objections received after Settlement notice is disseminated. *See id.*

23 **B. The Settlement Class should be certified.**

24 In its Order granting the motion for class certification, the Court found all
25 prerequisites of Fed. R. Civ. P. 23(a) and (b)(3) to be satisfied. Order at 13-19.
26 Consequently, Plaintiffs will not repeat their arguments supporting certification
27
28

1 herein and simply incorporate by reference pages 24-29 of their initial motion (Dkt.
2 No. 166).¹²

3 **C. The Court should order dissemination of Class notice.**

4 Whether to order dissemination of proposed settlement notice “is an important
5 event” and “should be based on a solid record supporting the conclusion that the
6 proposed settlement will likely earn final approval after notice and an opportunity to
7 object.” Fed. R. Civ. P. 23(e)(1) advisory committee’s note to 2018 amendment.
8 Before finally approving a class settlement, “[t]he court must direct notice in a
9 reasonable manner to all class members who would be bound by the proposal.” Fed.
10 R. Civ. P. 23(e)(1)(B). Where the settlement class is certified under Rule 23(b)(3), the
11 notice must also be the “best notice that is practicable under the circumstances,
12 including individual notice to all members who can be identified through reasonable
13 effort.” Fed. R. Civ. P. 23(c)(2)(B). “Notice is satisfactory if it generally describes the
14 terms of the settlement in sufficient detail to alert those with adverse viewpoints to
15 investigate and to come forward and be heard.” *Churchill Vill., L.L.C.*, 361 F.3d at
16 575. The notice program provided in the Settlement Agreement satisfies these
17 standards.

18 The notice program here includes a dedicated settlement website and thorough
19 Long Form Notice (also available on the website). ASA § IV.C.3. The Long Form
20 Notice and Claim Form will be sent via U.S. mail to all reasonably identifiable Class
21 members. *Id.* § IV.C.1. Class members for which Defendants maintain email
22 addresses will also receive emails containing a hyperlink to the settlement website
23 and electronic copies of the Long Form Notice and Claim Form. *Id.* § IV.C.2. Claims
24

25
26 ¹² The Order directed Class Counsel to “properly inquire into potential conflicts”
27 between Class Counsel and Class Members or the Class Representatives “and inform
28 the Court accordingly.” Order at 17. Class Counsel have done so, found no such
conflicts, and report on such in the Amended Leadership Declaration at 40.

1 can be submitted by U.S. mail, email, and through the settlement website. *Id.* §§
2 III.B.2, IV.C.3. Consumers will be able to enter their Vehicle Identification Numbers
3 (“VIN”) on the settlement website, without completing a claim form, to easily
4 determine if their vehicles are Class Vehicles and whether it is eligible for the
5 Software Upgrade. *Id.* § IV.C.3. Hyperlinks to the settlement website will be posted
6 on Hyundai and Kia’s respective websites. *Id.* § IV.B. Publication notice will also be
7 issued monthly. *Id.* § IV.C.4. Defendants will pay all Class notice and settlement
8 administration costs. *Id.* § II.E.

9 **1. The proposed Settlement provides the best method of notice**
10 **practicable.**

11 The Settlement provides that all reasonably identifiable Class members will
12 receive a copy of the Long Form Notice and a Claim Form via direct U.S. mail,
13 which satisfies the requirements of due process. ASA § IV.C.1. *See Sullivan v. Am.*
14 *Express Publ’g Corp.*, 2011 WL 2600702, at *8 (C.D. Cal. June 30, 2011) (“Notice
15 by mail has been found by the Supreme Court to be sufficient...”). To identify Class
16 members for notice, Defendants will provide all names and addresses of Class
17 Vehicle owners, along with Class Vehicle VINs, to a third-party entity authorized to
18 use that information to obtain the names and most current addresses of Class
19 members through state agencies. ASA § IV.C.1.

20 In addition to notice through U.S. mail, the Settlement Administrator will email
21 a hyperlink to the dedicated settlement website and an electronic version of the Long
22 Form Notice and Claim Form to Class members for which Defendants maintain an
23 email address. *Id.* § IV.C.2. The dedicated settlement website will contain:
24 (i) instructions on how to obtain reimbursements; (ii) a mechanism for Class
25 members to submit claims electronically; (iii) instructions for contacting the
26 Settlement Administrator for assistance with claims; (iv) the Long Form Notice; (v)
27 the Claim Form; (vi) the Settlement Agreement; (vii) any orders issued in this
28

1 litigation approving or disapproving of the proposed Settlement; and (viii) any other
2 information the Parties determine is relevant to the Settlement. *Id.* § IV.C.3.
3 Defendants will make the same information available to Class members through their
4 websites via links to the dedicated settlement website. *Id.* § IV.B. Further, the
5 Settlement Administrator will issue monthly press releases notifying the public of the
6 existence of the Settlement, the Settlement website, and all opt-out and objection
7 deadlines. *Id.* § IV.C.4. The Settlement Administrator will be available to respond to
8 questions regarding the status of submitted claims, how to submit a claim, and other
9 aspects of the settlement via a dedicated, toll-free telephone number and email. *Id.* §§
10 III.B.2-3, IV.C.5. Finally, the Settlement Administrator will report to Class Counsel
11 the total number of notices sent to Class members by U.S. mail and email, along with
12 the numbers of notices returned as undeliverable, so that counsel may ensure notice is
13 appropriately disseminated. *Id.* § IV.D.

14 Accordingly, Plaintiffs request the Court approve this notice method as the best
15 practicable method under the circumstances. *See, e.g., Rannis v. Recchi*, 380 F. App'x
16 646, 650 (9th Cir. 2010) (finding mailed notice the best notice practicable where
17 reasonable efforts were taken to ascertain class members' addresses).

18 **2. The proposed Notice plan informs Class members of their rights.**

19 The notice provided to Class members should “clearly and concisely state in
20 plain, easily understood language” the nature of the action; the class definition; the
21 class claims, issues, or defenses; that the class member may appear through counsel;
22 that the court will exclude from the class any member who requests exclusion; the
23 time and manner for requesting exclusion; and the binding effect of a class judgment
24 on class members. Fed. R. Civ. P. 23(c)(2)(B). The form of notice proposed by the
25 Parties complies with those requirements. ASA, Exs. A-B. The Long Form Notice to
26 be sent to Class members through U.S. Mail and email will explain the terms of the
27 proposed Settlement, the Class definition, the underlying litigation, and that Class
28

members may appear through counsel; detail the process for requesting exclusion from or objecting to the proposed Settlement; and disclose the binding effect of the proposed Settlement on Class members if they do not request exclusion. *Id.* Plaintiffs believe this is the most effective way to alert Class members to the existence of the proposed Settlement and convey detailed information about the settlement approval process, and accordingly ask the Court to approve the proposed forms of Notice. *See Banh v. Am. Honda Motor Co.*, 2021 WL 3468113, at *9 (C.D. Cal. June 3, 2021) (approving notice plan comprised of mailing and email to class members and creation of settlement website).

3. Notice to Federal and State Officials

Defendants will provide notice of the Settlement to the U.S. Attorney General and appropriate regulatory officials, as required by 28 U.S.C. § 1715. ASA § IV.A.

V. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request the Court grant their Motion and enter the accompanying proposed Preliminary Approval Order. Plaintiffs further request the Court set a schedule for key dates including a Fairness Hearing date, and they propose the following:

EVENT	DATE
Preliminary Approval Hearing	October 30, 2023
Class Notice Disseminated (“Notice Date”)	No later than 120 days after entry of Preliminary Approval Order
Motion for an Award of Attorneys’ Fees, Expenses, and Service Awards Filed	45 days after Notice Date
Motion for Final Approval Filed	45 days after Notice Date
Objection and Opt-Out Deadline	60 days after Notice Date
Supplemental Response to any Objections Filed	30 days after Objection Deadline
Settlement Fairness and Evidentiary Hearing	No earlier than 120 days after Notice Date

1
2 Dated: September 27, 2023.

Respectfully Submitted.

3 By: /s/ Steve W. Berman

4 Steve W. Berman, Esq.

**HAGENS BERMAN SOBOL SHAPIRO
LLP**

5 1301 Second Avenue, Suite 2000

6 Seattle, Washington 98101

7 Telephone: 206-623-7292

8 Facsimile: 206-623-0594

9 Email: steve@hbsslaw.com

10 By: /s/ Elizabeth A. Fegan

11 Elizabeth A. Fegan, Esq.

FEGAN SCOTT LLC

12 150 S. Wacker Dr., 24th Floor

13 Chicago, Illinois 60606

14 Telephone: 312.741.1019

15 Fax: 312.264.0100

16 Email: beth@feganscott.com

17 By: /s/ Kenneth B. McClain

18 Kenneth B. McClain, Esq.

HUMPHREY FARRINGTON & McCLAIN

21 221 W. Lexington Ave., Suite 400

22 Independence, Missouri 64050

23 Telephone: 816.836.5050

24 Facsimile: 816.836.8966

25 Email: kbm@hfmlegal.com

By: /s/ Roland Tellis

Roland Tellis, Esq.

BARON & BUDD, P.C.

15910 Ventura Boulevard, Suite 1600

Encino, California 91436

Telephone: 818.839.2333

Facsimile: 214.523.5500

Email: rtellis@baronbudd.com

*Consumer Class Action Leadership Counsel
and Counsel for Plaintiffs*