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

20 IN RE: HYUNDAI AND KIA FUEL
21 ECONOMY LITIGATION

Case No. 2:13-ml-02424-GW-FFM

22 ***KRAUTH/HASPER/BIRD***
23 **PLAINTIFFS' CONDITIONAL**
24 **OPPOSITION TO JOINT MOTION**
25 **FOR FINAL APPROVAL OF**
26 **CLASS SETTLEMENT**

27 Date: June 11, 2015
28 Time: 9:30 a.m.
Judge: Hon. George H. Wu
Courtroom: 10

TABLE OF CONTENTS

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

I. INTRODUCTION..... 1

II. ‘RED FLAGS’ PREVIOUSLY IDENTIFIED BY THE *KRAUTH/HASPER* PLAINTIFFS 2

III. THE CLAIMS RATE IS LOW..... 5

 A. The Lump Sum Payment Claims Rate is Less than 20%. 5

 B. Participation in the Voluntary Program is Not Part of the Settlement Claims Rate. 6

 C. Under these Circumstances, a Claims Rate of Less than 20% is Low. 8

IV. AN ESTIMATED 300,000 CLASS MEMBERS ARE NOT RECEIVING A BENEFIT OF ANY KIND EITHER UNDER THE SETTLEMENT OR THE VOLUNTARY PROGRAM..... 9

V. MEASURES MUST BE TAKEN TO INCREASE THE CLAIMS RATE..... 10

 A. Defendants Should Automatically Send Checks to Class Members who Have Not Submitted a Claim. 11

 B. Alternatively, Defendants Should Send Supplemental Notice to Class Members. 13

VI. CONCLUSION..... 13

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

TABLE OF AUTHORITIES

Cases

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Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) 3

In re Baby Products Antitrust Litig., 708 F.3d 163 (3d Cir. 2013)..... 11

Staton v. Boeing Co., 327 F.3d 938 (9th Cir. 2003) 3

Statutes

Federal Rules of Civil Procedure

Rule 23(e) 3

Other Authorities

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1 The Consumer Watchdog Legal Team submits this conditional Opposition to
2 the Motion for Final Approval on behalf of the *Krauth/Hasper* Plaintiffs and
3 Plaintiff/Objector Louis Bird in *Bird v. Hyundai Motor America*, Sacramento
4 Superior Court Case No. 34-2012-00127249.

5 **I. INTRODUCTION.**

6 Prior to granting preliminary approval of the Settlement, the Court ordered
7 Settling Parties to utilize email notice and make a number of improvements to the
8 language and format of the notice and claim forms in response to the
9 *Krauth/Hasper* Plaintiffs’ concerns that complicated documents and a lengthy
10 claims process would result in limited Class Member participation. Those crucial
11 improvements have undoubtedly resulted in more Class Members receiving
12 compensation.

13 The Court has, however, consistently stated that it may “find a problem with
14 fairness” (Jun. 26, 2014 Hrg. Tr. at 60:10) if the Settlement’s claims rate turned out
15 to be low, and would require Settling Parties to take measures to increase
16 participation.

17 In fact, over four months after Notice began going out, the claims rate is less
18 than 20%. As the *Krauth/Hasper* Plaintiffs discussed in their Opposition to
19 Preliminary Approval, the low claims rate, combined with the provision permitting
20 Defendants to retain unclaimed funds, provides an unjustified windfall for Hyundai
21 and Kia.

22 A simple way to rectify the low claims rate would be to automatically send
23 Lump Sum Payments to Class Members via check. This would be especially
24 appropriate for those who are entitled to the additional “4x40” compensation, but
25 have unaccountably not filed the required claim. Alternatively, sending
26 supplemental notice to Class Members who have not made a claim and extending
27 the claims deadline (presently July 6, 2015) for three extra months would also
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1 increase participation.

2 Pursuant to the Court’s direction at the March 19, 2015 hearing (Mar. 19,
3 2015 Hrg. Tr. at 52:18 - 53:2), counsel for the *Krauth/Hasper* Plaintiffs met and
4 conferred by phone and through written correspondence with counsel for
5 Defendants, Settling Plaintiffs, and Liaison Counsel to discuss the claims rate and
6 potential remedial measures. Defendants’ counsel and counsel for
7 *Krauth/Hasper/Bird* Plaintiffs have a mediation scheduled. For this reason, the
8 parties agreed to extend the deadline for oppositions and replies to the Motion for
9 Final Approval and filed a Joint Stipulation Modifying Briefing Schedule Re
10 Motion for Final Approval on April 26, 2015. (Dkt. 466). The Court has not
11 granted the extension at the time of this filing.

12 **II. ‘RED FLAGS’ PREVIOUSLY IDENTIFIED BY THE**
13 **KRAUTH/HASPER PLAINTIFFS.**

14 A detailed description of the history of this litigation between January,
15 2012 and May 30, 2014 is set forth in the Opposition to Preliminary Approval.
16 (Exh. 2 at 2:12 -11:13).¹

17 Courts are increasingly sensitive to protecting the rights of absent class
18 members, to whom the court owes a duty to carefully scrutinize proposed
19 settlements to ensure that they are “fundamentally fair, adequate, and
20 reasonable.” Fed. R. of Civ. P. 23(e). *See also Hanlon v. Chrysler Corp.*, 150

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23 ¹ The *Krauth/Hasper* Plaintiffs incorporate by reference their briefs and comments
24 to the Court and Settling Parties regarding the Settlement, including the
25 *Krauth/Hasper* Plaintiffs’ January, 2014 Memo re Proposed Settlement (Dkt. 211-
26 3); *Krauth/Hasper* Plaintiffs’ Opposition to *Brady/Hunter/Espinosa* Plaintiffs’
27 Motion for Preliminary Approval (“Opposition to Preliminary Approval”) (Dkt.
28 236); *Krauth/Hasper* Plaintiffs’ Response to Settling Parties’ Supplemental Brief
in Support of Preliminary Approval of Class Settlement and Certification of
Settlement Class (Dkt. 277); *Krauth/Hasper* Plaintiffs’ Statement Re Settling
Parties’ Submission of Proposed Final Notice and Claim Documents (Dkt. 311);

1 F.3d 1011, 1026 (9th Cir. 1998) (citations omitted); *Staton v. Boeing Co.*, 327
2 F.3d 938, 952 (9th Cir. 2003).

3 There remain a number of “red flags” that render the present Settlement,
4 though improved, unfair, unreasonable, and inadequate under the Federal Rules
5 of Civil Procedure, case law and the best practices for class action settlements
6 as promulgated by recognized authorities (*See* Exh. 2 at 11:13 – 23:18).

7 The *Krauth/Hasper* Plaintiffs filed an Opposition to Preliminary
8 Approval on May 30, 2014, arguing that the Court should reject preliminary
9 approval because the class notices (post card and long form) and the claims
10 form were highly confusing, the claims process was cumbersome, and
11 unnecessary in any event. Due to the inadequacies of the notice, they
12 contended, it was likely that relatively few Class Members would be able to
13 avail themselves of the relief ostensibly provided by the Settlement. Moreover,
14 the Opposition to Preliminary Approval argued, Hyundai and Kia had
15 structured the Settlement in this manner to improperly escape accountability
16 for their misconduct, as the Settlement permitted Hyundai and Kia to keep all
17 unclaimed and expired funds (the constructive “reverter”). The Opposition to
18 Preliminary Approval also argued it was improper for Hyundai and Kia to
19 administer the Settlement.

20 To cure these defects, the *Krauth/Hasper* Plaintiffs requested that the
21 Court deny the Motion for Preliminary Approval unless Settling Parties: (1)
22 eliminated the requirement of a claim form, (2) eliminated the constructive
23 “reverter,” (3) appointed a neutral third party to administer the Settlement
24 rather than Defendants, (4) replaced the postcard notice with a letter in larger
25 font containing clear and prominent information, (5) revised the Long Form
26 Notice to contain clear, prominent, and required information, (6) required
27 Defendants to provide periodic reports on the claims rate. (Exh. 2 at 23:18 –
28 24:10). The Settling Parties made the change suggested at (4); the Court
ordered the changes suggested at (5) and (6).

1 The Court agreed with the *Krauth/Hasper* Plaintiffs that the notice and claim
2 forms and process needed improvement and after six rounds of revisions, five
3 briefs, and five hearings, the format and language of the notice and claim
4 documents was greatly improved so that Class Members would better understand
5 what they are entitled to under the Settlement and more Class Members would
6 receive notice of the Settlement.

7 Though the Court rejected the *Krauth/Hasper* Plaintiffs’ challenges to the
8 requirement of a claim form, the constructive “reverter,” and Hyundai and Kia’s
9 role as the claims administrator, the Court promised to monitor the claims process
10 and if the claims rate was low, take further action, for example to require further
11 notice, and extend the claims period accordingly.²

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16 ² See, e.g., Jun. 26, 2014 Hrg. Tr. at 60:5-11 (“if I find that there has not been a
17 significant participation [in the settlement] ... I may find a problem of fairness or a
18 problem of the settlement because of the lack of participation”); Jul. 24, 2014 Hrg.
19 Tr. at 9:5-21 (“What I am proposing is a notice, notice set dates such that,
20 obviously, we wouldn’t tell class members that we are like bifurcating the notice
21 but something that initially the notices go out, and there would be a certain period
22 of time. At the end of that period of time, we can get a percentage count of the
23 responses because in a situation of this sort, it would seem to me that everybody
24 who gets one of these notices, it is in their best interest to respond in some way,
25 shape or form because, you know, it is basically money to them. So if there is not a
26 response, it would seem to me -- and if there is a lot of nonresponses, then it seems
27 to me there may a question as to the efficacy of the notice and the efficacy of the
28 process”); Jul. 24, 2104 Tentative Ruling at 4, fn. 1 (“this Court is inclined to
require the period for class members’ responses to be set such that at the end of a
preliminary period a calculation of the percentage of eligible members who
responded could be made – so that, if the turn-out was particularly low, there could
be a secondary notification to the then non-responding class members”); Aug. 21,
2014 Hrg. Tr. at 21:18-21 (“if, in fact, that I find that the responses is not what I
consider to be up to snuff, I will extend the deadline period”).

1 **III. THE CLAIMS RATE IS LOW.**

2 **A. The Lump Sum Payment Claims Rate is Less than 20%.**

3 The principle benefit of the Settlement is the Lump Sum Payment option
4 (for purposes of discussing the claims rate, we consider the Lump Sum Payment
5 claims rate as including claims for the cash card, dealer service card and new card
6 certificate).

7 According to the claims data provided by Defendants,³ an estimated 14.1%
8 of Hyundai Class Members⁴ and 18% of Kia Class Members⁵ have filed a claim for
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12 ³ All figures discussed herein are based on the public, unredacted information in
13 the Joint Motion for Final Approval of Class Settlement (“Joint Motion”) (Dkt.
14 444) and the claim reports attached to declarations filed in support of the Joint
15 Motion. (Zielomski Decl., Exh. A; King Decl., Exh. A). Those reports contain data
16 that is current as of March 26, 2015. Defendants have provided Consumer
17 Watchdog counsel with an updated claims report that is current as of March 30,
2015. For the purpose of this filing, we refer to the publicly available data.

18 ⁴ This estimate is based on Hyundai’s data for completed and pending claims. Of
19 the 84,397 completed Hyundai claims, 61,129 chose the Lump Sum Payment
20 option. The claims rate for completed Lump Sum Payments is thus 10.7%
21 (61,129/572,278 Notices sent). We estimate that even if all the pending claims are
22 completed, this value will only reach 14.1% (72.4% of the completed claims are
for the Lump Sum Payment; 72.4% of 26,865 pending claims = 19,450; 61,129
completed Lump Sum Payment claims + 19,450 estimated pending Lump Sum
Payment claims = 80,579; 80,579/572,278 = 14.1%).

23 ⁵ This estimate is based on Kia’s data for completed and pending claims. Of the
24 55,674 completed Kia claims, 42,314 chose the Lump Sum Payment option. The
25 claims rate for completed Lump Sum Payments is thus 14.3% (42,314/295,789
26 Notices sent). We estimate that even if all the pending claims are completed, this
27 value will only reach 18% (76% of the completed claims are for the Lump Sum
28 Payment; 76% of 14,767 pending claims = 11,223; 42,314 completed Lump Sum
Payment claims + 11,223 estimated pending Lump Sum Payment claims = 53,537;
53,537/295,789 = 18%).

1 the Lump Sum Payment. Thus, an estimated 89% (733,951 of 823,067) of Class
2 Members have not submitted a claim for a Lump Sum Payment.⁶

3 **B. Participation in the Voluntary Program is Not Part of the Settlement**
4 **Claims Rate.**

5 While the *Krauth/Hasper* Plaintiffs contend that the only benefits created by
6 the Settlement are those actually created by the Settlement, Hyundai and Kia now
7 contend that for purposes of assessing the claims rate under the Settlement, those
8 customers who took advantage of the unilateral and Voluntary Program,
9 announced by Defendants on November 2, 2012 (prior to this MDL and the filing
10 of most of the related cases), should be considered to have made a claim under the
11 Settlement. In other words, Defendants argue that those affected customers who
12 enrolled in the Voluntary Program before Notice of the Settlement went out should
13 be treated as claimants under the Settlement. According to Hyundai and Kia,
14 therefore, the participation rates are a “remarkable” 63.3% (for Hyundai) and
15 50.0% (for Kia). (Joint Motion at 12:1 – 13:18, 13:15-18).

16 The Settling Parties cannot include participation in the Voluntary Program
17 as Settlement participation. *See Eubank v. Pella Corp.*, 753 F.3d 718, 725-727 (7th
18 Cir. 2014) (calling parties’ estimate of the value of a class action settlement “an
19 exaggeration” where the estimate “include[d] the value of [] warranty extensions
20 even though they were a contractual entitlement that preceded the settlement rather
21 than being conferred by it and thus were not part of the value created by the
22 settlement”).

23 The Voluntary Program not only pre-dated the Settlement, it was explicitly
24 identified by the Hagens Berman firm, counsel for the *Hunter* and *Brady* Plaintiffs,
25 as inadequate, necessitating the lawsuit they filed. (*See Brady et al. v. Hyundai*
26 *Motor America et al.*, ¶¶6-13 (C.D. Cal. Nov. 6, 2012) (Dkt. 1)). Accordingly,

27 ⁶ This number reflects the completed claims and estimated pending claims (*see* fns
28 4 and 5) for the Lump Sum Payment.

1 Class Members who enrolled in the Voluntary Program prior to Notice going out,
2 as well as Class Members who enrolled in the Voluntary Program through the
3 Settlement website (or paper claim form) for the first time, should not be
4 considered participants in the Settlement since the Settlement did not create the
5 benefit they are presently receiving. Indeed while the Lump Sum Payments are
6 contingent upon final approval of the Settlement, Voluntary Program payments are
7 not.

8 Moreover, the fact that Class Members can participate in the Voluntary
9 Program (even those Class Members who signed up after the original December
10 31, 2013 deadline) without releasing their rights under the Settlement is proof that
11 the Voluntary Program is distinct from the Settlement.⁷

12 Further, Hyundai and Kia’s current position conflicts with statements they
13 have previously made.⁸ And while the Settling Plaintiffs are also sponsoring the
14

15 ⁷ Class Members who were registered for the Voluntary Program prior to Notice
16 going out are told that if they do nothing they will remain in the Voluntary
17 Program. (*See, e.g.*, FAQ, <https://www.hyundaimpgclassSettlement.com/faq> (last
18 visited Apr. 24, 2015) (“If you are already participating in the Lifetime
19 Reimbursement Program, you do not need to take any further action to remain in
20 the program”). And Class Members had the opportunity to opt out of the
21 Settlement by March 5, 2015 – without releasing their rights – and still remain in
22 or register for the Voluntary Program. (*See* Dkt. No 342-1 at 3 (“If you are already
23 enrolled in or register for the Lifetime Reimbursement Program by June 5, 2015,
24 you will be able to remain in the program and continue to receive its benefits even
25 if you excluded yourself from the Settlement”); FAQ,
<https://www.hyundaimpgclassSettlement.com/faq> (last visited Apr. 24, 2015) (“If
26 you do exclude yourself, you can keep any reimbursement you already received
27 and you may continue receiving reimbursements pursuant to the Lifetime
28 Reimbursement Program in the future, but you will not have the right to share in
the benefits offered in the Settlement”).

⁸ *See* Opposition to *Espinosa* Plaintiffs’ Motion for Fees, Expenses and Incentive
Awards at 1:13-18 (“In addition to overstating their influence on the Settlement,
the *Espinosa* plaintiffs mischaracterize the value of the Settlement traceable to the
litigation. Although benefits available to Class Members approach \$400 million,

1 Motion for Final Approval, in a filing made concurrently with the Joint Motion,
2 Settling Plaintiffs do not include Voluntary Program participation prior to
3 December 31, 2013 in their assessment of the Settlement.⁹

4 Even if Class Members who enrolled in the Voluntary Program after they
5 received the Settlement Notice are included in the Settlement claims rate, the result
6 is still that less than one in five Class Members are receiving compensation from
7 claims submitted through the Settlement process. (For example, including the
8 estimated 3,318 Hyundai and 3,478 Kia post-Notice enrollments in the Voluntary
9 Program would increase the overall claims rate by less than 2%.)¹⁰

10 **C. Under these Circumstances, a Claims Rate of Less than 20% is Low.**

11 Settling Parties argue that the claims rate is high here, even without
12 bootstrapping participation in the Voluntary Program prior to December 31, 2013
13 to the Settlement. They claim that a response rate of less than 20% “shows strong
14 support for the Settlement” since “[c]ase law and academic literature acknowledge
15 that response rates in class actions are often low[.]” (Joint Motion at 12:17 – 20;
16 Mullenix Decl., ¶28 (“Based on publicly available information relating to
17 participation in claims-made settlements, the claim response of 18.3% for the

18 the bulk of that figure emanates from the voluntary reimbursement program
19 Hyundai and Kia announced two months before the *Espinosa* plaintiffs participated
20 in the first Settlement mediation. The Settlement provides a modest supplement to
21 this value”) (Dkt. 398).

22 ⁹ Settling Plaintiffs’ “valuation accounts for lump-sum payments actually claimed
23 by class members, new car rebates and service credits actually claimed by class
24 members, and first claims under the Lifetime Reimbursement Program that
25 resulted from the extension of the program deadline [post-December 31, 2013].”
26 Separate Memorandum of Settling Plaintiffs in Support of Final Approval at 4:3-10
27 (Dkt. 441). Settling Plaintiffs state, “The two [Hyundai and Kia] valuations total
28 \$97 million.” *Id.* at 5:7; *see also id.* at 4:18-22 (redacted material), 5:4-7 (redacted
material).

¹⁰ This estimate is based on Hyundai’s and Kia’s data for completed and pending
claims.

1 Hyundai class and 22.1% for the Kia class currently is well within an expected
2 range of claims participation for such settlements”).

3 By any standard, and certainly judged by the goal of class actions (to
4 compensate all class members) and the best practices articulated by commentators,
5 that less than one in five Class Members are getting the benefit of the Settlement,
6 and Defendants are paying out less than 20% of the \$392 million value that they
7 originally assigned to this Settlement on December 23, 2013, is inadequate. (*See*,
8 *e.g.*, Dkt. 185-2 at 121-127).

9 That class action participation rates are typically low – or that there are few
10 opt-outs -- does not support the Settling Parties’ conclusion that Class Members
11 strongly support this Settlement. *See Eubank v. Pella Corp.*, 753 F.3d at 728
12 (“Virtually no one who receives notice that he is a member of a class in a class
13 action suit opts out. He doesn’t know what he could do as an opt-out. He’s unlikely
14 to hire a lawyer to litigate ... a low opt-out rate is no evidence that a class action
15 settlement was ‘fair’ to the members of the class”). Regardless of whether claims
16 rates in class actions are historically low, the Court should ensure Class Members’
17 interests are not being compromised by the structure of the Settlement and that
18 their participation in its benefits are maximized.

19 **IV. AN ESTIMATED 300,000 CLASS MEMBERS ARE NOT**
20 **RECEIVING A BENEFIT OF ANY KIND EITHER UNDER THE**
21 **SETTLEMENT OR THE VOLUNTARY PROGRAM.**

22 For purposes of a global assessment of compensation to Class Members
23 either through the Settlement or the pre-existing Voluntary Program, combining
24 the number of individuals filing claims for Settlement benefits and those
25 participating in the Voluntary Program reveals that an estimated 301,546 Class
26 Members did not receive any benefit whatsoever (as of March 26, 2015).¹¹ That

27 _____
28 ¹¹ Hyundai: An estimated 189,344 (33%) of Hyundai Class Members are not
receiving any compensation. 21,190 (25.1%) of completed Hyundai claims were

1 constitutes nearly one-third of the Class. This is particularly problematic for a case
2 in which Defendants have conceded liability and paid the largest Clean Air Act
3 fine in United States history for what EPA Administrator Ms. Gina McCarthy said
4 was “by far the most egregious case” of any mileage misstatement. David
5 Shepardson, *Hyundai, Kia Agree to \$360M MPG Settlement*, *Detroit News*, Detroit
6 News (Nov. 3, 2014),
7 [http://www.detroitnews.com/story/business/autos/foreign/2014/11/03/hyundai-kia-](http://www.detroitnews.com/story/business/autos/foreign/2014/11/03/hyundai-kia-agree-million-mpg-settlement/18404545/)
8 [agree-million-mpg-settlement/18404545/](http://www.detroitnews.com/story/business/autos/foreign/2014/11/03/hyundai-kia-agree-million-mpg-settlement/18404545/); see Press Release, EPA, United States
9 Reaches Settlement with Hyundai and Kia in Historic Greenhouse Gas
10 Enforcement Case (Nov. 3, 2014),
11 [http://yosemite.epa.gov/opa/admpress.nsf/596e17d7cac720848525781f0043629e/1](http://yosemite.epa.gov/opa/admpress.nsf/596e17d7cac720848525781f0043629e/15519081bf4002285257d8500477615)
12 [5519081bf4002285257d8500477615](http://yosemite.epa.gov/opa/admpress.nsf/596e17d7cac720848525781f0043629e/15519081bf4002285257d8500477615).

13 **V. MEASURES MUST BE TAKEN TO INCREASE THE CLAIMS**
14 **RATE.**

15 The *Krauth/Hasper/Bird* Plaintiffs propose the following methods by which
16 the Settling Parties can increase the claims rate.¹²

17 submitted by “new” claimants and an estimated 6,743 of the pending claims are
18 from “new” claimants; 355,001 were enrolled in the Voluntary Program prior to
19 the Notice going out. Thus, an estimated 189,344 Hyundai Class Members are not
20 receiving compensation. (See Zielomski Decl., Exh. A). Kia: An estimated 112,202
21 (37.9%) of Kia Class Members are not receiving any compensation. 23,583
22 (42.4%) of completed Kia claims were submitted by “new” claimants and an
23 estimated 6,261 of the pending claims are from “new” claimants; 153,743 were
24 enrolled in the Voluntary Program prior to Notice going out. Thus, an estimated
25 112,202 are not receiving compensation. (See King Decl., Exh. A).

26 ¹² The Court has not yet ruled on the application for attorneys’ fees it ordered the
27 *Krauth/Hasper* Plaintiffs to submit. In all Court filings, oral comments to the
28 Court, and communications with Settling Parties related to the fee application, the
Krauth/Hasper Plaintiffs have been clear that they intended to continue to seek
improvements to the Settlement in if Class Member participation rates turned out
to be low. (*Krauth/Hasper* Plaintiffs’ Motion for Payment of Attorneys’ Fees,
Reimbursement of Expenses and Compensation to Named Plaintiffs (“Fee
Motion”) at 3:10-16 (Dkt. 371); Declaration of Laura Antonini in Support of Fee

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A. Defendants Should Automatically Send Checks to Class Members who Have Not Submitted a Claim.

At this point in the process, maximizing the Class’s receipt of the Lump Sum Payment – the principal benefit of the Settlement – is critical. *See In re Baby Products Antitrust Litig.*, 708 F.3d 163, 174 (3d Cir. 2013) (court opines that “it could condition approval of a settlement on the inclusion of a mechanism for additional payouts to individual class members if the number of claimants turns out to be insufficient to deplete a significant portion of the total settlement fund”).

The low participation rate in this Settlement can and should be addressed with one simple fix: automatically send the Lump Sum Payment to the approximately 300,000 Class Members who are not getting any compensation through the Voluntary Program or the Settlement in the amount of the applicable Lump Sum Payment. The Settling Parties’ justification for the claims-made nature of this Settlement has been that Class Members need the claim form in order to identify which compensation option they want under the Settlement. Once the claims deadline of July 6, 2015 passes, Class Members will no longer have *any* options. Thus, there is no reason these Class Members should not be automatically sent the Lump Sum Compensation to which they are entitled.

A review of the claims rate for the additional “4x40” compensation submitted by Hyundai’s “4x40” Class Members highlights the need for further remedial measures here. Under the Settlement, “4x40” Class Members who register for or remain in the Voluntary Program must submit a claim to get the

Motion at ¶¶20, 22, 106; *Krauth/Hasper* Plaintiffs’ Reply in Support of Fee Motion (“Reply in Support of Fee Motion”) at 22:15 – 23:6 (Dkt. 420); Declaration of Laura Antonini in Support of Reply in Support of Fee Motion at ¶¶19-20 (Dkt. 420-1)); *see also* Corrected Supplemental Memorandum of Points and Authorities in Support of *Krauth/Hasper* Plaintiffs’ Motion for Payment of Attorneys’ Fees and Reimbursement of Expenses (Dkt. 461-1); Corrected Supplemental Declaration of Laura Antonini in Support of Fee Motion (Dkt. 461-2).

1 additional compensation. The extent to which “4x40” Class Members who were
2 previously enrolled in the Voluntary Program prior to Notice going out and who
3 did not file a claim for the additional “4x40” compensation strongly suggests that
4 the Notice failed to properly apprise them of their rights.¹³ Thus, Defendants
5 should also automatically send the “4 x 40” compensation to Class Members who
6 were already enrolled in the Voluntary Program but who did not submit a claim in
7 response to the Settlement Notice, in the amount to which they are entitled.

8 As stated in prior briefing, under the particular circumstances of this case, in
9 which Defendants (1) have conceded uniform liability, (2) can identify Class
10 Members from their records, and (3) have information to ascertain the Lump Sum
11 Payment owed to each individual Class Member, there is *no reason* to deprive
12 these Class Members of the Settlement benefits.

13 This process would ensure that a maximum number of Class Members get
14 the compensation to which they are entitled by virtue of this Settlement.
15 “Whenever there is an option available to distribute fairly a class recovery without
16 requiring a proof of claim by class members as a precondition to sharing in that
17 recovery, the automatic distribution of the class recovery to eligible class members
18 is the preferable option and is more consistent with the objectives of the class
19 action rule.” Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 8:35, at
20 272 n.3 (4th ed. 2002); *see* Federal Judicial Center, *Judges’ Class Action Notice*

21
22 ¹³ Based on the data provided by Defendants, an estimated 75% of Hyundai Class
23 Members have “4x40” claims. (*See* Zielomski Decl., Exh. A). Thus, an estimated
24 266,251 of the 355,001 Hyundai Class Members enrolled in the Voluntary
25 Program prior to Notice going out are entitled to the additional “4x40”
26 compensation. Of the 355,001 Hyundai Class Members who enrolled in the
27 Voluntary Program prior to Notice going out, only 63,207 have submitted
28 (completed) claims. (Zielomski Decl., Exh. A). It is highly unlikely that the
approximately 200,000 remaining eligible Class Members from this group
understood they were entitled to the additional “4x40” compensation.

1 and Claims Process Checklist and Plain Language Guide at 6 (2010) (“In too many
2 cases, the parties may negotiate a claims process which serves as a choke on the
3 total amount paid to class members”).

4 **B. Alternatively, Defendants Should Send Supplemental Notice to Class**
5 **Members.**

6 Alternatively, participation will undoubtedly increase if Defendants
7 supplement the existing Notice that has already gone out with a reminder letter sent
8 via US mail, and by email, to the Class Members who have not submitted a claim
9 through the Settlement website. If supplemental notice is sent out, the claims
10 deadline of July 6, 2015 would need to be extended by approximately three months
11 to October 6, 2015, in order for people to have enough time to receive, review and
12 respond to the notice. The Court has previously stated it would require
13 supplemental notice under the circumstances presented here. (*See* fn. 2).

14 **VI. CONCLUSION.**

15 Absent any further voluntary actions by the Defendants to increase
16 participation in the Settlement, the *Krauth/Hasper/Bird* Plaintiffs ask the Court to
17 intervene as it has in the past. For the reasons set forth above and in the
18 *Krauth/Hasper/Bird* Plaintiffs’ prior briefing and comments (attached hereto as
19 Exhibits 1 through 7), the *Krauth/Hasper/Bird* Plaintiffs respectfully request the
20 Court continue any ruling on the Joint Motion for Final Approval until the
21 participation rate in the Settlement has increased.

22
23 Respectfully submitted,

24 Dated: April 27, 2015

CONSUMER WATCHDOG

25 By: /s/ Laura Antonini

26 Laura Antonini

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Bird Plaintiffs*

EXHIBIT 1



MEMORANDUM

TO: Liaison Counsel
CC: Non-settling Plaintiffs' Counsel
FROM: Counsel for *Krauth* and *Hasper* Plaintiffs
DATE: January 22, 2014
RE: *In Re: Hyundai and Kia Fuel Economy Litigation*, MDL 13-2424-GW (FFMx)

As requested by the Court on January 9, 2014, this memo lists the cases filed by Consumer Watchdog, Cuneo Gilbert & LaDuca, LLP, Cotchett Pitre & McCarthy, LLP, and Dreyer Babich Buccola Wood Campora, LLP against Hyundai/Kia for their misrepresentations regarding fuel economy and violation of advertising requirements, and sets forth our clients' position regarding the Proposed Settlement Agreement ("Proposed Settlement") filed in the MDL on December 23, 2013.

I. CASES FILED BY PLAINTIFFS' COUNSEL: *BIRD*, *KRAUTH*, *HASPER*

A. *Louis Bird v. Hyundai Motor America*, Sacramento Superior Court Case No. 34-2012-00127249

- Filed on July 2, 2012; First Amended Complaint filed November 27, 2012
- *Bird* is not included in this MDL
- Class definition: "All California residents who purchased or leased a new Hyundai Elantra for model years 2011, 2012 and 2013." (First Amended Complaint, ¶39.)
- Causes of action:
 1. Consumers Legal Remedies Act, Cal. Civil Code section 1770, subdivisions (a)(9), (a)(7), (a)(16), and (a)(5)
 2. Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (including violations of Federal Trade Commission regulations 16 C.F.R. §§ 259.2(a)(1)-(2))
 3. False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq.

B. *Gunther Krauth v. Hyundai Motor America*, C.D. Cal. Case No. 8:12-cv-01935-GW-FFM

- Filed on November 6, 2012
 - *Krauth* petitioned for, and is included within, this MDL
 - Class definition: "All persons residing in the United States who purchased or leased a new Hyundai Elantra for model years 2011 – 2013. Expressly excluded from the Class are Defendant and their subsidiaries, affiliates, officers, directors, and employees. ('Class')." (Complaint, ¶36.)
 - Causes of action:
 1. Consumers Legal Remedies Act, Cal. Civil Code section 1770, subdivisions (a)(9), (a)(7), (a)(16), and (a)(5)
 2. Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.
-

(including violations of Federal Trade Commission regulations 16 C.F.R. §§ 259.2(a)(1)-(2))

3. False Advertising Law; Cal. Bus. & Prof. Code § 17500 et seq.
4. Unjust Enrichment

**C. *Linda Hasper et al. v. Hyundai Motor America and Kia Motors America*,
C.D. Cal. Case No. 8:13-cv-00220-GW-FFM**

- Filed on February 7, 2013
- *Hasper* is included in this MDL
- Class definition: “All persons residing in the United States who purchased or leased a new Class Vehicle. Expressly excluded from the Class are Defendant and their subsidiaries, affiliates, officers, directors, and employees (‘Class’).” (Complaint, ¶70.)
- State Sub-Class definitions (Complaint, ¶71):
 - California Sub-Class: “All current and former owners of Class Vehicles who reside in the State of California and/or who purchased or leased Class Vehicles in California. Expressly excluded from the Class are Defendant and their subsidiaries, affiliates, officers, directors, and employees[.]”
 - Florida Sub-Class: “All current and former owners of Class Vehicles who reside in the State of Florida and/or who purchased or leased a Class Vehicle in Florida. Expressly excluded from the Class are Defendant and their subsidiaries, affiliates, officers, directors, and employees[.]”
 - Illinois Sub-Class: “All current and former owners of Class Vehicles who reside in the State of Illinois and/or who purchased or leased a Class Vehicle in Illinois. Expressly excluded from the Class are Defendant and their subsidiaries, affiliates, officers, directors, and employees[.]”
 - Connecticut Sub-Class: “All current and former owners of Class Vehicles who reside in the State of Connecticut and/or who purchased or leased a Class Vehicle in Connecticut. Expressly excluded from the Class are Defendant and their subsidiaries, affiliates, officers, directors, and employees[.]”
 - Texas Sub-Class: “All current and former owners of Class Vehicles who reside in the State of Texas and/or who purchased or leased a Class Vehicle in Texas. Expressly excluded from the Class are Defendant and their subsidiaries, affiliates, officers, directors, and employees[.]”
 - Indiana Sub-Class: “All current and former owners of Class Vehicles who reside in the State of Indiana and/or who purchased or leased a Class Vehicle in Indiana. Expressly excluded from the Class are Defendant and their subsidiaries, affiliates, officers, directors, and employees[.]”
 - Arizona Sub-Class: “All current and former owners of Class Vehicles who reside in the State of Arizona and/or who purchased or leased a Class Vehicle in Arizona. Expressly excluded from the Class are Defendant and their subsidiaries, affiliates, officers, directors, and employees[.]”
- Causes of action:
 1. Consumers Legal Remedies Act, Cal. Civil Code section 1770, subdivisions (a)(9), (a)(7), (a)(16), and (a)(5)

2. Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (including violations of Federal Trade Commission regulations 16 C.F.R. §§ 259.2(a)(1)-(2))
3. False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq.
4. Unjust Enrichment
5. Florida Deceptive and Unfair Practices Act, Florida Statute § 501.201, et seq.
6. Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/2
7. Connecticut Unfair Trade Practices Act Conn. Gen Stat. § 42-110b
8. Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code § 17.41, et seq.
9. Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1(b)
10. Arizona Consumer Fraud Act, A.R.S. § 44-1522(A)
11. Fraud
12. Negligent Misrepresentation

II. KRAUTH & HASPER PLAINTIFFS' POSITION REGARDING THE PROPOSED SETTLEMENT.

Summary: After careful preliminary analysis, the Plaintiffs represented by the Consumer Watchdog team of firms have identified serious flaws in the Proposed Settlement. It is our clients' view that the Proposed Settlement is inadequate and unfair for the following three reasons:

(1) Claims process: The claims process, which entails an eleven-page notice and a five-page, nine-step claim form, is extremely convoluted, onerous – and ultimately, completely unnecessary. It does not accurately inform Class Members of how to exercise their options under the Proposed Settlement. As proposed, the claims process will discourage and prevent Class Members from obtaining the compensation to which they are entitled.

(2) Compensation: The formula and values behind the proposed lump-sum compensation are not the same as those provided during confirmatory discovery; therefore, it is impossible to assess the basis for the Proposed Settlement. As presently structured, compensation appears to be based on arbitrary distinctions that discriminate against various members of the Class, particularly those who keep their cars for the full ownership term promoted by Defendants. Further, the proposed compensation appears likely to be *less* advantageous than the “Voluntary Reimbursement Program” initiated by Defendants for many members of the Class.

Moreover, the compensation is insufficient because it does not compensate consumers for the diminished value of their vehicles. Nor does it take into account the substantial additional compensation available in some states to victims of intentional wrongdoing.

(3) Defendants keep all unclaimed and expired compensation: When a convoluted claims process is coupled with a provision permitting Defendants to retain unclaimed monies as

proposed here, it is *inevitable* that Defendants will never be required to pay a large portion of the compensation that is owed to the Class.

For these reasons, the Proposed Settlement does not comport with the legal requirement that it be “fair, adequate and reasonable,” and *Krauth* and *Hasper* intend to oppose the Proposed Settlement as currently drafted.

However, it is their counsel’s belief that, with the active assistance and encouragement of the Court, modifications can be made that will address the proposal’s flaws, hopefully rendering formal opposition unnecessary.

The following is a more detailed preliminary discussion.

A. The Claims Process is Convolutd, Onerous and Unnecessary; It Will Preclude and Discourage Class Members from Obtaining Compensation.

The Proposed Settlement would require Class Members to read through an eleven-page notice, then fill out a five-page, nine-step claim form. The forms are convoluted, repetitive, prolix, and yet despite the extensive verbiage, omit information that Class Members must have in order to make an intelligible decision as to how they wish to proceed. Our concern is that the greater the obstacles, the fewer Class Members will participate. Those that do may nevertheless be disqualified for failure to adhere to each of the onerous requirements.

Ultimately, it is our view that *no claim form is necessary*.

However, should the Court determine otherwise, the deficiencies in these documents must be ameliorated.

1. The Claim Form is Unnecessary.

(a) Defendants have the information to issue payments automatically.

Both Hyundai and Kia have Class Member information that would allow claims to be paid automatically: Defendants have extensive contact and vehicle information for all new or used car purchasers through their dealers. Further, Defendants presumably have updated records of valid postal and email addresses for the approximately 69% of Class Members who registered for the Voluntary Reimbursement Program between November 2, 2012 and December 15, 2013, since the consumers were required to provide their mailing addresses to Defendants in order to register. Finally, Defendants have also agreed to directly send the Notice and Claim Form “by first-class mail to every Class Member who is reasonably ascertainable from an available R.L. Polk (or a similar database).” Proposed Settlement, §§ 4.1, 11.1. The same database can be used to query for those who have moved. The Proposed Settlement does not rely upon or require any individualized information not already in Defendants’ possession, or readily ascertainable from available sources.

- (b) Compensation can be sent to Class Members without a Claim Form.

Defendants have the ability to send Class Members compensation without requiring them to fill out and submit a Claim Form. Defendants can directly send Class Members one payment card that Class Members can either use as cash, a Dealer Service Debit Card, or a New Car Rebate Card.

- (c) Those “4 x 40” Class Members entitled to additional compensation should also not be required to fill out a Claim Form.

Current original and former owners of affected Hyundai Elantra, Accent, Velostar and Sonata Hybrid models “who remain[] in the Reimbursement Program may elect to receive” a separate payment of \$100. Proposed Settlement, § 3.1.8; Addendum to Settlement Agreement. Current lessees and current fleet owners of these vehicles are entitled to a payment of \$50. *Ibid.* Class Members can choose between: a cash debit card, a Dealer Service Debit Card worth 150% of the “4 x 40” payment, or a New Car Rebate Card worth 200% of the “4 x 40” payment. *Ibid.*; Ex. D at 4.

Defendants have the information and ability to send “4 x 40” Class Members compensation without requiring them to fill out and submit a Claim Form. Defendants have the information to issue payments automatically since Class Members must be registered for the Voluntary Program to be entitled to the “4 x 40” payment. Also, Defendants can directly send Class Members one payment card that Class Members can either use as cash, a Dealer Service Debit Card, or a New Car Rebate Card.

2. Claim Form Deficiencies.

A Claim Form is not necessary here. However, if the Court does require a claim form, the proposed Claim Form attached to the Proposed Settlement as Exhibit G is insufficient for the reasons set forth below.

- (a) The Claim Form is onerous and contains unnecessary steps.

The following features of the Claim Form are unnecessary because they require Class Members to provide information that Defendants either already have in their possession, or do not need in order to process a claim:

- The Proposed Settlement requires Class Members to write their name and VIN on all five pages of the Claim Form. Proposed Settlement, Ex. D at 5. This is onerous, unnecessary and unfair because Defendants have this information, it does not need to be on every page, there is no line on each page allocated to the information, and the Claim Form itself asks for it in a separate step (Step 10).
- Class Members must identify the make and model of their vehicle on a two-page long checklist of 76 different vehicles (Step 1). Proposed Settlement, Ex. D at 1-2. This is

unnecessary because Defendants have this information and in any event the VIN entry in Step 10 would enable Defendants to identify the exact year, make and model of the vehicle.

- Class Members must elect whether they want to receive a lump-sum payment or remain in the Voluntary Reimbursement Program (Step 7). If the Court requires a claim form, this step should be eliminated. Class Members electing to remain in the Voluntary Reimbursement Program should not be required to submit a Claim Form or take additional actions beyond what is required for their participation in the Voluntary Reimbursement Program.
- Class Members must indicate whether they want to receive compensation on a Debit Card, Dealer Service Debit Card, and New Card Rebate Card (Step 8). This step should be eliminated for the reasons set forth above in §II.A.1. Defendants can directly send Class Members one payment card that Class Members can either use as cash, a Dealer Service Debit Card, or a New Car Rebate Card.
- Those “4 x 40” Class Members who are entitled to additional compensation must separately indicate whether they want to receive payment on a Debit Card, Dealer Service Debit Card, and New Card Rebate Card (Step 9). This step should be eliminated for the reasons set forth above in §II.A.1. Defendants can directly send “4 x 40” Class Members one payment card that Class Members can either use as cash, a Dealer Service Debit Card, or a New Car Rebate Card.
- The Claim Form requires Class Members to provide a copy of the purchase contract in addition to the registration certificate (Step 11). Imposing this paperwork burden on Class Members is onerous and unnecessary. The Notice can ask recipients to check that the preprinted vehicular and ownership information are correct before utilizing the card.

(b) The Claim Form does not provide clear and prominent information.

The Claim Form presents the compensation options in confusing language and in a way that minimizes relevant information. For example:

- The Claim Form directs current owners and lessees to “[d]etermine the maximum cash value of your Settlement Benefits” (Step 4) by referencing the lump-sum payment chart. The underlined phrase “maximum cash value” inaccurately implies that the amount determined under this step (Step 4) is the total amount a Class Member is entitled to under the Proposed Settlement. Hidden in a paragraph two steps down the page (Step 6) is the information that payments Class Members have already received under the Voluntary Reimbursement Program will be deducted from this “maximum cash value” amount.

- The Claim Form (Step 6) (and the Notice, p. 8) direct Class Members to “enclose a check to repay the money you received under the” Voluntary Reimbursement Program if Class Members want to increase the amount of the Dealer Service Debit Card or New Car Rebate Certificate. The vague language and obscure placement of this provision make it unclear and could result in Class Members paying Defendants for something they did not actually want to receive.
- The Claim Form (and the Notice) do not explain how Class Members who have received payments under the Voluntary Reimbursement Program can find out the amount of those past payments. Most Class Members have received payments under the Voluntary Reimbursement Program. Unless these Class Members maintained their own records, they have no way of knowing (and no way of knowing how to find out) the amount they would receive under the lump-sum payment option. Obviously, this information is highly relevant in deciding the right compensation option and making an informed decision as to whether to remain in the Class. This information could easily be pre-printed on the Claim Form.
- The Claim Form (and the Notice) are highly opaque about how the lump-sum payment is calculated. It is not possible for a Class Member to determine how the lump-sum payment amounts compare to the amounts available under the Voluntary Reimbursement Program.

(c) The Claim Form prevents affected consumers who purchased vehicles after November 2, 2012 from submitting claims.

Only consumers who purchased or leased their vehicle prior to November 2, 2012 may submit a Claim Form (Step 2) and receive benefits under the Proposed Settlement.

The November 2, 2012 time limitation precludes otherwise valid claims from consumers who purchased vehicles after November 2, 2012 based on incorrect Monroney Labels that had not been replaced by the dealers following the mileage restatement. Documents produced in discovery show that incorrect Monroney Labels continued to be affixed to vehicles after November 2, 2012.¹

(d) Procedures for online Claim Form submission should be established.

Claims can be paid to Class Members without requiring a Claim Form. However, if the Court does require a claim form, an online submission option should be utilized to streamline the submission of claims.

¹ Laura Gill, named plaintiff in the *Hasper* action, purchased her vehicle on November 3, 2012 based on inaccurate Monroney Labels that had not been replaced by the dealer. Gill would not be entitled to submit a claim under the Proposed Settlement.

3. Notice Deficiencies.

- (a) The Notice is unclear as to the actions Class Members must take to exercise their options under the Proposed Settlement.

The table of “Your Legal Rights and Options in This Settlement” (Proposed Settlement, Ex. G at 1) on the first page of the Notice does not adequately inform Class Members of the actions they must take in order to exercise their options under the Proposed Settlement. The table tells Class Members that they can: “Do Nothing”, “Exclude Yourself”, “Object”, or “Go to a Hearing”. Proposed Settlement, Ex. G at 1.

The option in the table to “Do Nothing” states, “To participate in the lump-sum payment program, ***do nothing now and if the settlement is approved, fill out a one-time claim form to receive benefit.***” Proposed Settlement, Ex. G at 1, emphasis added. This language is misleading because it implies that Class Members should “do nothing” upon receipt and review of the Notice and wait until they are informed that the settlement has been approved before filling out and submitting a Claim Form. The Claim Form will be enclosed with the Notice. Proposed Settlement, § 4.1. If a Class Member does nothing upon receipt and review of the Notice and Claim Form, the Class Member will receive nothing under the Proposed Settlement. In order “to participate in the lump-sum payment program,” a Class Member definitely must do something: submit a Claim Form within nine months of the last date permitted by the District Court for mailing of the Class Notice. Proposed Settlement, § 4.2.

The table on the first page of the Notice should inform Class Members that if they “Do Nothing” they will “Get no lump-sum payment” under the Proposed Settlement and “Give up rights.” Additionally, the table should include a separate row explaining that Class Members must “Submit a Claim Form” in order to receive compensation under the Proposed Settlement.

Similarly, under the headings “If You Do Nothing” and “What happens if I do nothing at all?” the Notice states, “If you do nothing at this time, you will remain in the Class and be eligible for the benefits offered by the Settlement ***as long as you have submitted a timely and valid claim form***, assuming that it is approved by the Court.” Proposed Settlement, Ex. G at 12, emphasis added. This language is unclear because it does not explain what happens if Class Members “do nothing at all”: they will not receive any benefits under the Proposed Settlement.

- (b) The Notice contains inconsistent information regarding fuel price used in the Voluntary Reimbursement Program calculation.

The Notice is inconsistent with Defendants’ websites regarding the average fuel price used in the Voluntary Reimbursement Program calculations. The Notice states that the Voluntary Reimbursement Program calculation uses “the 2012 average fuel price for the area in which the owner lives, based on U.S. Energy Information Association data.” Proposed Settlement, Ex. G at 5. Kia’s Reimbursement Program website states: “Fuel price reimbursement rates will be updated monthly based upon a rolling 12-month average.” Kia,

FAQ, <https://kiampginfo.com/faq#program> (last visited Jan. 14, 2014). Hyundai's Reimbursement Program website states: "the most recent average gas price in your area." Hyundai, Compensation, <https://hyundaimpginfo.com/overview/compensation> (last visited Jan. 14, 2014).

- (c) Class Members should only be required to mail opt-out letters to one address.

The Notice directs Class Members who want to exclude themselves from the Proposed Settlement to mail a letter of their desire to opt-out to *both* counsel for Settling Plaintiffs and Defendants. Proposed Settlement, Ex. G at 9-10. Requiring Class Members to mail a letter to two separate addresses creates an unnecessary hurdle to opting out. The Notice should provide one address to send opt-out letters to, typically a neutral settlement administrator. Alternatively, a simple and clear form for opting out could be included with the Notice and Claim Form. There should also be a process to opt out on line.

4. Miscellaneous Notice Issues.

- (a) Inaccurate information in the Notice.

The Notice leaves the impression that it is an official document of the Court because the case caption appears on the first page. The case caption should be deleted. Similarly, the statement that "The Court has asked lawyers from the law firms of Hagens Berman Sobol Shapiro and McCune Wright LLP to represent you and the Class" (Notice, p. 10, Question 16) is incorrect. These firms have presented themselves to the Court and asked to be appointed lead counsel, not vice versa.

- (b) Information sources for Class Members.

The Notice should be modified to prominently display at the bottom of each page a phone number, e-mail address, or website where the class can obtain answers to questions.

- (c) Website and toll-free service number.

Defendants "shall each establish and maintain a website dedicated to the settlement [] and a toll-free service number that Class Members may call." Proposed Settlement, § 11.2.

This is another responsibility that is properly accorded to an independent settlement administrator.

- (d) "Dealer Flyers" are ineffective.

Defendants will "request, in good faith, that their authorized dealers assist Settlement Class Members who visit the dealer for the purpose of requesting a mileage check pursuant to the Voluntary Reimbursement Program, by providing such Settlement Class Members who have not submitted a Claim Form with a flyer substantially in the form of Exhibit E."

Proposed Settlement, § 6.2, Ex. E. The Proposed Settlement states that Defendants have no “authority to direct any authorized Hyundai or Kia dealer to” distribute the flyers. *Id.*, § 6.1.

Without an incentive or a firm order to follow this procedure, dealers are unlikely to distribute the flyers. Also, it is unclear how (and unlikely that) dealers will know whether a customer has submitted a Claim Form for compensation under the Proposed Settlement. The proposed flyer will not effectively reach Class Members.²

Additionally, the flyer is vague and confusing. The term “one-time lump sum benefit” is unclear. It is unclear that the phrase “less amounts already received” refers to amounts received *under the Reimbursement Program*. The flyer does not inform Class Members that this “one-time lump sum benefit” automatically terminates their right to continued participation in the Voluntary Reimbursement Program. The wording is so vague that it would be more effective to generally inform Class Members that different compensation options are available as a result of a class action settlement agreement and direct them to the website and toll-free number for more information.

(e) Notice via first-class mail.

Settling parties have not provided the following information regarding the Notice: the percentage of Class Members to receive individual notice via first-class mail; a plan to update outdated addresses before mailing has been established; a plan to re-mail notices that are returned as undeliverable has been established.

(f) Additional methods to supplement the Notice.

The Proposed Settlement does not provide for email notice. Defendants have email addresses for the approximately 69% of Class Members who registered for the Voluntary Reimbursement Program between November 2, 2012 and December 15, 2013. Supplementing the written notice with an email notice would effectively reach a greater percentage of Class Members.

5. Defendants as Settlement Administrators.

The Proposed Settlement contains no provision for an independent settlement administrator. Under the Proposed Settlement, Defendants will fulfill that role, mailing the Notice and the Claim Form, process claims, and provide Class Members with their compensation. Proposed Settlement, § 4.1, 11.1, 4.3.

Defendants have a pecuniary interest in discouraging people from participating in the Proposed Settlement. Thus they have a conflict with the interests of the Class in full compensation. A third party claims administration company should be utilized.

² Settling Plaintiffs’ attempt to characterize the Flyer as a “non-monetary benefit[] provided to the Class by the proposed Settlement” is without merit. Motion for Preliminary Approval at 29:6-7.

B. Compensation.

The Proposed Settlement offers to provide certain Class Members with a lump-sum payment as purported compensation for the *additional cost of fuel* they have incurred, and will incur, as a result of the fuel economy misrepresentations. There are significant discrepancies between the information Settling parties provided during the course of the litigation and the Motion for Preliminary Approval as to the calculation of the additional fuel cost. Moreover, no compensation is made available for the diminution in value of the vehicles, nor is any compensation provided to redress the intentional misconduct.

1. Errors or Flaws in Calculation of Additional Fuel Costs.

The settling parties appear to have used the following four factors to determine a single lump-sum amount: (1) the discrepancy between the fuel economy derived from the proper EPA test versus the fuel economy derived from the false information provided by Hyundai and Kia to the EPA; (2) the number of miles driven; (3) the cost of fuel; and (4) the period of ownership of the vehicle. *See* Motion for Preliminary Approval at 30:15-19; Proposed Settlement, Ex. D at 4 (the “[l]ump-sum [payments] are calculated based upon several factors, including extra fuel cost for the average time of vehicle ownership”). However, it appears that the Proposed Settlement is *not* based on the values provided during confirmatory discovery. It is unclear what formula the settling parties ultimately used to calculate the amounts presented in the Proposed Settlement. Moreover, there are obvious errors and flaws in the application of at least one of the four factors.

(a) Calculation of Annual Mileage.

It is unclear what mileage data was used to calculate the proposed lump-sum payment amounts. Settling Plaintiffs represented during the litigation that they used the 15,000 annual mileage figure listed on the Monroney Labels of the Class vehicles to calculate how much in fuel cost compensation each Class Member would receive. *See* April 25, 2013 Hearing Transcript at 13:2-4 (“the number of miles driven by each car, we took right off the Monroney sticker”). This is inconsistent with Settling Plaintiffs’ statement that they used “the Class members’ actual mileage or their mileage in the aggregate” as part of their evaluation of damage here. Motion for Preliminary Approval at 30:17-18. However, there is no indication in the Proposed Settlement of a methodology for calculating “actual mileage”; nor is “mileage in the aggregate” defined or explained.

More information is manifestly necessary before the Proposed Settlement can be properly reviewed.

(b) Calculation of Fuel Costs.

It is unclear what fuel cost values were used to calculate the lump-sum payment amounts.

Settling Plaintiffs state that in general they utilized information that is “publicly

available from NHTSA and the Department of Transportation” and that they looked at “fuel costs by region” in calculating the compensation. Motion for Preliminary Approval at 30:17-22.

First, it is unclear how the proposed lump-sum payments, which do not vary by region, could be based on fuel costs by region. Using fuel costs by region – information that is readily available – would result in far more accurate compensation for Class Members than using a national average fuel cost.³

Second, the settling parties represented during the April 25, 2013 status conference that they used the national per-gallon *projections* of fuel prices listed on the Monroney Labels of the vehicles. (The Monroney labels present an average per-gallon dollar amount calculated by EPA “based on projections from the U.S. Energy Information Administration [“EIA”] for the applicable model year.” <https://www.fueleconomy.gov/feg/label/learn-more-gasoline-label.shtml#details-in-fine-print>.)

More information is manifestly necessary before the Proposed Settlement can be properly reviewed.

(c) Length of ownership

The calculation of this figure is essential to determining the amount of economic damage sustained by Class Members. However, there is substantial uncertainty as to how this figure will be determined and applied for compensation purposes. It appears that the Proposed Settlement substantially underestimates the average length of ownership of the vehicles – and is certainly far lower than Defendants’ public representations concerning their vehicles.

During the April 25, 2013 status conference, counsel for the Settling Plaintiffs, Rob Carey, stated that the average length of ownership component of the calculation (presumably for current original owners) was “just under five years.” *See* April 25, 2013 Hearing Transcript at 15:16. Mr. Carey went on to represent to the Court that “[i]t can be backed out mathematically.” *Id.* at 15:17.

The source of this data is apparently R.L. Polk, a widely acknowledged reliable source for vehicle data. According to a study on its website, R.L. Polk concluded that “[c]ombined, new and used vehicle owners are holding on to their vehicles for an average 57 months.” *See* https://www.polk.com/company/news/u.s._consumers_hold_on_to_new_vehicles_nearly_six_years_an_all_time_high. This equates to 4.75 years—roughly the figure apparently relied upon by settling parties in determining the lump-sum payment amounts now reflected in the

³ The Voluntary Reimbursement Program uses regional gas prices to calculate additional fuel costs. *See* Hyundai, Compensation, <https://hyundaimpginfo.com/overview/compensation> (last visited Jan. 14, 2014) (“the most recent average gas price in your area”); Kia, FAQ, <https://kiampginfo.com/faq#program> (last visited Jan. 14, 2014) (“Fuel price reimbursement rates will be updated monthly based upon a rolling 12-month average”).

Proposed Settlement. *See* April 25, 2013 Hearing Transcript at 15:16. The settling parties indicate that they will use R.L. Polk as a source for Class Member data for the purpose of mailing the Notice and Claim Form. Proposed Settlement, § 11.1.

However, 4.75 years is not appropriate as a means of calculating compensation for current original owners here: it *averages* the length of ownership of *new* and *used* vehicles. The new vehicle ownership period is 71.4 months, or 5.95 years. *See* https://www.polk.com/company/news/u.s._consumers_hold_on_to_new_vehicles_nearly_six_years_an_all_time_high. As a result, the Proposed Settlement substantially shortchanges Class Members.

In addition to current original owners, a lump-sum payment is also offered to current non-original owners, current lessees, and current fleet owners under the Proposed Settlement. It is unclear what ownership period values were used to determine the lump-sum payment amounts for current non-original owners, current lessees, and current fleet owners.

Moreover, in advertising their vehicles to the American public, Defendants have consistently focused on longevity, and the promise implicit behind the greatly emphasized “100,000 mile warranty” is that if a consumer purchased the vehicle, it would last a long time. *See* Hyundai, America’s Best Warranty, <https://www.hyundaiusa.com/assurance/america-best-warranty.aspx#1> (last visited Jan. 20, 2014); Kia, Kia Quality and Value with a 10 year or 100,000 mile Warranty, <http://www.kia.com/us/en/content/why-kia/quality/warranty> (last visited Jan. 20, 2014).

Finally, the length of ownership factor is of penultimate importance to the Class, because, assuming it is correctly understood by Class Members, it could be determinative of a Class Member’s decision whether to stay in the Voluntary Reimbursement Program initiated by Defendants in November, 2012, or to receive the lump-sum payment offered by the Proposed Settlement of this civil litigation. Unlike the Proposed Settlement, the Voluntary Reimbursement Program provides compensation for additional fuel costs for the entire time a Class Member owns or leases the vehicle.

2. Diminution in value.

The Proposed Settlement does not take into consideration the diminution in value of the vehicles caused by the restatement of fuel economy. The omission of such compensation is startling, given that it is one of the most widely recognized elements of economic loss sustained by those who purchased major products based on grave misrepresentations as to a key feature – in this case, fuel economy. For example, in the recently-settled Toyota Brake/Acceleration MDL, \$250 million was allocated to pay consumers for the diminished value of their vehicles. *See In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Products Liab. Litig.*, 2013 WL 3224585 (C.D. Cal. June 17, 2013). The Settling Firms, at least, are aware of the Toyota case – the Hagens Berman firm was one of the litigants.

3. Intentional misrepresentation.

The Proposed Settlement does not take intentional misrepresentation into account. Even with the limited information provided through the confirmatory discovery process, it is apparent that Defendants knew or should have known about the fuel economy misrepresentations long before Consumer Watchdog and many consumers first complained about them. Pursuant to the laws of multiple states, the facts here give rise to the imposition of additional compensation stemming from the intentional nature of Defendants' conduct.

C. Unclaimed and Expired Funds Kept by Defendants.

The preceding discussion regarding serious flaws in the proposed Notice and claims process must be viewed in the context of one of the most deleterious aspects of the Proposed Settlement: Hyundai and Kia get to keep any unclaimed funds. *See* Proposed Settlement, §§ 4.3, 3.2.4. Moreover, the compensation is proposed to be provided in the form of debit cards, which expire within one and three years of issue, depending on the form of compensation the Class Member elects to receive. The compensation "shall remain the property of [Defendants], unless and until it is expended by the Settlement Class Member" and, upon the expiration date, "any unexpended funds shall become the permanent property of" Defendants. Proposed Settlement, § 3.2.4. It is clear these unused funds will not be used for the benefit of the Class. It is equally clear that the more confusing and onerous the claims process, the less likely it is that Class Members will obtain the compensation they are ostensibly entitled to under the Proposed Settlement – and the more Defendants will be permitted to evade full compensation to the Class. That is why such settlements are increasingly disfavored by the courts (and consumers).

EXHIBIT 2

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18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20

21 IN RE: HYUNDAI AND KIA FUEL
22 ECONOMY LITIGATION

Case No. 2:13-ml-02424-GW-FFM

**KRAUTH/HASPER PLAINTIFFS’
OPPOSITION TO
BRADY/HUNTER/ESPINOSA
PLAINTIFFS’ MOTION FOR
PRELIMINARY APPROVAL**

23
24
25 Date: June 26, 2014
26 Time: 9:00 a.m.
27 Judge: Hon. George H. Wu
28 Courtroom: 10

TABLE OF CONTENTS

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

I. INTRODUCTION 1

II. BACKGROUND 2

 A. Genesis of the Litigation..... 2

 B. Litigation Begins..... 3

 C. The November 2, 2012 Announcement Confirms Hyundai and Kia Inflated
 MPG; They Initiate the “Voluntary Reimbursement Program.” 4

 D. In the Aftermath of the November 2 Announcement, 54 Lawsuits are Filed;
 Consumer Watchdog Team Petitions for MDL. 5

 E. A “Settlement” Is Announced on February 14, 2013. 5

 F. Confirmatory, Rather than Traditional, Discovery Ensued Without the Full
 Protection of the Federal Rules and Rule 23(g) Leadership Motions..... 6

 G. What the Limited Discovery Shows About Hyundai and Kia’s Misrepresentation
 of Their Vehicles’ Fuel Economy..... 8

 H. The December 2013 Settlement Motion and Amendments..... 10

III. THE PROPOSED SETTLEMENT IS UNFAIR, INADEQUATE AND
 UNREASONABLE..... 11

 A. The Settlement Should Not Be Approved Because Hyundai and Kia Retain
 Unclaimed and Expired Funds..... 12

 B. Hyundai and Kia Should Not Be Permitted to Administer the Settlement..... 14

 C. The Claims Process is Unnecessary..... 16

 D. The Class Notice is Inadequate..... 18

 E. The Claims Process is Onerous, Convoluted and Will Discourage Class Members
 from Obtaining Compensation..... 21

IV. CONCLUSION AND RECOMMENDATIONS 23

TABLE OF AUTHORITIES

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

Cases

Churchill Vill., LLC v. Gen. Elec., 361 F.3d 566..... 19

Dennis v. Kellogg Co. 697 F.3d 858..... 14

Fraley v. Facebook, Inc., C 11-1726 RS, 2012 WL 5838198 13

Hanlon v. Chrysler Corp., 150 F.3d 1011 11

Harris v. Vector Mktg. Corp., 2011 U.S. Dist. LEXIS 48878 at 37-38..... 13

In re Bluetooth Headset Products Liability Litigation (Bluetooth), 654 F.3d 935 12, 13, 14

In re ConAgra Peanut Butter Prods. Liab. Litig., 251 F.R.D. 689..... 21

In re General Motors Corp. Pick-Up Truck Fuel Tank (3d Cir. 1995) 55 F.3d 768, 814 8

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In re Zoran Corp. Derivative Litigation 2008 WL 941897 12

Kakani v. Oracle Corp. 2007 WL 179377..... 14

Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306 18

Nguyen v. BMW of N. Am., LLC, No. 3:10-cv-02257 (N.D. Cal. May 25, 2010) 17

Rodriguez v. W. Pub. Corp., 563 F.3d 948 19

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1 **I. INTRODUCTION**

2 American consumers purchased over 900,000 Hyundai and Kia vehicles
3 over a three-year period based on the companies’ admittedly false representations
4 about their cars’ fuel economy. The settlement presented to this Court for
5 preliminary approval last December was the product of a highly unusual process
6 and fails to provide the justice these consumers deserve from the class action
7 system. The facts and circumstances of this case – defendants that concede uniform
8 liability to the class and ongoing governmental investigations – dictate that a direct
9 payment to harmed consumers, unburdened by a claim form, is the only just result.

10 The Proposed Settlement contains numerous terms that the courts and
11 independent commentators such as the National Consumer Law Center (NCLC)
12 and the National Association of Consumer Advocates (NACA) consider “red flags”
13 that warrant rejection under the specific circumstances here:

- 14 ➤ **Unreadable and convoluted notice.** A nearly illegible postcard is the
15 sole manner in which Class Members will receive direct notice of
16 their rights under the Proposed Settlement – virtually guaranteeing
17 that most Class Members will never exercise their rights, even as they
18 will be held to have released their claims.
- 19 ➤ **Unnecessary and onerous claims process.** Class Members must
20 comply with a completely unnecessary, confusing and onerous mail
21 and online claims process that will indisputably discourage many
22 Class Members from pursuing their rights under the Proposed
23 Settlement.
- 24 ➤ **Defendants administer the settlement.** Hyundai and Kia are
25 responsible for processing Class Members’ claims against them – a
26 straightforward conflict of interest that incentivizes errors and
27 improper denials of claims by the very same companies that engaged
28 in the misrepresentations to begin with.

And the clincher:

- **Reversionary settlement.** Hyundai and Kia – the wrongdoers – get to
keep all the money that consumers do not claim or use.

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Here’s the Settling Parties’ formula for the Proposed Settlement:

Unreadable Notice +
Onerous Claims Process +
Defendants Administer Claims +
Reversionary Settlement =
Limited Compensation for Class, Windfall For Defendants

The Proposed Settlement fails the “fair, adequate and reasonable” test, especially as it has been applied – with increasing sensitivity – by courts in the Ninth Circuit and elsewhere. If approved, it would erode public confidence in a crucial device for redressing corporate wrongdoing. (By contrast, the modifications proposed in the Conclusion of this brief would transform the Proposed Settlement from an illusory one to one that truly provides benefits to all Class Members.) Therefore, we respectfully urge the Court to reject the Proposed Settlement.

II. BACKGROUND

A. Genesis of the Litigation.

This litigation began with an investigation by Consumer Watchdog, a non-profit charitable organization, into numerous fuel economy complaints it received from consumers about the 2011 and 2012 Hyundai Elantra. (See *Krauth* Complaint at ¶ 29; *Hasper* Complaint at ¶ 65.) In response to these complaints, on November 30, 2011, Consumer Watchdog sent a letter to the EPA requesting “that the EPA re-test the 2011 and 2012 Elantra model in its own facility, to seek an explanation for the MPG disappointments of so many Elantra buyers....” (*Id.*) Consumer Watchdog subsequently sent letters to Hyundai Motor America (December 2011), President Obama and the EPA Administrator (January 2012), Hyundai Motor America’s CEO at the time, John Krafcik, and Hyundai Motor Company (Hyundai and Kia’s parent company, located in South Korea) CEO, Eok Jo Kim (February 2012) questioning the accuracy of Hyundai’s representations about the fuel economy of the Elantra. (*Id.*)

1 Meanwhile, one of the two firms sponsoring the Proposed Settlement filed
2 *Espinosa v. Hyundai Motor America*, Case No. 2:12-cv-00800-GW-FFM (C.D.
3 Cal.), a case challenging the fuel economy of the Elantra and Sonata. The *Espinosa*
4 complaint expressly relied upon Consumer Watchdog’s research and public
5 correspondence. (See *Espinosa* Complaint at ¶ 27.) Receiving no response to the
6 CLRA demand letter, Consumer Watchdog attorneys filed a class action complaint
7 against Hyundai in California state court on July 3, 2012. *Bird v. Hyundai Motor*
8 *America*, Case No. 34-2012-00127249 (Sacramento Superior Court). The *Espinosa*
9 and *Bird* cases were litigated in traditional fashion following the applicable civil
10 rules until November 2, 2012.

11 **C. The November 2, 2012 Announcement Confirms Hyundai and Kia**
12 **Inflated MPG; They Initiate the “Voluntary Reimbursement Program.”**

13 The course of the litigation changed dramatically on November 2, 2012,
14 when the EPA, Hyundai and Kia jointly announced that the auto manufacturers had
15 in fact overstated the fuel economy of more than a dozen models of vehicles
16 manufactured by Hyundai and Kia between 2010 and 2012 – over 900,000 cars –
17 and that Hyundai and Kia would be adjusting the advertised MPG values of all of
18 these vehicles (hereinafter, “November 2 Announcement”).

19 Simultaneous with the November 2 Announcement, Hyundai and Kia
20 initiated a “Voluntary Reimbursement Program” (hereinafter, “Voluntary
21 Program”). See generally www.hyundaimpginfo.com and www.kiampginfo.com.
22 The Voluntary Program purports to compensate current owners (and lessees) by
23 providing a debit card loaded with funds calculated based upon:

- 24 1. The number of miles the owner has accumulated on the vehicle in question.
- 25 2. The original and revised combined fuel economy ratings of the vehicle in
26 question, in miles per gallon.
- 27 3. The 52-week average fuel price for the area in which the owner lives, based
28 on EIA government data.

1 4. An extra 15 percent above the reimbursement amount as a payment for
2 “inconvenience.”

3 See Hyundai FAQs for Affected Models & Compensation² and Kia MPG
4 Information FAQ.³ In order to receive these payments, owners must periodically
5 visit a Hyundai or Kia dealer to have their mileage verified. *Id.*

6 **D. In the Aftermath of the November 2 Announcement, 54 Lawsuits are**
7 **Filed; Consumer Watchdog Team Petitions for MDL.**

8 The November 2 Announcement spurred an onslaught of similar class action
9 complaints against Hyundai and Kia in federal courts across the United States.
10 Among them was *Hunter v. Hyundai Motor America*, Case No. 8:12-cv-01909-
11 JVS-JPR (C.D. Cal.), brought by the other plaintiffs’ firm sponsoring the Proposed
12 Settlement. Filed on the same day as the November 2 announcement, the *Hunter*
13 complaint also relies on Consumer Watchdog’s inquiries to Hyundai, EPA and the
14 White House. (*See Hunter Complaint at ¶ 49.*)

15 Consumer Watchdog attorneys and associated counsel filed the *Krauth* case
16 before this Court on November 6, 2012. On November 19, 2012, Consumer
17 Watchdog attorneys petitioned the MDL Panel to consolidate all cases to the
18 United States District Court for the Central District of California, Southern
19 Division. By transfer order dated February 5, 2013, the cases were ordered
20 consolidated before this Court.

21 **E. A “Settlement” Is Announced on February 14, 2013.**

22 Prior to the first MDL status conference before this Court, counsel in *Krauth*
23 filed a proposed agenda requesting a briefing schedule for plaintiffs’ leadership
24 structure, a consolidated amended complaint, and discovery. However, at the first
25 status conference, on February 14, 2013, two of the 60 firms representing named
26 plaintiffs in this MDL – Hagens Berman Sobol Shapiro LLP and McCune Wright
27

28 ² Available at <https://hyundaimpginfo.com/faq#compensation>.

³ Available at <https://kiampginfo.com/faq>.

1 LLP (hereinafter, “Settling Plaintiffs”; together with Defendants, “Settling
2 Parties”) – informed the Court that they had negotiated a global settlement of the
3 litigation with Hyundai that would bind all affected consumers. Other than those
4 two firms, no other lawyers representing aggrieved plaintiffs participated in the
5 negotiations, which commenced just twelve days after the November 2 EPA
6 announcements. (Carey Decl., ¶ 10). As the Court noted at the first MDL hearing,
7 “it is slightly unusual [for] the settlement [to] have gone this far at the very
8 beginning of the MDL.” (See May 30, 2014 Decl. of Harvey Rosenfield
9 (“Rosenfield Decl.”), Ex. A Transcript of Feb. 14, 2013 hearing at Pages 11:22-
10 12:6.)⁴

11 Notwithstanding the Settling Parties’ announcement that a settlement had
12 been reached, it was not until December 23, 2013 (more than ten months later) that
13 Settling Plaintiffs finally filed the Proposed Settlement as part of the instant motion
14 for preliminary approval.

15 **F. Confirmatory, Rather than Traditional, Discovery Ensued Without the**
16 **Full Protection of the Federal Rules and Rule 23(g) Leadership**
17 **Motions.**

18 Based on the representations made by the Settling Parties to this Court in
19 February, 2013, that a settlement had been reached, the traditional procedures
20 applicable to the litigation of class actions were held in abeyance.

21 First, the Rule 23(g) leadership process was not invoked. As a practical
22 matter, however, the two firms representing the Settling Plaintiffs were accorded
23 the privileges of lead counsel. Hyundai and Kia refused to communicate directly
24 with the Consumer Watchdog team of attorneys and others representing Non-

25 ⁴ One factor in determining the fairness, adequacy and reasonableness of proposed
26 settlements reached prior to certification is whether “defendants appear to have
27 selected, without court involvement, a negotiator from among a number of
28 plaintiffs’ counsel[.]” Federal Judicial Center, Manual for Complex Litigation, §
21.62 at 317 (4th ed. 2004). That is precisely what Hyundai and Kia appear to have
done here.

1 Settling Plaintiffs. Liaison Counsel (Eric Gibbs of Girard Gibbs LLP) was
2 appointed by the Court to act as an intermediary. (The Liaison Counsel now
3 supports the Proposed Settlement.)

4 Second, repeated requests by Non-Settling Plaintiffs for formal discovery
5 were denied in favor of “confirmatory discovery.” (*See, e.g.*, Rosenfield Decl., Ex.
6 B (February 28, 2013 Hearing Transcript at Pages 15-16).) Hyundai and Kia
7 refused to proceed with discovery according to federal discovery rules. Instead,
8 Hyundai and Kia unilaterally dictated which witnesses they would produce for
9 “interviews” – not depositions – and the duration and subject matter of those
10 interviews. (*See* Rosenfield Decl., Ex. C (April 25, 2013 Hearing Transcript at
11 Pages 41-42).) Non-Settling Plaintiffs requested formal depositions pursuant to the
12 Federal Rules of Civil Procedure and to postpone such depositions until after the
13 completion of the limited confirmatory discovery permitted; however, the
14 interviews continued without the benefit of complete discovery.⁵

15 Hyundai and Kia steadfastly refused to produce proper privilege logs under
16 the Federal Rules; instead they unilaterally elected to produce limited privilege
17 logs only for the electronic discovery of their handpicked interviewees. Following
18 a motion to compel, Hyundai begrudgingly revised its privilege log, but many
19 questions went unanswered.⁶ 

20 
21
22 This highly restrictive process is particularly troubling because when the
23 Court ordered Defendants to provide Non-Settling Plaintiffs with all discovery that
24

25 ⁵ Consumer Watchdog attorneys and other counsel for Non-Settling Plaintiffs were
26 permitted to participate in the interviews.

27 ⁶ Two discovery disputes, including the dispute regarding Hyundai’s privilege log,
28 remain outstanding, as the Court has not yet issued final rulings on these issues.
(*See* Civil Minutes, Dec. 9, 2013, Dkt. 182; Civil Minutes, Jan. 10, 2014, Dkt.
201.)

1 had been provided Settling Plaintiffs, it became apparent that the Settling Plaintiffs
2 had not themselves obtained much, if any, substantive discovery prior to
3 announcing their “settlement” on February 14, 2103.⁷

4 **G. What the Limited Discovery Shows About Hyundai and Kia’s**
5 **Misrepresentation of Their Vehicles’ Fuel Economy.**

6 Preliminarily, it is important to note that the MPG values that appear on
7 vehicle MPG stickers (referred to as “Monroney Labels”) and in advertising are
8 based on testing *conducted by vehicle manufacturers* pursuant to rigorous
9 specifications promulgated by the EPA; the EPA itself does *not test* the vehicles
10 (but does perform occasional audits of vehicles to confirm MPG accuracy).⁸

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 One major ad campaign – “4x40” – touted
20 four Hyundai vehicles (Elantra, Sonata Hybrid, Accent, Veloster) that Hyundai
21 claimed would achieve 40 mile per gallon highway fuel economy.

22 The discovery is equally clear that Hyundai and Kia officials were aware of
23 the discrepancies, but failed to take any action. [REDACTED]

24 [REDACTED]
25 [REDACTED]

26 ⁷ Failure to conduct adequate discovery is another “red flag” warranting rejection
27 of a settlement. *In re General Motors Corp. Pick-Up Truck Fuel Tank* (3d Cir.
28 1995) 55 F.3d 768, 814; Newberg & Conte, *Newberg on Class Actions* (3d ed.
1992) § 11.41, p. 92-93.

⁸ See <http://www.epa.gov/otaq/testdata.htm>.

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[REDACTED]

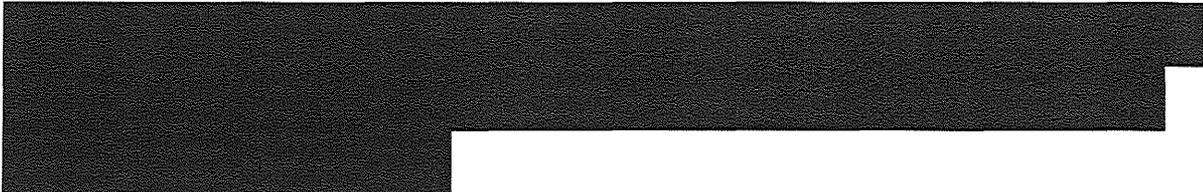
[REDACTED]

Despite this and other similar communications

[REDACTED], Hyundai and Kia blamed the overstatements on “honest procedural errors.” (See Rosenfield Decl., Ex. D (Excerpt of Transcript of Hyundai-Kia MPG Rating Adjustment Teleconference).) Given the severe limitations on discovery summarized above, we do not have even close to a complete picture of the degree of corporate involvement in the testing process, nor of all the actions that were taken once the errors were exposed.

However, [REDACTED]

[REDACTED]



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H. The December 2013 Settlement Motion and Amendments

The Settling Parties finally filed their Motion and accompanying exhibits on December 23, 2013. In response to a request by the Court that all Non-Settling Plaintiffs provide their position on the Proposed Settlement, the Consumer Watchdog team submitted a 14 page single-space summary of flaws and defects in the proposal on behalf of the Krauth and Hasper Plaintiffs. (See Rosenfield Decl., Ex. E.) Other Non-Settling Plaintiffs provided their views, which were summarized by Liaison Counsel in a filing on January 30, 2014. (Dkt. 211.)

Subsequently, with this Court’s encouragement, Liaison Counsel and the Settling Parties entered into negotiations to alter the proposal to address the criticisms. (Neither the Consumer Watchdog team’s lawyers, nor those representing any other Non-Settling Plaintiffs, participated in those negotiations – at least to our knowledge). As a result, the Proposed Settlement has been amended twice. The amendments to the Proposed Settlement essentially make two changes: the form of the notice, and the opportunity for electronic claim submission. Now, Hyundai and Kia will send a postcard instead of a claim form to Class members by mail.

Under the Proposed Settlement, Class Members⁹ can choose to register for, or remain in, the Voluntary Program, receive one or more non-transferable “Cash

⁹ According to the Proposed Settlement, only consumers who purchased or leased their vehicle on or before November 2, 2012 may seek compensation. (Proposed Settlement, § 1.4.) This arbitrary time limitation precludes otherwise valid claims from consumers who purchased vehicles after November 2, 2012 based on incorrect Monroney Labels that had not been replaced by the dealers following the EPA announcement. For example, Laura Gill, one of the named plaintiffs in *Hasper*, purchased her vehicle on November 3, 2012 based on inaccurate Monroney Labels that had not been replaced by the dealer following the November

1 Debit Cards” that expire within one year – the lump sum payment option (see
 2 table),¹⁰ a “Dealer Service Debit Card” or a “New Card Rebate Certificate.”

3 **Proposed \$ Compensation to Class Members (Excluding “Fleet Vehicles”)**

4 Class Members	Debit Card Amount	Additional “4x4”Debit Card*
5 Current Original Owner Opting for “Lump-sum” Payment	HMA Average: \$458.45 KIA Average: \$533.67	\$0
6 Current Original Owner Opting for Voluntary Program	Same as Voluntary Program	\$100
7 Current Non-Original Owner (Purchased Used)	HMA Average: \$22.23 KIA Average: \$266.84	\$0
8 Former Owner	Same as Voluntary Program	\$100
9 Current Lessee Opting for “Lump- sum” Payment	HMA Average: \$232.65 KIA Average: \$299.00	\$0
10 Current Lessee Opting for Voluntary Program	Same as Voluntary Program	\$50
11 Former Lessee	Same as Voluntary Program	\$0

12 *for owners of Elantra, Accent, Veloster, Sonata Hybrid

13
 14 **III. THE PROPOSED SETTLEMENT IS UNFAIR, INADEQUATE AND**
 15 **UNREASONABLE.**

16 Courts are increasingly sensitive to protecting the rights of absent class
 17 members, to whom the court owes a duty to carefully scrutinize proposed
 18 settlements to ensure that they are “fundamentally fair, adequate, and reasonable.”
 19 Fed. R. of Civ. P. 23(e). “It is the settlement taken as a whole, rather than the
 20 individual component parts, that must be examined for overall fairness.” *Hanlon v.*
 21 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (citations omitted); *Staton v.*
 22 *Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003).

23 A particularly high level of scrutiny is necessary here: “[S]ettlement
 24 approval that takes place prior to formal class certification requires a higher
 25 standard of fairness.” *Hanlon v. Chrysler Corp.*, *supra*, 1026. “[A] district court

26 2 Announcement. (*Hasper Complaint*, ¶¶ 27, 28.) Gill would not be entitled to
 27 submit a claim under the Proposed Settlement.

28 ¹⁰ While the Proposed Settlement specifies that the Debit Card will be free of
 “issuer fees” (Proposed Settlement, § 3.2.1), Settling Parties have not revealed
 whether other fees or restrictions will apply.

1 may not simply rubber stamp stipulated settlements.” *In re Zoran Corp. Derivative*
2 *Litigation* 2008 WL 941897 at *2 (N.D. Cal.), citing *Staton v. Boeing Co.*, 327
3 F.3d 938, 959-60 (9th Cir. 2003); *see also In re Bluetooth Headset Products*
4 *Liability Litigation (Bluetooth)*, 654 F.3d 935, 946 quoting *Staton* (“court’s role is
5 to police the ‘inherent tensions among class representation, defendant’s interests in
6 minimizing the cost of the total settlement package, and class counsel’s interest in
7 fees”).

8 When the Proposed Settlement is taken as a whole, the number of “red
9 flags” renders it unfair, unreasonable and inadequate under the Federal Rules of
10 Civil Procedure, case law and the best practices for class action settlements as
11 promulgated by recognized authorities (NCLC, *Consumer Class Actions* (8th ed.
12 2013) (hereinafter, “NCLC Guide”); NACA, *Standards and Guidelines for*
13 *Litigating and Settling Consumer Class Actions*, 255 F.R.D. 215 (2009)
14 (hereinafter, “NACA Guidelines”); Federal Judicial Center, *Judges’ Class Action*
15 *Notice and Claims Process Checklist and Plain Language Guide* (2010)
16 (hereinafter, “FJC Notice Guide”); Federal Judicial Center, *Managing Class Action*
17 *Litigation: A Pocket Guide for Judges* (3rd Ed. 2010) (hereinafter, “Guide for
18 Judges”).¹¹

19 **A. The Settlement Should Not Be Approved Because Hyundai and Kia**
20 **Retain Unclaimed and Expired Funds.**

21 The serious flaws in the proposed notice, claims and administration
22 procedures, discussed below, must be viewed in the context of the most deleterious
23 aspect of the Proposed Settlement: Hyundai and Kia get to keep any funds not
24 claimed by the class. (*See Proposed Settlement*, §§ 4.3, 3.2.4.) The proposed notice
25 and claims process virtually guarantee that most Class Members will receive no
26 compensation at the same time they are being required to release their rights

27
28 ¹¹ Excerpts of these best practice guides are attached as Exs. F, G and H to
Rosenfield Decl.

1 against Hyundai and Kia. As the NACA Guidelines explain at 248: “The amount
2 of such reverting funds is likely to be higher where claim forms are required before
3 class members receive their distribution.”

4 Moreover, the compensation to Class Members is to be provided in the form
5 of debit cards, which expire within one to three years of issue, depending on the
6 form of compensation the Class Member elects to receive. (Proposed Settlement,
7 §§ 3.21, 3.22, 3.23.) According to the Proposed Settlement, the compensation on
8 the debit cards “shall remain the property of [Defendants], unless and until it is
9 expended by the Settlement Class Member” and, upon the expiration date, “any
10 unexpended funds shall become the permanent property of” Defendants. (Proposed
11 Settlement, § 3.2.4.) It is clear these unused funds will not be used for the benefit
12 of the Class.

13 Hyundai and Kia – admitted wrongdoers here – should not be permitted to
14 structure a class action settlement so that they retain any of the compensation they
15 ostensibly have agreed to pay the class. This is particularly true where, as here, the
16 basis for the class action lawsuit is a consumer protection statute whose objectives
17 include deterrence as well as disgorgement. In such cases, “it would contradict
18 these goals to permit the defendant to retain unclaimed funds.” *Six (6) Mexican*
19 *Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1308 (9th Cir. 1990).
20 “[R]eversion is not appropriate where deterrence is a statutory goal and is not
21 otherwise required by the circumstances.” *Harris v. Vector Mktg. Corp.*, 2011 U.S.
22 Dist. LEXIS 48878 at 37-38.

23 Precisely for these reasons, courts disfavor settlements like the instant
24 proposal that permit the defendant to retain unclaimed funds. “A reversion clause
25 creates perverse incentives for a defendant to impose restrictive eligibility
26 conditions and for class counsel and defendants to use the artificially inflated
27 settlement amount as a basis for attorney fees.” Guide for Judges at 20. *See also*
28 *Bluetooth*, 654 F.3d 935, 947 (9th Cir. 2011); *Fraley v. Facebook, Inc.*, C 11-1726

1 RS, 2012 WL 5838198 (N.D. Cal. Aug. 17, 2012); *Tarlecki v. Bebe Stores, Inc.*
2 2009 WL 1364340.

3 In *Kakani v. Oracle Corp.* 2007 WL 179377 (N.D. Cal.), the district court
4 denied preliminary approval of a claims-made, reversionary settlement, finding it
5 unfair because “such a scheme would be a bonanza for the [defendant] company ...
6 plaintiffs’ counsel ... [and] the named representatives[,]” while “the main losers”
7 were “those absent class members who wind up not submitting a timely claim
8 and/or who never receive a notice letter in the first place.” *Id.* at *5.

9 Like the settlement in *Kakani*, the Proposed Settlement does not create a
10 common fund. Instead, Hyundai and Kia retain unclaimed and expired amounts to
11 which Defendants concede Class Members are entitled. (*See* Proposed Settlement,
12 § 3.2.4); *see also* *Dennis v. Kellogg Co.*, 697 F.3d 858, 866 (9th Cir. 2011)
13 (reversing preliminary approval of settlement as abuse of discretion where
14 defendant established “constructive common fund,” balance of unclaimed funds
15 was to be distributed through cy pres in the form of food); *Bluetooth*, 654 F.3d at
16 943 (discussing constructive common fund analysis).

17 The Court should reject Hyundai and Kia’s attempt to evade full
18 accountability to the class as a whole for the economic injuries they incurred as a
19 result of the two companies’ MPG misrepresentations. All Class Members should
20 be compensated pursuant to the Proposed Settlement, and Hyundai and Kia should
21 not be allowed to keep their ill-gotten gains. Unclaimed or expired funds should be
22 distributed pro rata to Class Members, with cy pres to take place once it is no
23 longer economically feasible to distribute further funds to Class Members.

24 **B. Hyundai and Kia Should Not Be Permitted to Administer the**
25 **Settlement.**

26 “Where the settlement provides that each qualifying class member receive a
27 specified payment, either a flat sum or an amount to be determined by a formula,
28 settling defendants may have an interest in maximizing the extent to which class

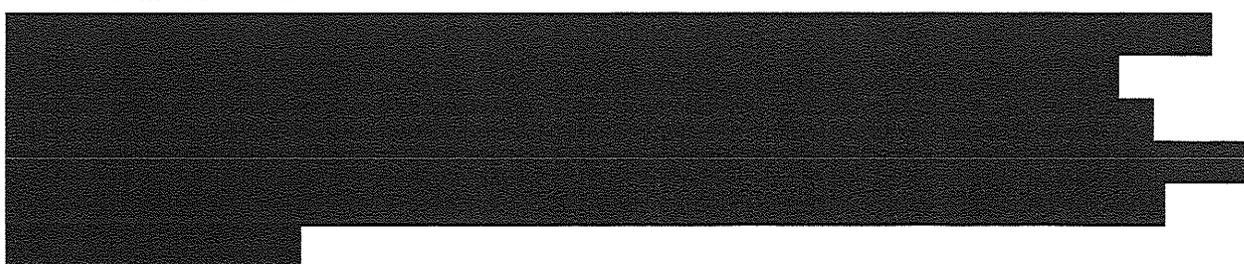
1 members are disqualified or have their claims reduced.” Federal Judicial Center,
2 Manual for Complex Litigation (“MCL 4th”), § 21.66 at 331 (4th ed. 2004). That
3 is why, when reviewing settlements reached before a decision on class
4 certification, the “court should determine whether the persons chosen to administer
5 the procedure are disinterested and free from conflicts arising from representing
6 individual claimants.” *Id.*, § 21.612 at 315.

7 Under the Proposed Settlement, however, Hyundai and Kia are permitted to
8 administer the claims process. They will send notice to class members, attempt to
9 locate class members no longer at their original address, provide claim forms via a
10 website, operate toll-free help lines, review, approve and pay claims and oversee
11 appeals processes for denied claims. (Proposed Settlement, § 4.1, 11.1, 4.3; Second
12 Addendum, §§ 2.1-2.8.)

13 This is particularly improper given the specific facts of this case: Hyundai
14 and Kia misled the EPA and consumers about the fuel economy of their vehicles.
15 The fruits of that wrongdoing were an unspecified financial windfall for Hyundai
16 and Kia, at the expense of their customers, their competitors, and more generally
17 the environment.¹² The Defendants have little incentive to administer the
18 settlement in a scrupulously proper and transparent manner. To the contrary, they
19 have an obvious pecuniary interest in discouraging Class Members from
20 participating in the Proposed Settlement – an interest that is reflected in the severe
21 deficiencies in the notice and claims procedures.

22 Moreover, the Proposed Settlement permits the Defendants to evade any
23 accountability for their conduct in administering the claims process. It provides
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1 that Hyundai and Kia will report claims rate data only to Settling Plaintiffs’
2 counsel, and only at the latter’s request. (Second Addendum, § 2.6.) This conflict
3 of interest cannot be remediated; it undermines the interests of Class Members.

4 **C. The Claims Process is Unnecessary.**

5 Given that the Defendants here have conceded liability and are readily able
6 to distribute compensation to Class Members directly, requiring Class Members to
7 request the compensation to which they are entitled under the Proposed settlement
8 is unfair and unreasonable. *See* Alba Conte & Herbert Newberg, *Newberg on Class*
9 *Actions* § 8:35, at 272 n.3 (4th ed. 2002) (“Whenever there is an option available
10 to distribute fairly a class recovery without requiring a proof of claim by class
11 members as a precondition to sharing in that recovery, the automatic distribution of
12 the class recovery to eligible class members is the preferable option and is more
13 consistent with the objectives of the class action rule.”). In assessing fairness,
14 courts must “consider whether a claims process is necessary at all.” *Guide for*
15 *Judges* at 30. The NACA Guidelines advise, “[I]n ‘opt-out’ class actions, claims
16 forms should be avoided[.]” NACA Guidelines at 263. This is because “claims
17 made” settlements result in reduced compensation to the class as a whole, while
18 releasing their rights: “Class claim forms and procedures can reduce the number of
19 class members who receive recovery and the amount paid by the defendants. ...
20 [yet] [c]lass members who fail to act by returning a claim form may be bound by a
21 general release of claims and defenses.” NCLC Guide at 211, quoting NACA
22 Guidelines at 263. “Claim forms may be necessary only (i) when class members
23 cannot be adequately identified from the defendant’s records; or (ii) when class
24 members must provide information to establish eligibility for relief or to ascertain
25 the scope of the damages and the information is not available in the defendant’s
26 records or otherwise available from third parties.” NCLC Guide at 211.

27 Defendants all too often insist on a claims-made settlement as a deliberate
28 strategy to minimize having to pay what they owe the class because they know that

1 many class members will not take the time to complete and submit a claim form.
2 As the FJC Notice Guide explains: “In too many cases, the parties may negotiate a
3 claims process which serves as a choke on the total amount paid to class members.”
4 FJC Notice Guide at 6. This risk becomes most serious when – as here – the
5 Settling Parties not only structure the settlement as a claims-made settlement, but
6 they add layer upon layer of complexity and steps to the process that harmed
7 consumers must follow.

8 **No claim form is necessary here.** As automobile manufacturers, Hyundai
9 and Kia are particularly capable of sending Class Members their compensation
10 automatically. Defendants have contact information for all new and used car
11 purchasers and lessees made through their dealers, as well for those obtaining
12 maintenance and repair services. Moreover, Defendants possess updated records of
13 valid postal and email addresses for the [REDACTED]

14 [REDACTED]¹³ Additionally,
15 Hyundai and Kia have agreed to utilize “an available R.L. Polk (or a similar
16 database)” if necessary to obtain other Class Members’ contact information.
17 (Proposed Settlement, §§ 4.1, 11.1; Second Addendum, § 1.1.)

18 Using the contact information they possess, Hyundai and Kia can simply
19 send Class Members a cash payment for the lump sum (if current, original or non-
20 original owners or lessees) or Voluntary Program amounts (if former owners or
21 lessees) they are entitled to, as the default option. The class notice (discussed *infra*)
22 can inform Class Members that they will automatically receive cash compensation
23 unless they state a preference for one of the other options, in which case a simple
24

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 Hyundai and Kia have valid postal address and email addresses for all of these consumers.

1 claim form would suffice.

2 The Settling Parties offer no evidence that a claim form is required under the
3 present circumstances – Defendants have accurate data at their disposal and
4 uniform misstatements and damages to Class Members. That Class Members are
5 offered various compensation options under the Proposed Settlement (cash
6 compensation, enrollment in the Voluntary Program, “4x40” payment, a Dealer
7 Service Debit Card, or a New Car Rebate Card) does not justify the use of a claim
8 form.

9 Similarly, the Settling Parties offer no justification for requiring class
10 members who are entitled to the special “4x40” payment to clear an additional
11 hurdle in order to receive the additional compensation. Those Class Members must
12 separately elect to receive the “4x40” payment during the online claims process or
13 on the paper claim form. (*See* Proposed Settlement, § 3.1.8; First Addendum.)¹⁴

14 **D. The Class Notice is Inadequate.**

15 Under Fed. R. of Civ. Pro. 23(c)(2)(B), class members must receive “the
16 best notice that is practicable under the circumstances.” To satisfy due process, the
17 notice must reflect a “desire to actually inform.” Guide for Judges at 27-28, citing
18 *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). A class
19 action settlement notice “is satisfactory if it generally describes the terms of the
20 settlement in sufficient detail to alert those with adverse viewpoints to investigate
21 and to come forward and be heard.” *Rodriguez v. W. Pub. Corp.*, 563 F.3d 948,
22 962 (9th Cir.2009) (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575
23 (9th Cir.2004). The “notice must clearly and concisely state in plain, easily
24 understood language” details of the settlement. Fed. R. of Civ. Pro. 23(c)(2)(B).

25
26
27 ¹⁴ Nor have the Settling Plaintiffs presented any reason for restricting the 4x40
28 relief to those Class Members who register for, or opt to remain in, the
Reimbursement Program.

1 When a settlement imposes a claims requirement, as this one does, the class
2 notice plays an additional, extremely important role: it is the first step in the claims
3 process.

4 Initially, the Settling Parties proposed to notify the class by sending a 13-
5 page letter (and five-page claim form) to Class Members via First Class mail,
6 supplemented by a four-sentence flyer available at Hyundai and Kia dealers (the
7 “Dealer Flyer”). (Proposed Settlement §§ 4.1, 6.2, 11.1, Exs. D, E, G.) After
8 criticisms by the Consumer Watchdog legal team and lawyers for other Non-
9 Settling Plaintiffs, Settling Parties amended the notice and claims process. (*See*
10 *Liaison Counsel’s Report Listing Non-Settling Plaintiffs’ Cases and Positions*
11 *Regarding Proposed Settlement*, Jan. 30, 2014, Dkt. 211; First Addendum; Second
12 Addendum.)

13 Now, to obtain any form of compensation under the newly amended terms of
14 the Proposed Settlement, a Class Member must first grasp the significance and
15 details of the contents of a four by six inch postcard.

16 The proposed class notice does not meet the requirements of Fed. R. of Civ.
17 Pro. 23(c)(2)(B) for the following reasons:

- 18 • **The Postcard is visually illegible.** The Settling Parties submitted the *text* of
19 the Postcard Notice to the Court, but not the actual document itself. (*See*
20 *Second Addendum*, Ex. A.) This is improper. FJC Notice Guide at 2 (“Draft
21 forms of the notices should be developed, in the shape, size, and form in
22 which they will actually be disseminated ... before authorizing notice to the
23 class”). *Scaled to actual postcard size, the Postcard is nearly unreadable.*
24 (*See Rosenfield Decl.*, Ex. I (scaled Postcard Notice).) The estimated 9.5-
25 point font is too small to deliver information about how to learn more about
26 the settlement in any effective manner.
- 27 • **The Postcard text is inadequate.** Notice should “prominently explain to
28 class members both the benefits of returning claims forms and the
consequences of not returning them.” NACA Guidelines at 264. It should be
“in an attention getting and understandable format.” Guide for Judges at 28.
None of the text on the Postcard Notice – including the critical information
about how to file a claim – is in bold or “prominently” stands out in any

1 way. There is room – white space – on the address side of the postcard to
2 flag its importance with a teaser, but the proposal does not take advantage of
3 that opportunity. Moreover, the text is poorly drafted and replete with
legalese.

- 4 • **The Postcard Notice is not appropriate in the context of the Proposed**
5 **Settlement.** Under the circumstances here, where the Class Notice serves
6 not only to notify a Class Member of the litigation, but also is the principal
7 method of communicating claims and compensation information, postcard
8 notice cannot as a practical matter properly inform class members of the
9 steps they need to take to obtain compensation.
- 10 • **The Dealer Flyer is inadequate.** The Dealer Flyer, which is written in
11 vague and confusing language, is unlikely to ever reach Class Members.
12 (*See* Rosenfield Decl., Ex. E; Proposed Settlement, §§ 6.1, 6.2).
- 13 • **The proposed notices fail to disclose to Class Members the amount of**
14 **fees that the attorneys for Settling Plaintiffs will receive.** Such
15 information must be presented to class members within the class notice. *See*
16 NACA Guidelines at 261.
- 17 • **The Proposed Settlement does not utilize email notice.** A notice sent via
18 email is appropriate when class members are likely to have access to email.
19 *See Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012) (approving
20 notice when the principal method was to send an email to the class members
and included a notice of the settlement in the “Updates” section of members’
personal Facebook accounts); NACA Guideline at 261 (“there is rarely a
reason why ... email ... should not ... be undertaken and utilized in addition
to the traditional forms” of notice).

See fn. 14, *supra*.¹⁵

21
22 ¹⁵ Defendants utilized email communication for the Voluntary Program. Indeed,
23 the Class Notice proposed here is not nearly as extensive as the notice of
24 compensation through the Voluntary Program, where consumers received emails,
25 direct mail notice, public announcements from Hyundai and Kia and
26 communications from dealers and the media announcing the Voluntary Program.
27 Ironically, Settling Plaintiffs “filed their class action lawsuit to rectify deficiencies
28 in the [Voluntary] Program.” (Mot. for Class Cert. at 2:24-25.) But in terms of
notice, the Proposed Settlement is deficient by comparison. Courts have rejected
notice programs where, like here, a company has initiated its own voluntary
program to refund consumers for a faulty product and the voluntary program
provides for more extensive notice than the class action settlement. *Webb v.*

- **The Settling Parties Have Failed to Provide the Long Form Notice.** It is impossible to fully assess the adequacy of notice to the class without the Long Form Notice. The Settling Parties have not submitted the Long Form Notice to the Court or Non-Settling Plaintiffs. This information must be submitted prior to the hearing on preliminary approval.¹⁶

E. The Claims Process is Onerous, Convolved and Will Discourage Class Members from Obtaining Compensation.

“Class counsel should do everything possible to minimize the class members’ burden in completing and returning claims forms,” according to the NACA Guidelines at 264. The Guide for Judges states, “avoid imposing unnecessary hurdles on potential claimants[.]” *Id.* at 30; *accord* FJC Notice Guide at 6 (the claims process should avoid “onerous features that reduce claims by making claiming more inconvenient”). Additionally, opting out should be as convenient as remaining a part of the class. “There should be no unnecessary hurdles that make it difficult for class members to exercise their rights to opt out, object, submit a claim, or make an appearance.” FJC Notice Guide at 1. When a claim form is necessary, it should be as simple as possible. *See Walter v. Hughes Commc'ns, Inc.*, 2011 WL 2650711 at *14-15 (N.D. Cal. July 6, 2011) (rejecting proposed claim form as too complicated and too vague); Guide for Judges at 30.

As presently structured, the Postcard informs Class Members that there are two methods of filing a claim for compensation: online, and through an online/mail hybrid. The proposed claims process is onerous and convoluted:

- **To file a claim online, the Class Member must jump through several hoops:** (1) go to the online claims website, (2) review the Long Form Notice,

Carter's Inc., 272 F.R.D. 489, 504 (C.D. Cal. 2011); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 214 F.R.D. 614, 622 (W.D. Wash. 2003); *In re ConAgra Peanut Butter Prods. Liab. Litig.*, 251 F.R.D. 689, 700–01 (N.D. Ga. 2008).

¹⁶ To the extent that the Settling Parties propose to adopt a printed notice (and claim form) similar to the one included in their original motion, we urge the Court to reject the printed notice for the reasons discussed in the analysis submitted by the Consumer Watchdog on January 22, 2014, attached as Ex. E to the Rosenfield Decl.

1 (3) verify that he or she is a class member by inputting both his or her full
2 VIN number and Unique ID listed on the Postcard Notice, (4) fill out and
3 submit the online claim form, (5) print the confirmation page after
4 submission of the claim form, (6) “attach proof of [class members’] current
5 address, such as a utility bill[,]” and, if the class member is a former owner
6 or lessee, documentation showing the mileage when the class member
7 bought and sold the vehicle, and (7) “mail, fax or email” the document
8 packet to Hyundai or Kia. (Second Addendum, Ex. B.)¹⁷

- 9 • **There is no reason to require class members to print out and mail their
10 online claim submission.** Hyundai and Kia should process online claims as
11 long as they are submitted with an electronic signature. *See* FJC Notice
12 Guide at 6 (“Technology allows ... an electronic signature”). It is far too
13 burdensome to require a consumer to take additional steps beyond
14 submitting the online claim form to obtain compensation.
- 15 • **The online claim form makes it burdensome for Class Members to opt
16 out.** Class Members must (1) go to the online claims website, (2) download
17 the Long Form Notice, which as of the date of this brief has not been
18 presented by the Settling Parties but presumably will contain instructions on
19 how to request exclusion, and (3) additionally, mail Settling Plaintiffs’
20 counsel the request to opt out. (Proposed Settlement, § 11.5; Second
21 Addendum, ¶ 1.11.) A Class Members should not be required to jump
22 through such hurdles to opt out.
- 23 • **The online claim form does not clearly explain the consequences of not
24 filing a claim form.** (*See* Second Addendum, Ex. A.) The NACA
25 Guidelines at 264 state that “[i]n opt-out class action settlements, if claims
26 are being released by the settlement, the claim form should explain in plain
27 language the claims that will be released, whether or not the class member
28 submits the claim form, unless the class member opts out of the settlement.”
The proposed claim form contains no language to this effect.
- **Deadlines and phone numbers for questions are not listed on the online
claim form.** On claim forms, “The deadlines and phone numbers for
questions should be prominent.” FJC Notice Guide at 6. The online claim
form does not display – let alone prominently – any deadlines for opt out

¹⁷ Links to the downloadable Long Form Settlement Notice, Claim Forms and
FAQ sheet appear in the left margin of the sample claim form website distributed
as Ex. B to the Second Addendum, but Settling Parties have not yet submitted
these documents to the Court or Non-settling Plaintiffs.

1 requests or submission of the confirmation page and additional
2 documentation regarding proof of address or proof of mileage, nor phone
3 numbers where Class Members can obtain information.

- 4 • **The online claim form does not clearly explain compensation options.**
5 The online claim form does not clearly inform current, original owners that
6 any amounts they have previously received under the Voluntary Program are
7 deducted from any lump-sum payment received under the Proposed
8 Settlement. Also, the online claim form does not clearly inform current,
9 original “4x40” owners and lessees that they are not entitled to a “4x40”
10 payment if they elect the lump sum option instead of remaining in, or
11 registering for, the Voluntary Program. Nor does the online form clearly
12 inform former owners and lessees that they are only entitled to the
13 compensation that they would have received under the Voluntary Program,
14 and that they are not entitled to the lump-sum payment option.
- 15 • **The proposed mail-based claims process is needlessly onerous and
16 convoluted.** Class Members who choose not to pursue the online claims
17 process discussed above must call an 800 number operated by Hyundai and
18 Kia to obtain a printed claim form by mail. (*See* Proposed Settlement, § 4.1,
19 4.2; Second Addendum, § 1.2, Ex. A.) *See* fn. 17, *supra*.
- 20 • **Settling Plaintiffs provide no estimates on how many Class Members
21 are eligible for the lump sum and “4x40” payments;** nor do they provide
22 any estimates on what percentages of those eligible Class Members will
23 claim the lump-sum or “4x40” payments.

24 **IV. CONCLUSION AND RECOMMENDATIONS**

25 The Court should **deny** the Motion for Preliminary Approval on the grounds
26 stated above unless the following changes are made:

- 27 1. Class Members should receive the cash compensation to which they
28 are entitled automatically, unless they request one of the other forms
of compensation (i.e., dealer service or new car discount).
2. Unclaimed or unexpired funds should be distributed pro rata to Class
Members and for there to be cy pres distribution when it becomes
uneconomical to make further pro rata distributions to the Class
Members.
3. An independent and neutral third party should be appointed to
administer the settlement.

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- 4. Class notice must be in the form of a letter – not a postcard – that is revised to contain clear and prominent information, including the proposed attorneys fees.¹⁸
- 5. The Settling Parties must submit the Long Form Notice for review and approval by the Court; it should be revised to contain clear, prominent and required information.
- 6. Reporting and Transparency: (A) Hyundai and Kia should be required to file quarterly public reports with the Court documenting the number and amount of claims, both successful and rejected, for each of the three groups of class members, as well as the claims rate, until the date on which all claims have been processed; and (B) All fee distributions to or by the attorneys for Settling Plaintiffs, direct or indirect, should be filed with the Court and made public.

On behalf of plaintiffs Krauth and Hasper, the Consumer Watchdog legal team is prepared to work with the Settling Parties, or present directly to the Court, more consumer-friendly versions of documents discussed above.

¹⁸ Alternatively, the Court should consider appointing an independent claims and notice expert to assist the Court in revising the process. See FJC Notice Guide at 1; *Kaufman v. Am. Express Travel Related Servs.*, 283 F.R.D. 404 (N.D. Ill. 2012) (appointing an independent expert to assist the court in developing notice plan that comports with FJC Notice Guide).

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Respectfully submitted,

Dated: May 30, 2014

CONSUMER WATCHDOG

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HARVEY ROSENFELD

Dated: May 30, 2014

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EXHIBIT 3

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

10 IN RE: HYUNDAI AND KIA FUEL
11 ECONOMY LITIGATION

Case No. 2:13-ml-02424-GW-FFM

***KRAUTH/HASPER PLAINTIFFS’
RESPONSE TO SETTLING PARTIES’
SUPPLEMENTAL BRIEF IN SUPPORT
OF PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS***

Date: July 24, 2014
Time: 9:30 a.m.
Judge: Hon. George H. Wu
Courtroom: 10

TABLE OF CONTENTS

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

I. SUMMARY OF BRIEF 1

II. CLASS MEMBERS SHOULD BE SENT THE LUMP-SUM PAYMENT AS THE
 DEFAULT OPTION WITHOUT HAVING TO FILE A CLAIM FORM..... 4

III. THE REVISED NOTICES DO NOT INCLUDE RELEVANT INFORMATION AND
 ARE NOT CALCULATED TO CATCH THE ATTENTION OF CLASS
 MEMBERS 5

 A. The Revised Short-Form Notice and Email Notice Fail to Prominently Display
 Pertinent Information in Clear, Concise Language..... 6

 1. The Email Notice Must be Revised to Prominently Display Pertinent
 Information in Clear, Concise Language. 12

 B. The Revised Long-Form Notice is Confusing. 13

IV. THE CLAIM FORMS ARE INCOMPLETE, ONEROUS AND CONFUSING. 16

 A. The Online Claim Form Provided by Settling Parties is Incomplete. 16

 B. The Paper Claim Form Still Contains Unnecessary Steps and Fails to Provide
 Clear and Prominent Information. 20

V. SETTLING PLAINTIFFS FAIL TO PROVIDE THE METHODOLOGY FOR
 DETERMINING THE LUMP-SUM PAYMENTS..... 21

 A. Settling Plaintiffs Fail to Explain the Methodology for Determining Lump-Sum
 Amounts for Current, Original Owners. 21

 B. Settling Plaintiffs Fail to Explain the Methodology for Determining Lump-Sum
 Amounts for Current, Non-Original Owners. 23

 C. Settling Plaintiffs Fail to Explain the Methodology for Determining the “4 x 40”
 Compensation. 24

VI. SETTLING PLAINTIFFS FAIL TO PROVIDE THE TOTAL VALUE OF THE
 PLAINTIFFS’ CASE 25

VII. THE PROPOSED SETTLEMENT SHOULD BE ANALYZED INDEPENDENTLY
 OF THE COMPENSATION PROVIDED BY THE VOLUNTARY PROGRAM.... 29

VIII. A PROCESS FOR RESOLUTION OF POST-NOVEMBER 2, 2012 CLAIMS
 SHOULD BE INCLUDED AS PART OF THE SETTLEMENT 31

IX. OUTSTANDING DISCOVERY ISSUES..... 31

X. CONCLUSION 32

TABLE OF AUTHORITIES

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

Cases

Mullane v. Cent. Hanover Bank & Trust v. W. Pub. Corp., 563 F.3d 948 (9th Cir. 2009) 8

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Walter v. Hughes Communs., Inc. 2011 WL 2650711 29

Statutes

Fed. R. Civ. P. 23 6

Other Authorities

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1 The *Krauth/Hasper* Plaintiffs¹ file this Response to the Settling Parties’
2 Supplemental Brief in Support of Preliminary Approval of Class Settlement and
3 Certification of Settlement Class (Dkt. No. 271) (“Supplemental Brief”) filed by
4 Hyundai and Kia and the two firms referred to throughout this litigation as the
5 “Settling Plaintiffs” on July 9, 2014. Liaison Counsel Eric Gibbs, representing
6 only “himself and the *Maharaj* plaintiffs,” filed a joinder in the Settling Parties’
7 Supplemental Brief. (Dkt. No. 273.) For purposes of this brief, we will refer to
8 these parties collectively as the “Settling Parties.”

9 **I. SUMMARY OF BRIEF**

10 At the June 26, 2014 hearing on the Motion for Preliminary Approval (Dkt.
11 No. 185), the Court made clear that “if I find that there has not been a significant
12 participation [in the settlement] ... I may find a problem of fairness or a problem of
13 the settlement because of the lack of participation.” (June 26, 2014 Hearing Tr. at
14 60:5-11, attached as Exhibit A to the Declaration of Laura Antonini (“Antonini
15 Decl.”) filed concurrently herewith.)

16 The *Krauth/Hasper* Plaintiffs share the Court’s concern. Unfortunately, the
17 Settling Parties’ Supplemental Brief (Dkt. No. 271) does not address most of the
18 infirmities in the proposed settlement that were noted by the Court at the June 26
19 hearing and in the Tentative Ruling circulated shortly thereafter (Dkt. No. 267).
20 Thus, all the ingredients for an onerous process that “serves as a choke on the total
21 amount paid to class members” (Federal Judicial Center, *Judges’ Class Action
22 Notice and Claims Process Checklist and Plain Language Guide* at 6 (3d ed.
23

24 ¹ Attempting to discredit the opposition presented on behalf of the *Krauth* and
25 *Hasper* plaintiffs, Hyundai and Kia’s law firm mischaracterizes the role that
26 Consumer Watchdog and its advocates have played in this and unrelated litigation.
27 (Defendants’ Joinder and Reply in Support of Motion for Preliminary Approval of
28 Class Settlement, Dkt. No. 250 at 1, fn. 3.) Their assertions, however, are belied by
the record here and in the other case they cite. See Declaration of Harvey
Rosenfield (“Rosenfield Decl.”) at ¶¶ 7-8.

1 2010)) remain extant. To ensure the participation of the class, these items must be
2 addressed.

3 **Notices.** Though the Court pointed out that it had “major problems” with the
4 Short-Form Notice and Long-Form Notice and directed the Settling Parties to
5 revise them and include an email notice, the revised documents remain needlessly
6 confusing and would not “catch the attention of the recipient.” (See June 26
7 Hearing Tr. at 11:8; Tentative Ruling at 21.) (In Section II, the *Krauth/Hasper*
8 Plaintiffs propose necessary changes to the notices.)

9 **Claim forms.** While the option of an *online* claim form is an improvement,
10 and is relatively easier to navigate, it is clear from testing that the web form is in
11 rudimentary condition. Moreover, the *mail-in* claim form remains overly
12 complicated and requires Class Members to enter duplicative information. (In
13 Section III, the *Krauth/Hasper* Plaintiffs offer suggestions to improve the claim
14 forms.)

15 The experienced class action lawyers representing the Settling Parties are no
16 doubt aware of the cumulative impact of the proposed notice and claim
17 requirement on claims rates. While providing a confusing and roughly averaged
18 estimate of the “likely recovery per plaintiff,” the Settling Parties neglect to
19 provide the Court with an estimate of the *percentage of the class that will actually*
20 *make a claim*. Experience suggests the number will be very low. (Sections V and
21 VI below.)

22 Perhaps that is why the Settling Parties are now emphasizing *the benefits of*
23 *the Voluntary Program* that the Defendants unilaterally unveiled *prior* to this MDL
24 proceeding. (See Section VII below.)

25 **Maximize compensation by eliminating the claim requirement for lump-**
26 **sum payments.** At this point in the process, maximizing the Class’s ability to
27 obtain the lump-sum payment – the principal benefit of the Proposed Settlement –
28

1 is critical. The deficiencies noted by the Court and by the *Krauth/Hasper* Plaintiffs
2 can and should be addressed with one simple fix: dispense with the requirement
3 that Class Members have to fill out a claim form to get the lump sum payment.
4 (The Court’s Tentative Ruling did not address this proposal by the *Krauth/Hasper*
5 Plaintiffs.) Defendants have access to *all the information* they need to determine
6 how much each Class Member is entitled to under the terms of the settlement, and
7 can *pre-populate* the Short-Form Notice with this information.

8 Under this approach, Class Members who want to receive the lump-sum
9 payment would *not need to take any action* upon receipt of the Short-Form Notice.
10 Only those who want to sign-up for the Voluntary Program, get the Dealer Service
11 coupon or the Car Rebate coupon would have to file a claim.

12 **Compensation estimates.** The Court asked the Settling Parties to explain
13 “the methodology for determining the lump-sum payment amounts for *each Class*
14 *Vehicle*” (Tentative Ruling at 18, emphasis added) and to provide a “ballpark
15 figure as to the net worth of all plaintiffs’ claims” (June 26 Hearing Tr. at 43:17-
16 18). For the reasons discussed below, Settling Parties’ submissions on these issues
17 were insufficient.

18 **Post-November 2, 2012 claims.** (See Section VIII below.)

19 **Outstanding discovery issue.** (See Section IX below.)

20 ***

21 The *Krauth/Hasper* Plaintiffs appreciate the Court’s attention to the details
22 of the notice and claim forms. While we acknowledge that the Court has indicated
23 it is inclined to grant preliminary approval, we urge the Court to withhold its
24 approval until the Settling Parties have presented the Court with revised forms that
25 meet the minimum standards for class actions and provide adequate information
26 regarding the calculations and value of Plaintiffs’ claims.

1 **II. CLASS MEMBERS SHOULD BE SENT THE LUMP-SUM**
2 **PAYMENT AS THE DEFAULT OPTION WITHOUT HAVING TO**
3 **FILE A CLAIM FORM**

4 The Settling Parties offer no explanation for requiring Class Members who
5 simply want the lump-sum cash benefit to file a claim to get it. At oral argument,
6 when the Court asked Counsel for Settling Plaintiffs, Rob Carey, about that option,
7 Mr. Carey was non-committal. (See June 26 Hearing Tr. at 50:3-21.)

8 Under the particular circumstances of this case, in which Defendants have
9 conceded uniform liability, there is *no reason* to require every Class Member to
10 file a claim in order to obtain the principle benefit of the settlement. This is not a
11 class action where, for example, class members cannot be identified from a
12 defendant’s records, or class members need to establish eligibility, or defendants
13 do not have information to ascertain the compensation owed to each individual
14 class member.² Here, the Defendants possess or can easily access address data,
15 vehicle ownership/lease/sale dates, and mileage information. This information can
16 be used to *pre-populate* the Short-Form Notice that all Class Members will receive
17 with the compensation to which each Class Member is entitled. The Short-Form
18 Notice should summarize the compensation options (*see* the Short-Form Notice
19 proposed by the *Krauth/Hasper* Plaintiffs, set forth below at page 10 and also
20 attached as Exhibit 1 hereto). Under the *Krauth/Hasper* Plaintiffs’ proposal, Class

21 _____
22 ² Attempting to defend the imposition of an unnecessary claim form, Liaison
23 Counsel Eric Gibbs argues, in effect, “everybody does it,” citing a completely
24 unrelated 2009 lawsuit in which Consumer Watchdog attorneys co-represented the
25 class. (Liaison Counsel’s Response in Support of Proposed Settlement, Dkt. No.
26 248 at 11-12.) Not only is that litigation irrelevant to this litigation, but Mr. Gibbs
27 fails to note that the principal purpose of the prior suit, and the core feature of its
28 approved settlement, was to require the defendant to revise its advertising; the
compensation benefit was ancillary. By contrast, the proposed settlement here
requires a claims process for the principle feature of the settlement – the lump-sum
cash benefit. (*See* Rosenfield Decl. at ¶9.)

1 Members who want to receive the lump-sum payment would *not need to take any*
2 *action* after receipt of the Short-Form Notice. They would receive the lump-sum
3 cash benefit *automatically*.

4 Only those Class Members who do *not* want the lump-sum benefit – who
5 wish to sign-up for the Voluntary Program, prefer the Dealer Service coupon or the
6 Car Rebate coupon – would have to file a claim.

7 This process would maximize the likelihood that Class Members get the
8 compensation to which they are entitled by virtue of this settlement. “Whenever
9 there is an option available to distribute fairly a class recovery without requiring a
10 proof of claim by class members as a precondition to sharing in that recovery, the
11 automatic distribution of the class recovery to eligible class members is the
12 preferable option and is more consistent with the objectives of the class action
13 rule.” (Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 8:35, at 272
14 n.3 (4th ed. 2002).)

15 Any other process risks a low claims rate. To that point: the Settling Parties
16 should be *ordered to estimate the anticipated claims rate for the lump-sum benefit*.
17 As the Court pointed out at the June 26 hearing, a low participation rate could
18 jeopardize final approval. (See June 26 Hearing Tr.at 59:22-25; 60:1-11.)

19 **III. THE REVISED NOTICES DO NOT INCLUDE RELEVANT**
20 **INFORMATION AND ARE NOT CALCULATED TO CATCH THE**
21 **ATTENTION OF CLASS MEMBERS**

22 At the June 26 hearing, the Court indicated that there were “major problems”
23 with the Settling Parties’ proposed notice and ordered the parties to revise the
24 forms. (June 26 Hearing Tr. at 11:7-8.) In response, Settling Parties submitted a
25 revised Short-Form Notice, added an Email Notice, and revised the Long-Form
26 Notice. But these revisions fall short of the standards of Federal Rule of Civil
27 Procedure 23.
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A. The Revised Short-Form Notice and Email Notice Fail to Prominently Display Pertinent Information in Clear, Concise Language.

On June 25, 2014, the *Krauth/Hasper* Plaintiffs filed and served a Response to Joint Notice of Filing of Revised Notice and Claim Documents (Dkt. No. 266), highlighting the problems with the original Short-Form Notice and mocked up an example of a Short-Form Notice that would cure the deficiencies in what Settling Plaintiffs proposed (Dkt. No. 266; *see* Ex. 1 attached hereto).

At the hearing on June 26, the Court noted that “*notice needs to not only include the relevant facts, but also be calculated to catch the attention of the recipient.*” (Tentative Ruling at 21, emphasis added, citing *Mullane v. Cent. Hanover Bank & Trust v. W. Pub. Corp.*, 563 F.3d 948, 962 (9th Cir. 2009).) The Settling Parties have submitted a “revised” Short-Form Notice that fails to include relevant information and is not calculated to catch the attention of the recipient.

Set forth below is the Settling Parties’ current Short-Form Notice, with numbers corresponding to the list of issues discussed below the image. We also include the *Krauth/Hasper* Plaintiffs’ proposed Short-Form Notice for the Court’s consideration below at page 10, and attached as Exhibit 1 hereto.

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Settling Parties' Short-Form Notice

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**IMPORTANT LEGAL NOTICE
FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**If you purchased or leased certain 2011, 2012, or 2013 model year
Hyundai vehicles, you may be entitled to money or other benefits
from a proposed settlement.**

3

You are receiving this notice because you likely qualify for a proposed federal court settlement that gives you the option of a lump sum of cash (via debit card), a larger dealership credit for goods and services (via debit card), or an even larger new car rebate certificate. Other benefits exist. This is not a solicitation and you do not have to pay any money to qualify for settlement benefits.

4

A proposed settlement has been reached in a class action lawsuit alleging that prior to November 2, 2012, the fuel economy ratings for certain Hyundai vehicles were misrepresented. The lawsuit claims that because of the alleged misrepresentations, class members purchased vehicles they otherwise would not have purchased or paid more for the vehicles than they otherwise would have paid. The lawsuit also claims that the Lifetime Reimbursement Program initiated by Hyundai on November 2, 2012 to reimburse class members for increased fuel costs is inadequate. Hyundai has denied the lawsuit's allegations. The parties agreed to resolve these matters before these issues were decided by the Court. The sole purpose of this notice is to inform you of the class action lawsuit and the proposed settlement so that you may decide what to do.

Records available to Hyundai indicate that you may be a class member for a vehicle for which the last four digits of the Vehicle Identification Number (VIN) is [last four digits]. If you are a class member, your rights may be affected, even if you take no action. You may be required to take action in order to get money and/or to protect your rights.

If you are a class member, you may be entitled to receive a cash payment or other benefits. Payments depend on your type of ownership and the year and model, minus any payments you have received under the Lifetime Reimbursement Program.

If you think you qualify, you can go to www.HyundaiMPGClassSettlement.com, where you can make a claim by typing in your vehicle's VIN and the following Unique ID Number:

[Unique ID]

You should also review a Long Form Notice for more information and, if applicable, the Claim Form. They are available (1) at www.HyundaiMPGClassSettlement.com; (2) by calling, toll-free, at [(xxx) xxx-xxxx]; and/or (3) by writing to the Hyundai Fuel

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5

Economy Class Action Settlement Center, P.O. Box 10759, Newport Beach, CA 92658.

Two key deadlines are [date] for requests to be excluded and objections and [date] for submitting claims (either through the website or by mailing a Claim Form). There are other deadlines, too. All deadlines are available (and may be updated) at www.HyundaiMPGClassSettlement.com. Para vereste aviso en Español, visita www.HyundaiMPGClassSettlement.com.

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Krauth/Hasper Plaintiffs' Model Short-Form Notice



IMPORTANT NOTICE ABOUT YOUR HYUNDAI ELANTRA

Dear Hyundai Elantra Owner:

A proposed settlement of a class action affects you, because you purchased a Hyundai Elantra on or before November 2, 2012. **You are entitled to benefits under the settlement.** The U.S. District Court for the Central District of California, authorized this notice. **Please read this notice carefully because it affects your legal rights whether you take action or don't act.**

What is the lawsuit about?

Class members like you brought a lawsuit alleging Hyundai misrepresented the fuel economy of several of its 2011, 2012, and 2013 vehicles prior to November 2, 2012. The lawsuit claims that people either chose to buy a Hyundai based on the overestimated fuel economy or people would have paid less if they knew the true fuel economy. The lawsuit also claims that Hyundai's Lifetime Reimbursement program did not pay people enough to reimburse them for their fuel costs. Hyundai has denied the lawsuit's allegations. The parties agreed to settle before the Court decided these issues. You are a class member under the settlement because you own a Hyundai Elantra and the last four digits of your Vehicle Identification Number (VIN) are [last four digits]. The settlement will pay class members up to a total of \$XXX million.

How do I get what I am entitled to?

You are entitled to compensation under the settlement. If you want to participate in the settlement, then you can choose one of the following options:

- **You can do nothing. If you do nothing, you will automatically get a cash debit card worth \$345.00;** OR
- **IF you want to participate in Hyundai's Lifetime Reimbursement program, then you must file a claim.** This program offers mileage-based compensation for your additional fuel costs for as long as you own your Hyundai. This option may be better for high-mileage drivers (visit www.HyundaiMPGInfo.com for a reimbursement estimator); OR
- **IF you want a Dealer Service Debit Card with a value of \$517.50, then you must file a claim.** This card can only be used at an authorized Hyundai dealer for merchandise, parts or service; OR
- **IF you want a New Car Rebate Certificate with a value of \$690.00, then you must file a claim.** This certificate can only be used to purchase a new Hyundai vehicle.

There are some limitations on these options that you should know about. More information is available at the toll-free number, the address, and the website listed below.

What if I don't like the settlement?

If you don't like the settlement, then you can choose one of the following options:

- You can object to the settlement. You must object before [date].
- You can exclude yourself from the settlement. The opt-out deadline is [date].

What else should I know?

For information about filing a claim, objecting or excluding yourself from the settlement, important deadlines (which can change without notice) or the fees requested by attorneys, you can visit the website below, call toll-free at [number] and/or write to the Hyundai Fuel Economy Class Action Settlement Center, [address details]. Para vereste aviso en Espanol, visita www.HyundaiMPGClassSettlement.com. For more information, please visit the website at:

www.HyundaiMPGClassSettlement.com

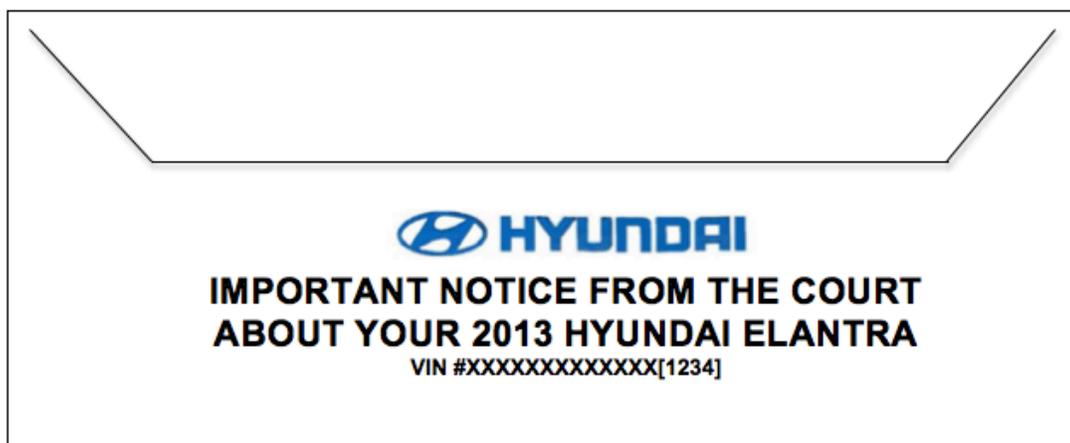
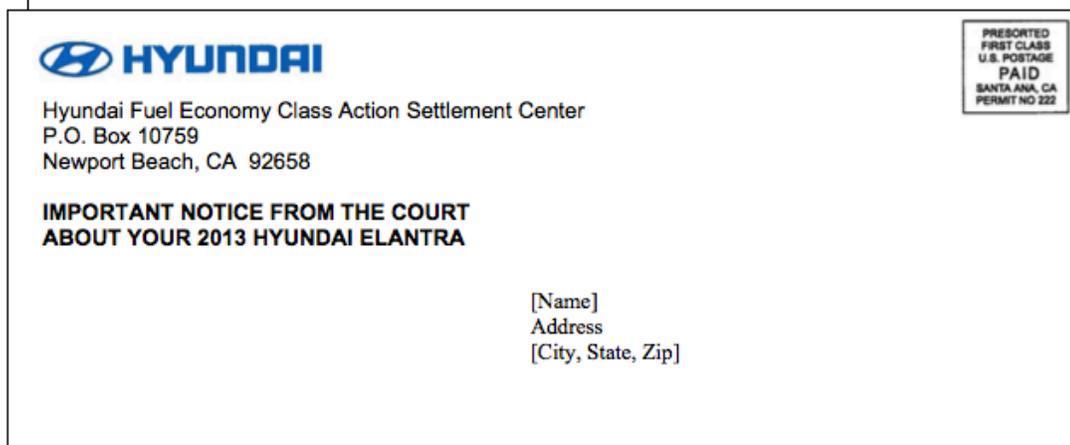


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1 **The Short-Form Notice should be mailed in an envelope.** Settling Parties
2 oppose this, contending that “[p]ersonal experience teaches that junk mail arrives
3 at least as often in an envelope.” (Supp. Br. at 18.) This argument misses the point.
4 Regardless of the form that junk mail may take, bona fide correspondence that is
5 truly important almost never arrives as a folded paper. It comes in an envelope. To
6 avoid confusing the Short-Form Notice with junk mail, the Notice should be
7 enclosed in an envelope to reinforce its status as bona fide correspondence.

8 **External Text.** The currently proposed “Important Legal Notice” reads like
9 junk mail. The *Krauth/Hasper* Plaintiffs propose that the recipient’s year and
10 model of the recipient’s vehicle be placed on the outside of the envelope. Set forth
11 below (and also attached as Ex. 1 hereto) is the *Krauth/Hasper* Plaintiffs’ proposed
12 envelope:



1 related to the Proposed Settlement. (See June 26 Hearing Tr. at 19:19–20:4.)
2 Except in limited circumstances, making a claim under the Proposed Settlement
3 does not offer benefits *in addition* to the Voluntary Program; making a claim *ends*
4 participation in the Voluntary Program. (See section VII.) The *Krauth/Hasper*
5 Plaintiffs propose the following language to fix these two problems:

6 Important! Please read the following legal notice concerning your [YEAR]
7 Hyundai [MODEL]. You may also receive this notice by U.S. Mail.

8 This notice is not related to Hyundai’s Lifetime Reimbursement Program.

9 This notice relates to a class action settlement that offers you different
10 compensation than the Lifetime Reimbursement Program. **This settlement**
11 **affects your legal rights whether you take action or don’t act.**

12 This wording allays any potential confusion about documents received in the mail
13 and properly characterizes the interplay between the Proposed Settlement and the
14 Voluntary Program.

15 Finally, the Settling Parties should clarify that the Email Notice will be in
16 HTML format and not attached as a Portable Document Format (“PDF”). Savvy
17 internet users will not open attachments from unknown senders due to the risk that
18 such attachments may contain malware like a computer virus.

19 **B. The Revised Long-Form Notice is Confusing.**

20 The Court provided a short list of the problems with the Long-Form Notice,
21 and noted that there were many others. (*See* Tentative at 22, n.26 [discussing a
22 subset of the problems with the Long-Form Notice]; June 26 Hearing Tr. at 20:7–
23 22:9 (same).) Settling Parties made some improvements to the Long-Form Notice:
24 it no longer purports to be an official court document since the case caption has
25 been removed, and the Notice prominently displays at the bottom of each page
26 information sources where Class Members can obtain answers to questions. (*See*
27 Dkt. No. 271, Ex. C.) However, it otherwise appears that the Settling Parties
28

1 misunderstood the Court’s call for clarity, and instead made the Long-Form Notice
2 more complicated.⁴

3 The most problematic section of the Long-Form Notice remains the one
4 identified by the Court: the table entitled “Your Legal Rights and Options in This
5 Settlement.” (*See* Dkt. No. 271, Ex. C.) Page one of the Long-Form Notice
6 provides a summary of the notice in the form of a table, and this summary should
7 be succinct. *See, e.g.*, Federal Judicial Center, *Judges’ Class Action Notice and*
8 *Claims Process Checklist and Plain Language Guide* at 8 (3d ed. 2010) (“Page one
9 is an overall summary of the notice. The objective is to use the fewest words.”).
10 The table on page one of the Long-Form Notice fails to explain Class Members’
11 options in the fewest words, and exemplifies the draftsmanship that concerned the
12 Court. (*See* Tentative at 22 n.26 (characterizing the quality of the Settling Parties’
13 notices and forms as “merely drafts” and noting that there needs to be “substantial
14 reworking”.) The Settling Parties must substantially revise the Notice before it can
15 be approved. In the table below, the *Krauth/Hasper* Plaintiffs have corrected the
16 defects (the table assumes the Court permits the use of a claim form); the Settling
17 Parties should use this simple, plain-language format as a template for revising the
18 entire Long-Form Notice. The *Krauth/Hasper* Plaintiffs’ proposal:

19 ///

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24 _____
25 ⁴ A rough estimate of the fees that the parties intend to request should be in the
26 Long-Form Notice. Moreover, it is the *Krauth/Hasper* Plaintiffs’ position that no
27 fee mediations should occur until after the Court has granted preliminary approval.
28 To the extent the Settling Parties have any incentive to support further
improvements for the benefit of the class, negotiating their fees at the same time
would undermine that incentive.

Krauth/Hasper Plaintiffs' Proposed Table for the Long-Form Notice

YOUR LEGAL RIGHTS AND OPTIONS		DEADLINES
YOU CAN ONLY CHOOSE ONE OF THESE OPTIONS		
SUBMIT A CLAIM FORM	<ul style="list-style-type: none"> You get a one-time, up-front payment. This payment reflects factors like your past and future fuel costs. 	[9 months after deadline for mailing class notice]
ENROLL/REMAIN IN LIFETIME REIMBURSEMENT PROGRAM	<ul style="list-style-type: none"> You receive periodic mileage-based payments for your additional fuel costs for as long as you own your Hyundai. You don't need to do anything if you've already enrolled and wish to remain in the program. You must act if you haven't enrolled in the program and wish to do so. 	[9 months after deadline for mailing class notice]
EXCLUDE YOURSELF	<ul style="list-style-type: none"> You cannot choose to get a one-time, up-front payment. You can still choose to enroll/remain in the Lifetime Reimbursement Program. This is the only option that allows you to bring a lawsuit against Hyundai Motors America, Kia Motors America, and/or their respective affiliates, in connection with the legal claims in this case. 	[9 months after deadline for mailing class notice]
DO NOTHING	<ul style="list-style-type: none"> Give up your legal right to bring a lawsuit against Hyundai Motors America, Kia Motors America, and/or their respective affiliates, in connection with the legal claims in this case. Get no one-time, up-front payment. Get no payments under Lifetime Reimbursement Program unless you enrolled in the program before [9 months after deadline for mailing class notice]. 	[9 months after deadline for mailing class notice]

1 **IV. THE CLAIM FORMS ARE INCOMPLETE, ONEROUS AND**
2 **CONFUSING.**

3 **A. The Online Claim Form Provided by Settling Parties is Incomplete.**

4 As discussed above, a claim form should not be required for Class Members
5 who want to receive the lump-sum payment. However, if the Court does require a
6 claim form for all compensation options, the online claim form is insufficient
7 because it is incomplete. Before the proposed Settlement can be approved, the
8 website must be tested to ensure that it adequately handles Class Member claims.

9 On July 13, 2014, Liaison Counsel Eric Gibbs circulated a link to the online
10 claim form website to counsel for the *Krauth/Hasper* Plaintiffs. (Antonini Decl. at
11 ¶4.) Mr. Gibbs provided the *Krauth/Hasper* Plaintiffs with information for five
12 hypothetical Hyundai Class Members to test the online claims website. (*Id.*)
13 However, the hypothetical Class Members selected by the Settling Parties only
14 represented a subset of consumers in the Class: those who have obtained payments
15 through the Voluntary Program. (*Id.*) On July 15, 2014, counsel for the
16 *Krauth/Hasper* Plaintiffs requested examples of how an online claim would look
17 for a Class Member who has not participated in the Voluntary Program. (*Id.*) On
18 July 17, Mr. Gibbs forwarded a second set of hypothetical Hyundai Class
19 Members, two of which have not participated in the Voluntary Program. (*Id.*)

20 The test examples provided by the Settling Parties omit crucial information.
21 For example, one of the hypothetical consumers is a former owner of a 2012
22 Hyundai Tucson who participated in Hyundai's Voluntary Program. After
23 inputting his VIN number and "Unique ID," this consumer is required to indicate
24 that he is a former owner, provide the mileage of his vehicle at the time he sold the
25 vehicle, and provide the date he sold the vehicle – information that Hyundai has
26 access to; former owners might only be able to find that data with difficulty. The
27 form should be prepopulated with the information:
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As of July 15, 2014, our records indicate you have received \$153.26 under the current Lifetime Reimbursement Program

You will receive one final payment based on the mileage when you bought and sold the vehicle, less any payments received in the current Lifetime Reimbursement Program.

I hereby authorize the filing and execution of this claim. I declare under penalty of perjury that the following information is true and correct.

Agreed

*** Required Field**

Your payment will be processed and mailed no earlier than the final court effective date, of [TBD].

Submit

Neither during nor after the submission process is this Class Member informed about how much of a payment he is eligible to receive. He is also never given the option to choose the Dealer Service coupon or the New Car coupon. According to the Settling Parties, *giving former owners that choice is the only reason for requiring former owners to submit a claim in the first place.* Instead, he is simply told that he will get “one final payment.”

Worse, this former owner – who by definition has already sold his vehicle – is instructed to visit his local Hyundai Dealership to “have [his] mileage verified in order to receive [his] Lifetime Reimbursement Debit Card.”

Confirmation Page

Unique ID: 353048094

You have successfully submitted the below information:

- First Name: **JOHN**
- Last Name: **ROJO6**
- Current Address: **932 Fake St**
- Current Apt/Suite:
- Current City: **Fake City**
- Current State: **CA**
- Current Zip: **92344**
- Email Address:
- Telephone #: **9095679438**
- Full VIN: **KM8JUCAC8CU336006**
- MY and Model: **2012 Tucson**
- Transmission and Engine: **AT, 2.4L**
- Category Type: **Former Original Owner**
- Sold Mileage: **219,337**
- Sold Date: **11/19/2012**
- Payment Selection: **Lifetime**
- Payment Type: **Debit Card**

You must visit your local Hyundai Dealership to have your mileage verified in order to receive your Lifetime Reimbursement Debit Card.

Print

Hours before the filing of this brief, Mr. Gibbs forwarded to counsel for the *Krauth/Hasper* Plaintiffs an email correspondence between Settling Plaintiffs’ counsel and Defense counsel discussing issues with the online claim form website. (Antonini Decl. at ¶5; the email chain is attached as Ex. B to the Antonini Decl.) In this email chain, counsel for Defendants state that certain issues with the website had been fixed, and that one “glitch will take at least a couple more days to fix.” (*Ibid.*)

Additionally, there are links to the Long-Form Notice, paper Claim Form and an FAQ sheet on the left margin of the claim form website, but the links are inactive.

1 The online claim form website is clearly unfinished. Counsel for the
2 *Krauth/Hasper* Plaintiffs cannot confirm at the time of the filing of this brief that
3 the problems with the website have been solved.

4 **B. The Paper Claim Form Still Contains Unnecessary Steps and Fails to**
5 **Provide Clear and Prominent Information.**

6 As discussed above, a claim form should not be required for Class Members
7 who simply want the lump-sum payment. However, if the Court does require a
8 claim form for all compensation options, the paper Claim Form is insufficient
9 because it contains unnecessary steps and fails to provide clear and prominent
10 information.

11 A portion of the class likely fall within the category of “luddites,” as the
12 Court quipped, and may not be sophisticated computer users. The Settling Parties
13 have made some improvements to the paper Claim Form: it no longer requires the
14 Class Members to write their VIN and “Unique ID” on each page; the meaning of
15 the phrase “maximum cash value of Your Lump Sum Payment” has been
16 somewhat clarified; and the Claim Form now includes subheadings like “Lump
17 Sum Payment” and “Lifetime Reimbursement Program.” (*See* Dkt. No. 271-4.)
18 However, the form is still needlessly complicated and prolix. The following
19 changes should be made:

- 20 • Class Members should not be required to list their name on every page of the
21 paper Claim Form.
- 22 • Class Members requesting paper Claim Forms over the telephone should
23 receive the document pre-populated with their personal information such as
24 name, address and VIN number, reducing the number of steps and time the
25 Class Member must take in order to complete the form.
- 26 • Overall, the Claim Form should be revised to reduce its complexity. In Step
27 3, for example, the explanation of the “Lump Sum Payment” option will
28 likely confuse Class Members even though it technically includes all the
relevant information. It is unclear whether the “maximum cash value” is
different from the “compensation amount in Schedule A.” Opaque language

1 and terminology like that should be simplified throughout the form in order
2 to make the Claim Form easier to understand for Class Members.

3 **V. SETTling PLAINTIFFS FAIL TO PROVIDE THE**
4 **METHODOLOGY FOR DETERMINING THE LUMP-SUM**
5 **PAYMENTS**

6 The Court asked the Settling Parties to explain “the methodology for
7 determining the lump-sum payment amounts for *each Class Vehicle*.” (Tentative
8 Ruling at 18, emphasis added.) As the Court noted, the “motion for preliminary
9 approval does not address how the settlement figures were calculated.” (*Id.* at 15,
10 fn. 17.) The Court stated, “I think I understood sort of how you got there, but I am
11 not sure if I have all the information necessary to necessarily agree that that is what
12 it is.” (June 26 Hearing Tr. at 9:9-12.)

13 **A. Settling Plaintiffs Fail to Explain the Methodology for Determining**
14 **Lump-Sum Amounts for Current, Original Owners.**

15 The Settling Plaintiffs fail to present the methodology for “determining the
16 lump-sum payment amounts for each Class Vehicle” as requested by the Court.
17 Instead, they set forth an incoherent and incomplete explanation as to how they
18 arrived at the lump-sum amount for a single hypothetical Class Member: a current,
19 original owner of a 2012 Hyundai Tucson (4WD automatic; 2.4 liter engine) – one
20 of 76 Class Vehicles covered by the Proposed Settlement. (See Supp. Br. at 13:9 –
21 14:14; Dkt. No. 185-2, Ex. A.)

22 Settling Parties claim that the lump-sum payment amounts in the charts for
23 current, original owners (*see* Dkt. No. 185-2 at 40, 42) are based primarily on
24 additional fuel costs incurred as a result of Defendants’ mileage
25 misrepresentations. (*See* Dkt. No. 185-1 at 4:10-13 [“The Settlement requires
26 Defendants to ... provide lump-sum payments to Class members to compensate
27 them for their extra fuel costs”].) However, when one calculates additional fuel
28 costs using the formula for additional fuel costs under the Voluntary Program
(ignoring the 15% “inconvenience fee”), there are discrepancies between the lump-

1 sum amounts and the products of the calculations. Set forth below are two
2 examples illustrating how the lump-sum payment amounts set forth by the Settling
3 Parties do not reflect additional fuel costs.

4 **Example #1: Current, Original Owner of 2012 Hyundai Elantra**
5 **(automatic transmission; 1.8 liter engine).** The lump-sum payment for this Class
6 Member is \$220, according to lump-sum payment chart attached as Exhibit B to
7 the Proposed Settlement.⁵ (Dkt. No. 185-2 at 40.) However, our calculation shows
8 that this Class Member should receive \$268 for additional fuel costs. Settling
9 Plaintiffs fail to explain this \$48 disparity, or present a methodology that could
10 explain this \$48 disparity. The calculation is as follows:

- 11 • An “average driver” who drives 15,000 miles per year for 4.75 years will
12 drive 71,250 miles in that time.
- 13 • Prior to November 2, 2012, the combined city/highway MPG for the 2012
14 Hyundai Elantra was 33 MPG. After November 2, 2012, the combined
15 city/highway MPG for the 2012 Hyundai Elantra was 32 MPG. The
16 difference is 1 MPG.
- 17 • Over the 4.75 years, the driver paid for 67 more gallons in fuel as a result of
18 Hyundai’s misrepresentation. ((71,250 miles / 33 MPG) - (71,250 miles / 32
19 MPG) = 67 gallons.)
- 20 • 67 gallons at \$4.00 per gallon = \$268

21 **Example #2: Current, Original Owner of 2013 Kia Sorento 2WD (A-6,**
22 **2.4L, GDI).** The lump-sum payment for this Class Member is \$235, according to
23 lump-sum payment chart attached as Exhibit C to the Proposed Settlement. (Dkt.
24 No. 185-2 at 42.) However, our calculation shows that this Class Member should

25 _____
26 ⁵ The lump-sum chart lists the payment amount for the 2012 Hyundai Elantra as
27 \$320. (Dkt. No. 185-2 at 40.) Since the 2012 Hyundai Elantra is one of the “4 x 40”
28 vehicles and the Settling Parties state that the additional \$100 for the “4 x 40”
payment is folded into the lump-sum amount, (*see, e.g.*, Dkt. No. 250 at 8:6-8), the
amount that actually represents the additional fuel costs is \$220.

1 receive \$475 in additional fuel costs. Settling Plaintiffs fail to explain this \$240
2 disparity, or present a methodology that could explain this \$240 disparity. The
3 calculation is as follows:

- 4 • An “average driver” who drives 15,000 miles per year for 4.75 years will
5 drive 71,250 miles in that time.
- 6 • Prior to November 2, 2012, the combined city/highway MPG for the 2013
7 Kia Sorento 2WD was 25 MPG. After November 2, 2012, the combined
8 city/highway MPG for the for the 2013 Kia Sorento 2WD was 24 MPG.
9 The difference is 1 MPG.
- 10 • Over the 4.75 years, the driver paid for 118.75 more gallons in fuel as a
11 result of Kia’s misrepresentation. ((71,250 miles / 25 MPG) - (71,250 miles /
12 24 MPG) = 118.75 gallons.)
- 13 • 118.75 gallons at \$4.00 per gallon = \$475

14 As these two examples illustrate, when calculating the additional fuel costs
15 for current, original owners who drive 15,000 over a period of 4.75 years (the
16 Settling Parties’ variables for what constitutes an “average” driver), there are
17 discrepancies in the results reported by the Settling Plaintiffs’ methodology
18 compared to the lump-sum amounts in the chart. The Settling Parties have not
19 sufficiently provided the methodology requested by the Court and, under our
20 calculations, Class Members appear to be shortchanged by the Proposed
21 Settlement.

22 **B. Settling Plaintiffs Fail to Explain the Methodology for Determining**
23 **Lump-Sum Amounts for Current, Non-Original Owners.**

24 Furthermore, the Settling Plaintiffs have not explained the methodology for
25 determining the lump-sum amounts available to current, non-original owners.
26 Under the Proposed Settlement, “For a non-original owner, [the lump-sum] amount
27 would be one-half of the original owner amount.” (Supp. Br. at 14:4-5; see
28 Proposed Settlement, Dkt. No. 185-2, § 3.1.2.) Settling Plaintiffs have provided no

1 justification for this arbitrary amount. Also, it is unclear what percentage of Class
2 Members are current, non-original owners. More information should be provided.

3 **C. Settling Plaintiffs Fail to Explain the Methodology for Determining**
4 **the “4 x 40” Compensation.**

5 The Settling Plaintiffs also have not explained the methodology for
6 determining the values of the “4 x 40” payments to current, original owners and
7 lessees and former owners and lessees.

8 **Current, original owners and lessees.** Under the Proposed Settlement,
9 current, original owners of “4 x 40” vehicles are entitled to receive \$100 and
10 current lessees are entitled to receive \$50. (*See* Proposed Settlement, § 3.1.8; Dkt.
11 No. 250 at 8:7-8.) The Settling Parties have provided no justification or
12 explanation for these amounts; they appear to be arbitrary.

13 **Former owners.** The Proposed Settlement defines a “Former Owner” as
14 follows: “a Person who (i) purchased a Class Vehicle, on or before November 2,
15 2012, and (ii) who does not own such Class Vehicle as of the date of this
16 Settlement Agreement [December 23, 2013]; and (iii) who was not a Fleet Owner
17 of such Class Vehicle.” (Proposed Settlement, § 1.16.) Under the Proposed
18 Settlement, former “4 x 40” owners who sold their vehicles between February 12,
19 2013 and December 23, 2013 are entitled to the additional “4 x 40” compensation.
20 The Settling Parties have failed to explain why former owners who purchased their
21 vehicles prior to November 2, 2012 and sold their vehicle *prior to* February 12,
22 2013 are not entitled to the additional “4 x 40” payment. The Settling Parties must
23 explain the reason for this arbitrary time limitation.

24 **Former lessees.** It is unclear why former owners are entitled to the
25 additional “4 x 40” compensation, while former lessees are not entitled to it. (*See*
26 Dkt. No. 206-1.) The Settling Parties must explain the reason for excluding former
27 lessees from the “4 x 40” compensation.
28

VI. SETTling PLAINTIFFS FAIL TO PROVIDE THE TOTAL VALUE OF THE PLAINTIFFS' CASE

In addition to requesting the methodology for the lump-sum amounts, the Court requested that the Settling Parties provide “an estimate as to the total value, and when I say total value, I am talking about total, if they want everything, value of the plaintiff’s case.” (June 26 Hearing Tr. at 9:22-25.) The Court explained:

I want to know what the total, you know, unencumbered, unreduced, what do you call it, that the plaintiffs’ claims are worth.

...

For example, some people may say, well, you know, there was a question as to, you know, if plaintiffs were successful in establishing that because of these misrepresentations with respect to fuel economy, the value of their cars are less. Well, not to say that [it] in fact could be established, but assuming that it could be established, what would be the figure for that. ...

(*Id.* at 10:6-17.)

The Settling Plaintiffs again fail to present sufficient information in response to the Court’s request. Indeed, they reference “expert testimony” on compensation issues, but then say “the formal analysis has not yet been completed.” (Supp. Br. at 16:8-9.) Settling Plaintiffs fail to provide any support for their estimates.

Damages claim reflecting reimbursement of fuel costs. In valuing the damages claim reflecting reimbursement of fuel costs, Settling Plaintiffs state:

“For a damages claim reflecting reimbursement of fuel costs, on average, each driver would be entitled to damages at the rate of \$87 per year since purchase to the date of trial, and \$87 per year for every year thereafter if a jury concludes he would have owned the vehicle and driven an average amount. If he proved he owned or would have owned the car for a total of 4.75 years, he would receive compensatory damages of \$370, discounted to present value, minus fees and expenses.”

(Supp. Br. at 16:1-5.) First, this example uses an average of \$87 per year in additional fuel costs based on the additional fuel costs that a hypothetical 2012 Hyundai Tucson owner would have incurred as a result of Defendants’ mileage

1 misrepresentations, without explaining how this \$87 value is representative of all
2 Class Members or the entire population of 76 Class Vehicles. Second, the Settling
3 Plaintiffs designated 4.75 years ownership as an average, without providing any
4 support for this number. This value conflicts with the Defendants’ own advertised
5 ten year warranty, and the Settling Plaintiffs’ initial estimate of ten years, and data
6 reported by other sources.⁶ Thus, there is no support for Settling Plaintiffs’
7 estimation of the value of the additional fuel cost damages.

8 **Damages for a claim that purchase prices were inflated.** The Settling
9 Plaintiffs state that such damages “would depend upon expert testimony regarding
10 the market impact of MPG discrepancies. The formal analysis has not yet been
11 completed, but plaintiffs’ experts estimated that each MPG could be assigned a
12 dollar value between \$100 and \$500.” (Supp. Br. at 16:7-10.) Settling Plaintiffs
13 cite to no expert declaration or any source of information to support these numbers.

14 **Punitive damages.** The Settling Plaintiffs argue that a punitive damage
15 claim “would be hotly contested, as settling plaintiffs previously explained.”
16 (Supp. Br. at 17:3-4.) But Settling Plaintiffs have not explained how punitive
17 damage claims would be hotly contested. Then they suggest that “the scope of
18 punitive damages on an economic loss-only case with a full recovery could be
19 limited to a one-to-one ratio,” citing the Supreme Court’s analysis of constitutional
20 limitations on punitive damage awards, set forth in *State Farm Mut. Auto. Ins. Co.*

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23 ⁶ See *America's Best Warranty*, Hyundai Motor America,
24 <http://www.hyundaiusa.com/assurance/america-best-warranty.aspx> (last visited Jul.
25 18, 2014); *Warranty*, Kia Motors America, [http://www.kia.com/us/en/content/why-](http://www.kia.com/us/en/content/why-kia/quality/warranty)
26 [kia/quality/warranty](http://www.kia.com/us/en/content/why-kia/quality/warranty) (last visited Jul. 18, 2014); Complaint at 5, *Brady v. Hyundai*
27 *Motor America*, Dkt. No. 1 (Nov. 6, 2014); Jerry Hirsch, *Americans Keep Their*
28 *New Cars for Almost Six Years*, L.A. Times, Feb. 21, 2012, available at
[http://articles.latimes.com/2012/feb/21/business/la-fi-mo-holding-cars-longer-](http://articles.latimes.com/2012/feb/21/business/la-fi-mo-holding-cars-longer-20120221)
20120221.

1 v. *Campbell*, 538 U.S. 408, 425 (2003). (Supp. Br. at 17:4-5.) In fact, that decision
2 authorizes a maximum ratio of nine-to-one for most cases. *Id.*

3 The limited discovery produced in this litigation to date⁷ establishes that the
4 Defendants were aware that there were discrepancies in the fuel economy testing
5 but failed to take action. Contested or not, Settling Parties offer no reason why,
6 depending on the evidence adduced at a trial, significant punitive damages would
7 not be appropriate.

8 **Post-purchase diminution in value.** Settling Plaintiffs claim that the
9 diminution in value of the Class Vehicles as a result of the mileage misstatement
10 “is most easily (and directly) measured by the net present value of the future
11 stream of additional fuel costs. Thus, reimbursement for the extra expense
12 redresses any diminution of the vehicles.” (Supp. Br. at 17:18-24.) These
13 statements are unsubstantiated – Settling Plaintiffs offer no other authority to
14 support their argument that the diminished value of the vehicle is merely equal to
15 the higher fuel costs arising from the Defendants’ misrepresentations.

16 **A more realistic estimate of the maximum potential recovery** in this
17 proceeding is far greater than the Settling Plaintiffs now urge. It would be reached
18 by first calculating the additional fuel costs for Class Members, assuming that
19 Class Members kept their cars for 71.4 months – the average length of new car
20

21 ⁷ On March 3, 2013, the Court asked the Settling Plaintiffs to provide the Non-
22 Settling Plaintiffs with all the discovery they had obtained from Defendants.
23 (March 3, 2013 Hearing Tr. at 24:13-20). Defendants subsequently agreed to
24 comply. (April 11, 2013 Hearing Tr. at 7:1-5.) It is abundantly clear from the
25 resulting production, which consisted mostly of advertisements and manuals, that
26 as of that date, the Settling Plaintiffs had *not* conducted sufficient discovery to
27 support a settlement. The only substantive discovery in this case was the limited
28 confirmatory discovery subsequently ordered by the Court. And while the Settling
Parties have repeatedly pointed to discovery produced in *Espinosa*, that discovery
is of limited utility because it occurred prior to the November 2, 2012 and did not
involve the incorrect testing or facts pertinent to the EPA restatement.

1 ownership⁸ – rather than the 4.7 years upon which the Proposed Settlement is
2 based. This is highly conservative: the Defendants’ advertising highlights that their
3 vehicles come with a ten-year warranty, suggesting that purchasers are interested
4 in retaining their vehicles for a longer period.⁹ Moreover, the Brady plaintiffs’
5 original complaint calculated the economic loss by assuming a ten-year useful life.
6 (Complaint at 5, *Brady v. Hyundai Motor America*, Dkt. No. 1 (Nov. 6, 2014).)
7 Using the Defendants’ methodology for compensation under the Voluntary
8 Program,¹⁰ assuming 71.4 months length of ownership, minus the payment for
9 “inconvenience,” the economic loss to the class would total \$600,650,588.¹¹ Using
10 an extremely modest premium of, say, 5% to compensate Class Members for
11 vehicle depreciation caused by the fuel economy misrepresentations,¹² Class
12 Members compensatory damages would equal \$630,683,117. Assuming a standard
13 three-to-one ratio for punitive damages, the class's claims could be valued at over
14 *\$2.5 billion*.

15 **The estimated value of the Proposed Settlement is Uncertain.** The total
16 amount of compensation delivered by the Proposed Settlement matters greatly to
17 the class, and to this Court’s review.

18
19 _____
20 ⁸ See Hirsch, fn. 6, supra.

21 ⁹ See Hyundai and Kia, fn. 6, supra.

22 ¹⁰ The methodology for compensation under the Voluntary Reimbursement
23 Program can be found at *FAQ*, Hyundai MPG Information,
24 <http://hyundaimpginfo.com/faq> (last visited Jul. 18, 2014). The cost of fuel is
25 calculated using a 52-week average fuel price for the area in which the owner lives,
26 based on U.S. Energy Information Association data. This analysis uses the U.S.
27 Energy Information Association’s average California price per gallon in 2013,
28 which is \$3.93/gallon. (See <http://www.eia.gov/petroleum/gasdiesel/>.)

¹¹ The *Brady* Complaint originally estimated the fuel cost to the class as
\$788,461,537.20. (Complaint at 5, *Brady v. Hyundai Motor America*, Dkt. No. 1
(Nov. 6, 2014).)

¹² Spreading this 5% premium – or \$30 million – across the approximately 900,000
affected vehicle amounts to a mere \$33 of depreciation per vehicle.

1 According to the Settling Parties, the Proposed Settlement is valued at \$392
2 million “before deduction for compensation already paid through the lifetime
3 reimbursement program.” (Supp. Br. at 15:2-3.) Under the Proposed Settlement,
4 Voluntary Program payments are deducted, *dollar for dollar*, from the lump sum
5 payment each class member is entitled to. (See Proposed Settlement, §§ 3 and 5.)
6 The Settling Parties have failed to provide the Court with the amount already paid
7 through the Voluntary Program. Assume for the sake of example that 50% of the
8 \$392 million has been paid out through the Voluntary Program. The total
9 compensation theoretically provided to Class Members by this Proposed
10 Settlement net of amounts paid under the Voluntary Program would then be \$196
11 million.

12 However, as a practical matter, that figure may be significantly overstated. If
13 a claim form is required, a generous claims rate would be around 10%. *See Walter*
14 *v. Hughes Communs., Inc.* 2011 WL 2650711, at *13 (collecting cases where
15 claims rates vary between 0.1% and 9.7%). In that event, the actual compensation
16 to the class would be approximately \$19.6 million.¹³ The Court should require
17 Settling Plaintiffs to revise their analysis of the total value of the plaintiffs’ claims
18 to provide actual support for the numerical values and statements throughout their
19 analysis.

20 **VII. THE PROPOSED SETTLEMENT SHOULD BE ANALYZED**
21 **INDEPENDENTLY OF THE COMPENSATION PROVIDED BY THE**
22 **VOLUNTARY PROGRAM.**

23 The Settling Parties conflate the Voluntary Program with the compensation
24 benefits provided by the Proposed Settlement. Settling Plaintiffs state, “this action
25 was about expanding the options available to the consumer” (Dkt. 271 at 13:9,
26 emphasis added); they describe the Proposed Settlement as “a complimentary

27 ¹³ The actual compensation to Class Members will depend on the composition of
28 the Class’s affected vehicles.

1 settlement” (June 26 Hearing Tr. at 11:16, emphasis added) and “an overlay with
2 an existing device that was designed to give a hundred percent of excess fuel cost”
3 (Id. at 46:5-7, emphasis added); they claim that the Proposed Settlement “enlarges
4 class members’ access to meaningful compensation” (Supp. Br. at 14:20, emphasis
5 added); they state that “[w]hat we are offering is, you know, additional capture, in
6 effect, setting a new compensation floor” (June 26 Hearing Tr. at 9:18-20,
7 emphasis added); they “also believe that the proposed settlement has increased and
8 will continue to increase participation in the Voluntary Program” (Supp. Br. at
9 14:21-22, emphasis added); and note that the Proposed Settlement “includes
10 economic choice which promotes increased benefits” (Supp. Br. at 14:17).

11 The Settling Parties have not offered any support for their argument that the
12 Voluntary Program should be considered a benefit of the Proposed Settlement.

13 The Proposed Settlement provides that Class Members can file a claim form
14 to register for the Voluntary Program. (*See, e.g.*, Dkt. No. 271-3 at 1.) Class
15 Members who registered for the Voluntary Program prior to the Proposed
16 Settlement are also told that if they do nothing they will remain in the Voluntary
17 Program. (*See, e.g.*, Dkt. No. 271-3 at 1 [“If you have already enrolled in the
18 Lifetime Reimbursement Program, you do not need to take any further action to
19 remain enrolled”].) And Class Members can opt out of the settlement – without
20 releasing their rights -- and still “remain in or register for the Voluntary Program.”
21 (See Dkt. No 271-3 at 2 [“If you exclude yourself, you will be able to remain in or
22 register for the Lifetime Reimbursement Program”].) It is unclear why the
23 Voluntary Program should be considered a part of the Proposed Settlement when
24 Class Members can participate in it without releasing their rights under the
25 Proposed Settlement.

1 **VIII. A PROCESS FOR RESOLUTION OF POST-NOVEMBER 2, 2012**
2 **CLAIMS SHOULD BE INCLUDED AS PART OF THE**
3 **SETTLEMENT**

4 One of the *Krauth/Hasper* Plaintiffs, Laura Gill of Texas, purchased her
5 vehicle on November 3, 2012 based on inaccurate Monroney Stickers that had not
6 been replaced by the dealer. While recognizing the individualized issues involved
7 in the resolution of post-November 2, 2012 claims, these injured consumers are
8 entitled to redress and should not be required to file individual lawsuits to get the
9 compensation to which they are entitled. Hyundai and Kia must propose a process
10 by which individuals who purchased their vehicles after November 2, 2012 based
11 on inaccurate Monroney Stickers may resolve their claims.

12 **IX. OUTSTANDING DISCOVERY ISSUES**

13 On November 21, 2013, the parties submitted a Joint Discovery Stipulation
14 identifying various discovery issues for the Court to resolve. (Dkt. No. 154.) The
15 *Krauth/Hasper* Plaintiffs challenged Hyundai’s assertions of privilege in its
16 privilege log (“issue number four”) and moved to compel documents in response to
17 document requests, including a request for “Documents and communications
18 related to Consumer Watchdog, including lawyers employed by or counsel to
19 Consumer Watchdog, except for documents filed in the above-captioned litigation
20 OR in *Bird v. Hyundai Motor America*” (“issue number two”). (See Joint
21 Discovery Stipulation, Dkt. No. 154, at 13:1 – 33:7 and 43:1 – 47:25; Krauth and
22 Hasper Plaintiffs’ Supplemental Discovery Memorandum, Dkt. No. 157-3.)

23 In the Court’s January 10, 2014 Civil Minutes, the Court “order[ed] a further
24 submission as to issue number two by the Defendants on or before January 15,
25 2014. The Court will issue its ruling as to issue number four by January 17, 2014.”
26 (Civil Minutes, Dkt. No. 201.) In response, Defendant HMA submitted additional
27 documents to the court for in camera review. (Dkt. Nos. 206, 207, 209.) The Court
28 never ruled on issue number two. Also, the Court never ruled on issue number

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four.

The *Krauth/Hasper* Plaintiffs request that the Court rule on these two outstanding discovery issues.

X. CONCLUSION

The foregoing defects in the notice and claims process, the lack of information on the methodology for calculating the lump-sum payment amounts, and the unclear valuation of the total value of plaintiffs’ claims, in conjunction with the arguments set forth in the *Krauth/Hasper* Plaintiffs’ Opposition, warrant additional changes to the proposal before it can be granted preliminary approval.

Respectfully submitted,

Dated: July 18, 2014

CONSUMER WATCHDOG

By: /s/ Laura Antonini

LAURA ANTONINI

*Attorneys for Krauth and Hasper, et al.
Plaintiffs*

EXHIBIT 1



IMPORTANT NOTICE ABOUT YOUR HYUNDAI ELANTRA

Dear Hyundai Elantra Owner:

A proposed settlement of a class action affects you, because you purchased a Hyundai Elantra on or before November 2, 2012. **You are entitled to benefits under the settlement.** The U.S. District Court for the Central District of California, authorized this notice. **Please read this notice carefully because it affects your legal rights whether you take action or don't act.**

What is the lawsuit about?

Class members like you brought a lawsuit alleging Hyundai misrepresented the fuel economy of several of its 2011, 2012, and 2013 vehicles prior to November 2, 2012. The lawsuit claims that people either chose to buy a Hyundai based on the overestimated fuel economy or people would have paid less if they knew the true fuel economy. The lawsuit also claims that Hyundai's Lifetime Reimbursement program did not pay people enough to reimburse them for their fuel costs. Hyundai has denied the lawsuit's allegations. The parties agreed to settle before the Court decided these issues. You are a class member under the settlement because you own a Hyundai Elantra and the last four digits of your Vehicle Identification Number (VIN) are [last four digits]. The settlement will pay class members up to a total of \$XXX million.

How do I get what I am entitled to?

You are entitled to compensation under the settlement. If you want to participate in the settlement, then you can choose one of the following options:

- **You can do nothing. If you do nothing, you will automatically get a cash debit card worth \$345.00;** OR
- **IF you want to participate in Hyundai's Lifetime Reimbursement program, then you must file a claim.** This program offers mileage-based compensation for your additional fuel costs for as long as you own your Hyundai. This option may be better for high-mileage drivers (visit www.HyundaiMPGInfo.com for a reimbursement estimator); OR
- **IF you want a Dealer Service Debit Card with a value of \$517.50, then you must file a claim.** This card can only be used at an authorized Hyundai dealer for merchandise, parts or service; OR
- **IF you want a New Car Rebate Certificate with a value of \$690.00, then you must file a claim.** This certificate can only be used to purchase a new Hyundai vehicle.

There are some limitations on these options that you should know about. More information is available at the toll-free number, the address, and the website listed below.

What if I don't like the settlement?

If you don't like the settlement, then you can choose one of the following options:

- You can object to the settlement. You must object before [date].
- You can exclude yourself from the settlement. The opt-out deadline is [date].

What else should I know?

For information about filing a claim, objecting or excluding yourself from the settlement, important deadlines (which can change without notice) or the fees requested by attorneys, you can visit the website below, call toll-free at [number] and/or write to the Hyundai Fuel Economy Class Action Settlement Center, [address details]. Para vereste aviso en Espanol, visita www.HyundaiMPGClassSettlement.com. For more information, please visit the website at:

www.HyundaiMPGClassSettlement.com





Hyundai Fuel Economy Class Action Settlement Center
P.O. Box 10759
Newport Beach, CA 92658

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**IMPORTANT NOTICE FROM THE COURT
ABOUT YOUR 2013 HYUNDAI ELANTRA**

[Name]
Address
[City, State, Zip]



**IMPORTANT NOTICE FROM THE COURT
ABOUT YOUR 2013 HYUNDAI ELANTRA**
VIN #XXXXXXXXXXXX[1234]

EXHIBIT 4

1 HARVEY ROSENFELD (SBN 123082)
harvey@consumerwatchdog.org
2 PAMELA PRESSLEY (SBN 180362)
pam@consumerwatchdog.org
3 LAURA ANTONINI (SBN 271658)
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4 **CONSUMER WATCHDOG**
2701 Ocean Park Blvd., Suite 112
5 Santa Monica, CA 90405
Tel: (310) 392-0522 / Fax: (310) 392-8874

6 *Attorneys for the Krauth and Hasper, et al. Plaintiffs*

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 IN RE: HYUNDAI AND KIA FUEL
11 ECONOMY LITIGATION

Case No. 2:13-ml-02424-GW-FFM

12 ***KRAUTH/HASPER PLAINTIFFS'***
13 **STATEMENT RE SETTLING**
14 **PARTIES' SUBMISSION OF**
15 **PROPOSED FINAL NOTICE AND**
16 **CLAIM DOCUMENTS**

17 Date: August 21, 2014
18 Time: 9:30 a.m.
19 Judge: Hon. George H. Wu
20 Courtroom: 10
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1 The *Krauth/Hasper* Plaintiffs file this Statement to clarify that the
2 “unincorporated further revisions to [the Long-Form Notice, Short-Form Mailer
3 and paper Claim Form] sought by the *Krauth* and *Hasper* plaintiffs,” attached as
4 Exhibits 4, 5 and 6 to the Settling Parties’ Submission of Proposed Final Notice
5 and Claim Documents filed on August 18, 2014 (Dkt. No. 304, Exs. 4, 5, 6), do not
6 accurately convey to the Court the revisions proposed by the *Krauth/Hasper*
7 Plaintiffs to Settling Parties.

8 On August 1, 2014, per the Court’s order (Dkt. No. 293), Settling Parties
9 submitted to Non-Settling Plaintiffs revised versions of the Long-Form Notice,
10 Short-Form Mailer and paper Claim Form (“August 1 Documents”).

11 On August 11, 2014, the *Krauth/Hasper* Plaintiffs submitted proposed
12 redlines of the August 1 Documents to Liaison Counsel.

13 Settling Parties incorporated some of the *Krauth/Hasper* Plaintiffs’ proposed
14 redlines into the “Proposed Final Long-Form Notice,” “Proposed Final Short-Form
15 Mailer” and “Proposed Final Claim Form,” which they submitted to the Court on
16 August 15, 2014 (“Final Documents”). (Dkt. No. 304, Exs. 1, 2, 3.) In that same
17 filing, Settling Parties also submitted to the Court “unincorporated further
18 revisions” to the Long-Form Notice, Short-Form Mailer and paper Claim Form
19 “proposed by the *Krauth* and *Hasper* plaintiffs” (“*Krauth/Hasper* Further
20 Revisions”). (Dkt. No. 304, Exs. 4, 5, 6.)

21 To create the *Krauth/Hasper* Further Revisions, Settling Parties
22 superimposed the *Krauth/Hasper* Plaintiffs’ redlines to the August 1 Documents
23 on to the Final Documents. As a result, the *Krauth/Hasper* Further Revisions
24 attribute redlines to the *Krauth/Hasper* Plaintiffs that they never proposed.

25 In order to evaluate the edits actually proposed by the *Krauth/Hasper*
26 Plaintiffs, the *Krauth/Hasper* Plaintiffs submit to the Court the redlines to the
27
28

1 Long-Form Notice, Short-Form Mailer and paper Claim Form that they submitted
2 to Settling Parties on August 11, 2014. (Attached as Ex. 1 hereto.)

3 Although improvements have been made to the Long-Form Notice, Short-
4 Form Mailer and paper Claim Form, the *Krauth/Hasper* Plaintiffs believe that the
5 Final Documents submitted to the Court still fail to clearly explain compensation
6 options to Class Members, and require edits consistent with those proposed in the
7 attached documents.

8 Respectfully submitted,

9 Dated: August 18, 2014

CONSUMER WATCHDOG

10
11 By: /s/ Laura Antonini

LAURA ANTONINI

12 *Attorneys for Krauth and Hasper, et al.*
13 *Plaintiffs*

EXHIBIT 1



August 11, 2014

VIA EMAIL

Eric H. Gibbs (ehg@girardgibbs.com)
Girard Gibbs LLP
601 California Street, 14th Floor
San Francisco, California 94117

Re: *In re Hyundai and Kia Fuel Economy Litigation*
Case No. 2:13-ml-2424-GW-FFM

Dear Eric:

Pursuant to Judge Wu's July 24, 2014 Minute Order (Dkt. No. 293), enclosed are our proposed redlines to the revised Short-Form Notice, Long-Form Notice and Claim Form documents attached to Scott Grzenczyk's email dated August 1, 2014. We also submit the following comments.

We continue to believe that no claim form is necessary under the circumstances of this Settlement. However, since the Court has indicated that a claim form may be utilized with the understanding that the claims rate will be reviewed at Final Approval, we submit edits and comments to the notice and claim forms that we think will stimulate greater class participation.

Short-Form Notice. The Short-Form Notice still does not clearly explain the compensation options for Class Members. Our redlines add necessary detail about the various compensation options so that Class Members will understand what they might be entitled to under the Settlement when they read the Short-Form Notice.

The Short-Form Notice still fails to visually "catch the attention of the recipient." (See Dkt. No. 267, Tentative Ruling, Jun. 26, 2014 at 21; Dkt. No. 277 at 6-10, Ex. 1; Dkt. No. 266, Ex. 1; Dkt. No. 236 at 18-20.) We urge the Settling Parties to adopt our formatting changes. Specifically, we revised the form of the heading to be more eye-catching, and used bold text and bullets to draw attention to details about the different payment options under the Settlement. (See Dkt. No. 277, Ex. 1; Dkt. No. 266, Ex. 1.)

Our proposed substantive and formatting changes to the Short-Form Notice will improve Class Members' understanding of the various compensation options and what they might be entitled to under the Settlement, which will ultimately increase participation rates.

Also, we have enclosed our previously proposed envelope for the Short-Form Notice. (See Dkt. 277 at 11, Ex. 1.) We believe that the Short-Form Notice should be mailed in an envelope with

Mr. Eric Gibbs
August 11, 2014
Page 2 of 3

personalized details about the recipient's vehicle on the outside so that Class Members can identify it as bona fide correspondence rather than confuse it with junk mail. *Id.*

Long-Form Notice. Our redlines to the Long-Form Notice improve the readability of the approximately 17 page document. We continue to urge the Settling Parties to model the Long-Form Notice on the Federal Judicial Center's suggestions (Federal Judicial Center, Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (3d ed. 2010)), which we have attempted to emulate in our redlines. A couple of notes about our redlines:

- We titled the Long-Form Notice "Class Notice" because the Short-form Notice and the paper Claim Form both refer to the document as the "Class Notice." Accordingly, all references on the online claim form website to the Long-Form Notice should refer to the Class Notice, including any links to download the document.
- The text in Question 8 does not actually answer the question "How is the Lifetime Reimbursement Program HMA established in 2012 different from the Settlement?" We added text in Question 8 that provides an answer to the question asked. Additionally, we moved the relevant detail about which Class Members are entitled to money under the Lifetime Reimbursement Program from Question 8 to Question 9, Step 3. Instead of just referring to Question 8, Question 9, Step 3, now sets forth relevant information. This will improve Class Members' understanding of the compensation options.

Online Claim Form. We have not received any information about revisions to the online claim form. In the Tentative Ruling circulated at the July 24 hearing, Judge Wu stated, "the online claim form [is] overly complicated in [its] explanation of settlement options, and the explanation of how prior participation in the Reimbursement Program affects a class member's options." (Tentative Ruling, July 24, 2014 at 4.)

Paper Claim Form. We previously suggested eliminating the requirement that Class Members put their name on every page of the Claim Form; in our view, the danger of Class Member fatigue outweighs the danger of the form becoming unstapled, particularly if Hyundai and Kia undertake their responsibility as settlement administrators carefully. We also again suggest that the requirement that Class Members identify their make and model (STEP 1) is unnecessary in order for Hyundai and Kia to process the claim. Thus, we again urge that it be deleted.

Finally, since the paper Claim Form refers throughout to "the vehicle identified in STEP 1," we moved the personal contact information and vehicle information a Class Member must supply from STEP 6 to STEP 1. This edit eliminates a step for Class Members and prevents additional edits throughout the paper Claim Form. Our additional redlines will improve readability and Class Members' understanding of the compensation options.

Please let me know if you or other Settling Parties would like to discuss our proposed redlines.

Mr. Eric Gibbs
August 11, 2014
Page 3 of 3

It is our understanding that you will convey this letter and our redlines directly to the other Settling Parties for their consideration.

Sincerely,

/s/ Laura Antonini
Laura Antonini

Enclosures: (1) Redlines to Short-Form Notice, (2) Proposed Envelope for Short-Form Notice, (3) Redlines to Long-Form Notice, (4) Redlines to Paper Claim Form

cc: Scott Grzenczyk, Girard Gibbs LLP (via email)

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

IMPORTANT LEGAL NOTICE

FROM THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

**NOTICE OF REGARDING CLASS ACTION SETTLEMENT OF A CLASS ACTION
WHICH THAT INCLUDES MONETARY AWARDS**

If you ~~purchased~~ bought or leased ~~certain~~ a 2011, 2012, or 2013 model-year Hyundai vehicles, you ~~may be entitled~~ could get a payment to money or other benefits from a ~~proposed~~ class action settlement.

You ~~are receiving this notice because you likely may~~ qualify for a payment under a class action proposed federal court settlement. There are different payment ~~that gives you the options: of a~~ lump sum of cash (via debit card), a ~~larger~~ dealership credit for goods and services (via debit card), ~~or an even larger new car rebate certificate, or participation in Hyundai's "Lifetime Reimbursement Program."~~ You could get between \$XXX and \$XXX. To get a payment, you must tell Hyundai which payment option you want. Although each class member's situation is different, the potential average settlement benefit for those current original owners who elect a lump sum cash payment is \$[redacted]. (High mileage drivers may receive greater amounts by participating in the Lifetime Reimbursement Program.) Other settlement benefits exist. This is not a solicitation and you do not have to pay any money to qualify for settlement benefits.

TheA proposed settlement has been reached in a class action lawsuit alleging Hyundai misrepresented ~~that prior to November 2, 2012,~~ the fuel economy ratings ~~for of~~ certain Hyundai vehicles ~~were misrepresented~~. The lawsuit claims that people either chose to buy a Hyundai based on the overstated fuel economy or people would have paid less had they known the true fuel economy ~~because of the alleged misrepresentations, class members purchased vehicles they otherwise would not have purchased or paid more for the vehicles than they otherwise would have paid~~. The lawsuit also claims that ~~the~~ Hyundai's Lifetime Reimbursement Program, initiated by Hyundai ~~on November 2, 2012 to reimburse class members to pay people~~ for increased fuel costs, is inadequate. Hyundai has denied the lawsuit's allegations. The parties agreed to resolve these matters before these issues were decided by the Court. The settlement will pay class members up to a total of \$XXX million. The sole purpose of this notice is to inform you of the class action lawsuit and the proposed settlement so that you may decide what to do.

Records ~~available to Hyundai~~ indicate that you may be a class member ~~because for a vehicle for which~~ the last four digits of your the car's Vehicle Identification Number (VIN) ~~are is~~ [last four digits]. ~~If you are a class member, your rights may be affected, even if you take no action.~~ If you are a class member and ~~don't fail to respond~~, you will ~~not get paid and you will~~ forfeit your rights under the settlement to sue Hyundai for fuel economy misrepresentations made prior to November 2, 2012 ~~and will not receive compensation pursuant to the settlement to which you might otherwise be entitled~~. You ~~may be required to take action~~ must tell Hyundai which payment option you want in order to get money and/or to protect your rights.

Payments ~~depend on your type of ownership and the year and model, minus any payments you have received under the Lifetime Reimbursement Program.~~

You should review the Class Notice to determine which payment options are available to you. The payment options include:

- **Lump sum payment** is a one-time payment on a cash debit card. If you currently own or lease your Hyundai vehicle, your lump sum amount depends on the year and make of your car. The average lump sum cash payment for current original owners is \$[redacted]. If you are a former owner or lessee, your lump sum amount is the value you would get through Hyundai's Lifetime Reimbursement program. All lump sum amounts are reduced by payments you already got through Hyundai's Lifetime Reimbursement program.
- **Dealer Service Debit Card** is available to all class members in 150% of your lump sum amount. This card can only be used at an authorized Hyundai dealer for merchandise, parts or service.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

- **New Car Rebate Certificate** is available to all class members in 200% of your lump sum amount. This certificate can only be used to purchase a new Hyundai vehicle.
- **Participation in Hyundai's Lifetime Reimbursement program** is only available to people who currently own or lease their vehicle. Hyundai's Lifetime Reimbursement program offers mileage-based compensation for your additional fuel costs for as long as you drive your vehicle. You have to visit the dealer to get your mileage verified if you want payments. This option may be better for high-mileage drivers (visit www.HyundaiMPGInfo.com for a reimbursement estimator).

If you think you qualify, you can go to www.HyundaiMPGClassSettlement.com, where you can make a claim by typing in your vehicle's VIN and the following Unique ID Number:

[Unique ID]

You should ~~also~~ review the Class Notice for more information and, if applicable, the Claim Form. They are available (1) at www.HyundaiMPGClassSettlement.com; (2) by calling, toll-free, at [(xxx) xxx-xxxx]; and/or (3) by writing to the Hyundai Fuel Economy Class Action Settlement Center, P.O. Box 10759, Newport Beach, CA 92658.

~~There are two key deadlines. If you want to object to the settlement or exclude yourself from the settlement, you must do so by [date]. for requests to be excluded and objections and If you want to [date] for submitting a claims~~ (either through the website or by mailing a Claim Form), you must do so by [date]. There are other deadlines, too. All deadlines are available (and may be updated) at www.HyundaiMPGClassSettlement.com. Para vereste aviso en Español, visita www.HyundaiMPGClassSettlement.com.



Hyundai Fuel Economy Class Action Settlement Center
P.O. Box 10759
Newport Beach, CA 92658

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**IMPORTANT NOTICE FROM THE COURT
ABOUT YOUR 2013 HYUNDAI ELANTRA**

[Name]
Address
[City, State, Zip]



**IMPORTANT NOTICE FROM THE COURT
ABOUT YOUR 2013 HYUNDAI ELANTRA**
VIN #XXXXXXXXXXXX[1234]

CLASS NOTICE

UNITED STATES DISTRICT COURT FOR THE
 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION
 In Re: Hyundai and Kia Fuel Economy Litigation, No. MDL 13-2424-GW(FFMx)

*This is not a solicitation from a lawyer.
 The U.S. District A federal cCourt has authorized that this notice be sent to you.*

If you ~~purchased~~ bought or leased one of the ~~Model Year~~ 2011, 2012 or 2013 Hyundai vehicles listed in Schedule A at the end of this notice, you ~~may be entitled to a cash~~ could get a payment or other benefits: from a class action settlement.

- The Settlement resolves a class action lawsuit alleging that Hyundai misrepresented the fuel economy of certain 2011, 2012 and 2013 vehicles prior to November 2, 2012.
- If the Settlement described below is approved by the Court, certain current and former owners and lessees of the ~~Model Year~~ 2011, 2012 and 2013 Hyundai vehicles listed in Schedule A (~~hereinafter “Class Vehicles”~~) ~~can~~ may be entitled to receive a Lump Sum Payment of cash payment or other benefits. You may also be entitled to payments from the Lifetime Reimbursement Program. ~~F~~(for more details, see response to Question 9 on page [redacted]: “What does the Settlement provide? What can I get from the Settlement?”).
- If you previously received ~~compensation money~~ under the Lifetime R*ei*mbursement P*ro*gram initiated by Hyundai Motor America (hereinafter “HMA”) in November 2012, you may still be ~~eligible to participate~~ able to get a payment from the Settlement.
- Your legal rights are affected whether you act or don’t act. Please read this entire notice carefully.
- Although each class member’s situation is different, ~~you could get a the potential average settlement benefit for those current original owners who elect a Lump Ssum cash Ppayment is between \$[redacted] and \$[redacted].~~ (High mileage drivers may receive greater amounts by participating in the Lifetime Reimbursement Program.)

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINES
SUBMIT A CLAIM FOR A LUMP SUM PAYMENT (OR OTHER SETTLEMENT BENEFITS)	To receive a Lump Sum Payment <u>in the form of cash, dealer service credit, or a new car rebate or other benefit under the Settlement</u> , you must submit a claim. Your Lump Sum Payment (or other Settlement benefit) will only be paid if the Court approves the Settlement. If you would like to submit a claim, you can do so	Deadline to Submit a Claim by: [9 months after deadline for mailing class notice]

If you have questions or want more information, you can:
 Visit www.HyundaiMPGClassSettlement.com
 Call **[HMA TOLLFREE TOLLFREE]**, or
 E-mail hyundaimpgsettlement@jnrcorp.com.

	<p>online at www.HyundaiMPGClassSettlement.com.</p>	
<p><u>SIGN UP FOR THE REGISTER FOR OR CONTINUE PARTICIPATING IN THE LIFETIME REIMBURSEMENT PROGRAM AND</u></p> <p><u>SUBMIT A CLAIM FOR ADDITIONAL COMPENSATION</u></p>	<p>Instead of receiving a Lump Sum Payment under the Settlement, you may choose to continue participating in, or register for, to get payments from the Lifetime Reimbursement Program. If you would like to register, you can do so You have to sign up online at www.HyundaiMPGClassSettlement.com. If you have already enrolled signed up in the Lifetime Reimbursement Program, you do not need to take any further action to remain enrolled.</p> <p>Even if you wish to remain in or register for the Lifetime Reimbursement Program, you may still be entitled to some additional compensation through the Settlement (see response to Question 9 on page). To claim this compensation, you must submit a claim.</p>	<p><u>Deadline to Register Sign up for the Lifetime Reimbursement Program and Deadline to Submit a Claim for Additional Compensation by:-</u> 9 months after deadline for mailing class notice</p>
<p><u>SUBMIT A CLAIM FOR ADDITIONAL COMPENSATION</u></p>	<p>If you are an eligible current or former owner or lessee of a Hyundai Elantra, Accent, Veloster or Sonata Hybrid, you may still be entitled to some additional compensation through the Settlement (see Question 9, STEP 4 on page). To claim this compensation, you must submit a claim.</p>	<p>Submit a Claim for Additional Compensation by: 9 months after deadline for mailing class notice</p>
<p>DO NOTHING</p>	<p><u>Get no payment from the Settlement.</u> You will be bound by the Settlement but will not receive any benefits from the Settlement and you will forfeit any rights to get paid or to sue Hyundai in the future over the fuel economy claims that are the subject of you might have under the Settlement (see Question 12 on page). In order to receive compensation, you must either submit a claim or participate in the Lifetime Reimbursement Program.</p>	<p><u>Deadline to Submit a Claim or Register Sign up for the Lifetime Reimbursement Program by:</u> 9 months after deadline for mailing class notice</p>
<p><u>EXCLUDE YOURSELF FROM THE SETTLEMENT</u></p>	<p>Receive <u>Get no benefits-payment</u> from the Settlement. This is the only option that allows you to be part of any other lawsuit against HMA, Kia Motors America, Inc. (hereinafter “KMA”), Hyundai America Technical Center, Inc. (also doing business as Hyundai-Kia America Technical Center), Hyundai Motor Company, Kia Motors Corporation, and/or their affiliates in connection with the legal claims in this case.</p> <p>If you exclude yourself, you will be able to remain in or register <u>sign up</u> for the Lifetime Reimbursement Program.</p>	<p><u>Deadline to Submit Your Request to be Excluded yourself by from the Settlement and Deadline to Register for the Lifetime Reimbursement Program:</u> 9 months after deadline for mailing class notice</p>

If you have questions or want more information, you can:
 Visit www.HyundaiMPGClassSettlement.com
 Call [HMA TOLLFREE], or
 E-mail hyundaimpgsettlement@jnrcorp.com.

OBJECT	<u>Write to the Court about why you don't like the settlement.</u>	Object by: [9 months after deadline for mailing class notice]
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~~Unless you exclude yourself from the Settlement, you also have the opportunity to object to the Settlement. The process for objecting to the Settlement is explained more fully in the response to Questions 18-22 on pages [redacted].~~

These rights and options—and the deadlines to exercise them—are explained in this notice. **READ THIS ENTIRE NOTICE CAREFULLY TO DECIDE WHICH PAYMENT OPTION IS BEST FOR YOU.**

The Court in charge of this matter still has to decide whether to approve the Settlement. Settlement benefits will become available if the Court approves the Settlement and after any appeals are resolved. Please be patient.

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call [HMA TOLLFREE], or
E-mail hyundaimpgsettlement@jnrcorp.com.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....	PAGE 4
1. Why should I read this notice?	
2. What are these lawsuits about?	
3. Why are these lawsuits class actions?	
4. Why is there a Settlement?	
WHO IS IN THE SETTLEMENT.....	PAGE 5
5. How do I know if I am part of the Settlement?	
6. I'm still not sure if I am included.	
7. Am I still eligible for the Settlement if I received money under the Lifetime Reimbursement Program?	
8. How is the Lifetime Reimbursement Program HMA established in 2012 different from the Settlement?	
THE SETTLEMENT BENEFITS—WHAT YOU GET.....	PAGE 6
9. How do the Settlement Benefits that I can receive compare to what I would receive under the Lifetime Reimbursement Program?	
HOW YOU CAN PARTICIPATE IN THE SETTLEMENT.....	PAGE 9
10. How can I participate in the Settlement?	
11. When would I get my Settlement benefits?	
12. What am I giving up to stay in the Class and receive a benefit?	
EXCLUDING YOURSELF FROM THE SETTLEMENT.....	PAGE 10
13. How do I get out of the Settlement?	
14. If I don't exclude myself, can I sue HMA or KMA for the same thing later?	
15. If I exclude myself, can I get benefits from this Settlement?	
THE LAWYERS REPRESENTING YOU.....	PAGE 11
16. Do I have a lawyer in the case?	
17. How will the lawyers be paid?	
OBJECTING TO THE SETTLEMENT.....	PAGE 12
18. How do I tell the Court that I don't like the Settlement?	
19. What's the difference between objecting and excluding?	
20. When and where will the Court decide whether to approve the Settlement?	
21. Do I have to come to the hearing?	
22. May I speak at the hearing?	
IF YOU DO NOTHING.....	PAGE 13
23. What happens if I do nothing at all?	
GETTING MORE INFORMATION.....	PAGE 13
24. Are there more details about the Settlement?	
25. How do I get more information?	

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call [HMA TOLLFREE], or
E-mail hyundaimpgsettlement@jnrcorp.com.

BASIC INFORMATION

1. Why should I read this notice?

This notice applies to you if, on or before November 2, 2012, you owned or leased ~~on or before November 2, 2012~~—one of the vehicles listed in Schedule A attached to this notice (Class Vehicles”).

These vehicles are the subject of more than 50 lawsuits currently pending in multidistrict litigation (“MDL Litigation”). The Court in charge of the ~~multidistrict MDL~~ litigation is the U.S. District Court for the Central District of California. The lawsuit is called *In Re: Hyundai and Kia Fuel Economy Litigation*, No. MDL 13-2424-GW (FFMx). The people who sued are called Plaintiffs or Class Representatives, and the companies they sued, HMA and KMA, are called the Defendants.

The Court has ordered this notice to be available to you because you have a right to know about a proposed Settlement, and about your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, HMA and KMA will provide payments and other benefits agreed to in the Settlement for certain past and present owners and lessees. This notice explains the litigation, the Settlement, your legal rights, the benefits available, who is eligible for them, and how to get them. You should read this entire notice.

2. What are these lawsuits about?

On November 2, 2012, HMA and KMA each issued a public statement informing the public that they were voluntarily adjusting-decreasing the fuel economy ratings downward for of the each Class Vehicles. Both HMA and KMA simultaneously announced that each company was instituting a “Lifetime Reimbursement Program” (hereinafter “Lifetime Reimbursement Program”) to compensate affected vehicle owners and lessees for the additional fuel costs associated with the lowered fuel economy ratings.

The lawsuits claim that, prior to November 2, 2012, the fuel economy ratings for the Class Vehicles were misrepresented. Plaintiffs claim that, because of the alleged misrepresentation, they and others purchased vehicles they otherwise would not have purchased or paid more for the vehicles than they otherwise would have paid. Plaintiffs also assert claim that the Lifetime Reimbursement Program is inadequate. HMA and KMA deny Plaintiffs’ allegations.

3. Why are these lawsuits class actions?

In a class action, people called “Class Representatives” sue on behalf of other people who have similar claims. All of these people together are the “Class” or “Class Members.” The Court has determined that the Class Representatives may pursue legal claims and enter into the Settlement on behalf of the entire Class, except those that choose to exclude themselves from the Settlement (described more fully see Steps 13 through 15 below).

4. Why is there a Settlement?

The Class Representatives and the Defendants agreed to a Settlement to avoid the cost and risk of further litigation, including a potential trial, and so that the Class Members can get payments and other benefits, in exchange for releasing HMA and KMA from liability. The Settlement does not mean that HMA or KMA broke any laws and/or did anything wrong, and the Court did not decide which side was right. The

5

If you have questions or want more information, you can:

Visit www.HyundaiMPGClassSettlement.com

Call [**HMA TOLLFREE**], or

E-mail hyundaimpgsettlement@jnrcorp.com.

Settlement here has been preliminarily approved by the Court, which authorized the issuance of this notice. The Class Representatives and the lawyers representing them (called “Class Counsel”) believe that the Settlement is in the best interests of all Class Members.

This notice summarizes the terms of the Settlement. The Settlement Agreement along with all exhibits and addenda sets forth in greater detail the rights and obligations of the parties and are available at website www.HyundaiMPGClassSettlement.com. If there is any conflict between this notice and the Settlement Agreement, the Settlement Agreement governs.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the Settlement?

The Class ~~included in the Settlement~~ includes any current or former owner or lessee of a Class Vehicle who was the owner or lessee, on or before November 2, 2012, of such Class Vehicle that was registered in the District of Columbia or one of the fifty (50) states of the United States, except that the following are excluded: (i) Rental Fleet Owners; (ii) government entities, except to the extent that a government entity is the owner or lessee of a Fleet Class Vehicle (in which case such government entity is not excluded from the Class); (iii) judges assigned to the MDL Litigation, including the judge or judges assigned to any lawsuit prior to the transfer of that lawsuit to the MDL Litigation; and (iv) persons who have previously executed a release of HMA or KMA that includes a claim concerning the fuel economy of a Class Vehicle.

~~“Class Vehicles” are the 2011, 2012, and 2013 vehicles listed in Schedule A at the end of this notice.~~

“Rental Fleet Owner” means an owner of one or more Fleet Class Vehicles that are available to be rented or leased.

“Fleet Class Vehicle” means a Class Vehicle purchased by a governmental entity, corporation, or Person that negotiated the purchase terms with HMA or KMA (as the case may be), as opposed to one of their authorized dealers, provided that neither HMA nor KMA agreed to repurchase such Fleet Class Vehicles at a later date.

~~The Class Vehicles are the Model Year 2011, 2012 and 2013 Hyundai vehicles listed in Schedule A attached to this notice.~~

6. I’m still not sure if I am included.

If you are still not sure whether you are included in this class, you can ask for free help. You can visit the website at www.HyundaiMPGClassSettlement.com. You can also call [(XXX)-XXX-XXXX] and ask whether your vehicle is included in the Settlement. Whether you visit the website or call the toll-free number, you will need to have your Vehicle Identification Number (VIN) ready. The VIN is located on a placard on the top of the dashboard and is visible through the driver’s side corner of the windshield. It also appears on your vehicle registration card and probably appears on your vehicle insurance card.

7. Am I still eligible for the Settlement if I received money under the Lifetime Reimbursement Program?

6

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call [HMA TOLLFREE], or
E-mail hyundaimpgsettlement@jnrncorp.com.

In November 2012, HMA and KMA initiated the Lifetime Reimbursement Program to reimburse certain current and former owners and lessees of the Class Vehicles for the additional fuel costs resulting from the companies' associated with the fuel economy ratings that were adjusted downward on November 2, 2012 fuel economy misstatements. If you have received money from reimbursement pursuant to this Lifetime Reimbursement Program (or if you receive such reimbursement in the future), you will still be a member of the Class.

You will not be a member of this Class unless if you take the steps to exclude yourself from the Class (see response to Question 13 on page [redacted]): "How do I get out of the Settlement?"). If you do exclude yourself, you can keep any reimbursement you already received and you may continue receiving reimbursements pursuant to the Lifetime Reimbursement Program in the future, but you will not have the right to share in the benefits offered in the Settlement.

8. How is the Lifetime Reimbursement Program ~~HMA established in 2012~~ different from the Settlement?

HMA and KMA voluntarily initiated the Lifetime Reimbursement Program on November 2, 2012 after issuing public statements that the companies had misstated the fuel economy of several of their 2011, 2012 and 2013 vehicles. Pursuant to the Lifetime Reimbursement Program, provides owners and lessees people who owned or leased their a Class Vehicle on or before November 2, 2012 with, are eligible to receive a personalized cash debit card that reimburses them for the additional fuel costs resulting from the Defendants' November 2, 2012 associated with the fuel economy misstatements ratings that were adjusted downward on November 2, 2012.

The reimbursement formula is additional fuel costs are calculated based on three factors: (1) the number of miles the owner or lessee has accumulated on the vehicle in question driven; (2) the difference between the original and revised combined fuel economy ratings of the vehicle in question, in miles per gallon; and (3) a 52-week average fuel price for the area in which the owner lives, based on U.S. Energy Information Association data. In addition, HMA adds an extra 15% percent to the reimbursement payment amount.

Under the Lifetime Reimbursement Program, owners and lessees of Class Vehicles can get periodic payments according to the number of miles they drive. In order to get the periodic payments, owners and lessees of Class Vehicles must take their vehicles into a dealer to get their mileage verified. Owners and lessees of Class Vehicles are entitled to these payments for as long as they own or lease their vehicle.

The Settlement provides Class Members with an alternative to the Lifetime Reimbursement Program by offering a one-time, up-front Lump Sum Payment. The Lump Sum Payment is calculated based on factors like additional fuel costs. The Lump Sum Payment offers compensation to Class Members without requiring them to go to the dealer to verify their mileage in order to get compensation.

The Settlement allows eligible Class Members to sign up for the Lifetime Reimbursement Program if they have not already signed up. High mileage drivers may receive greater amounts from the Lifetime Reimbursement Program.

Former owners and lessees of the Class Vehicles are eligible to receive a one-time reimbursement using this formula. Current owners and lessees are eligible to receive a reimbursement for prior accumulated mileage, as well as periodic future reimbursement as the Class Vehicle accumulates mileage in the future.

7

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call [HMA TOLLFREE], or
E-mail hyundaimpgsettlement@jnrcorp.com.

If you register for the Lifetime Reimbursement Program, you will be eligible to receive benefits for as long as you own or lease your Class Vehicle.

Detailed information about the Lifetime Reimbursement Program, including a tool that provides a reimbursement estimate, is available at www.HyundaiMPGClassSettlement.com. To participate in the Lifetime Reimbursement Program, eligible owners and lessees who have not already registered must register within nine (9) months of **[Deadline for date that class notice must be mailed.]** If you are already registered for the Lifetime Reimbursement Program, you do not need to take any further action to remain in the program.

As outlined below, you can now elect whether to remain in (or register for) the Lifetime Reimbursement Program and whether to receive the Settlement benefits. (Note that some participants in the Lifetime Reimbursement Program may also be eligible for Settlement Benefits.)

THE SETTLEMENT BENEFITS—WHAT YOU GET

9. How do the Settlement benefits that I can receive compare to what I would receive under the Lifetime Reimbursement Program?

Those eligible have two options:

1. **Lump Sum Payment.** Rather than participating in the Lifetime Reimbursement Program (described above), you can elect to receive a Lump Sum Payment, the cash value of which is listed on Schedule A. A Lump Sum Payment provides compensation in one payment, without the need for additional dealer visits or paperwork. The amount of each Lump Sum Payment is determined by your Class Vehicle and what type of Class Member you are, which is explained below. Current owners and lessees can get a Lump Sum Payment of cash in the amount listed in Schedule A at the end of this notice. Former owners and lessees are eligible to receive a Lump Sum Payment with the same of cash value in the amount that they would receive under the Lifetime Reimbursement Program. All those eligible for a Lump Sum Payment can instead choose a Lump Sum Payment in the form of whether to receive a Dealer Service Debit Card or a New Car Rebate Certificate in larger amounts than a Cash Debit Card (as described see in STEP 2 below). You must submit a claim to get the Lump Sum Payment.

2. **Lifetime Reimbursement Program.** Current owners and lessees may choose to participate in the Lifetime Reimbursement Program instead of receiving a Lump Sum Payment under the Settlement. High mileage drivers may receive greater amounts from the Lifetime Reimbursement Program. Instructions for estimating the amount you could potentially receive under the Lifetime Reimbursement Program are provided below. If you have not previously registered signed up for the Lifetime Reimbursement Program, you can do so by visiting sign up at www.HyundaiMPGClassSettlement.com. If you are already registered signed up for the Lifetime Reimbursement Program, you do not need to take any further action to remain in the program.

• **Additional Compensation.** If you are an eligible current or former owner or lessee of a Hyundai Elantra, Accent, Veloster or Sonata Hybrid, you may also be entitled to the Additional Compensation

8

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call **[HMA TOLLFREE]**, or
E-mail hyundaimpgsettlement@jnrcorp.com.

provided by the Settlement that is described below in STEP 4. If you are eligible for this Additional Compensation, you must submit a claim to receive it.

To make your election, you may want to consider the benefits available under the Lifetime Reimbursement Program and the Settlement for your particular Class Vehicle and your other personal circumstances. The following steps will assist you in determining ~~what is available to you~~ which payment option is best for you. ~~The~~ You can also compare the different amounts of your potential benefits you are eligible to get under the Settlement at ~~can also be viewed by visiting~~ www.HyundaiMPGClassSettlement.com, as long as you have your Vehicle Identification Number (“VIN”) and Unique ID available. If you do not know your Unique ID, please call [HMA TOLLFREE].

STEP 1: Determine What Type of Class Member You Are:

If you...

Purchased your Class Vehicle as a new vehicle on or before November 2, 2012 and you still owned it as of December 23, 2013, you are considered a **Current Original Owner**.

Purchased your Class Vehicle as a used vehicle on or before November 2, 2012 and you still owned it as of December 23, 2013, you are considered a **Current Non-Original Owner**.

Purchased your Class Vehicle on or before November 2, 2012 and you no longer owned it as of December 23, 2013, you are considered a **Former Owner**.

Leased your Class Vehicle on or before November 2, 2012 and you still leased it as of December 23, 2013, you are considered a **Current Lessee**.

Leased your Class Vehicle on or before November 2, 2012 and you no longer leased or owned it as of December 23, 2013, you are considered a **Former Lessee**.

Purchased your Fleet Class Vehicle (defined above) on or before November 2, 2012 and you still owned them as of December 23, 2013, provided that neither HMA or KMA agreed to repurchase such Class Vehicle at a later date, you are considered a **Current Fleet Owner**.

Purchased your Fleet Class Vehicle (defined above) on or before November 2, 2012 and you no longer owned them as of December 23, 2013, provided that neither HMA or KMA agreed to repurchase such Class Vehicle at a later date, you are considered a **Former Fleet Owner**.

This information can also be found at www.HyundaiMPGClassSettlement.com.

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call [HMA TOLLFREE], or
E-mail hyundaimgsettlement@jnrcorp.com.

STEP 2: Determine the Value of Your Lump Sum Payment:

If you are a Current Original Owner, Current Non-Original Owner, Current Fleet Owner, or Current Lessee, refer to Schedule A for the amount that corresponds to your vehicle and Class Member type.

If you are a Former Owner, Former Fleet Owner, or Former Lessee, you are entitled to a Lump Sum Payment with the same cash value that you would receive pursuant to the Lifetime Reimbursement Program, which is explained in Step 3 on page 25. You can see the cash value of your Lump Sum Payment by using the reimbursement calculator located at www.HyundaiMPGClassSettlement.com. In addition to the Lump Sum Payment, eligible Former Owners may be entitled to Additional Compensation (see STEP 4).

Lump Sum Payments may be claimed in three different ways: (1) as a Cash Debit Card at 100% cash value of the amount listed on Schedule A; (2) a Dealer Service Debit Card valued at 150% of the amount listed on Schedule A; or (3) a New Car Rebate Certificate valued at 200% of the amount listed on Schedule A. Details regarding each option are provided in Table 1 below.

After determining/deciding the value of the form of compensation/Lump Sum Payment you pick (set forth in see Table 1), a deduction will be made for any amounts you already received pursuant to/from the Lifetime Reimbursement Program. If you have questions regarding how much you may have already received under the Lifetime Reimbursement Program, e-mail hyundaimpgsettlement@jnrncorp.com or call [HMA TOLLFREE].

**Table 1
Lump Sum Payments**

<ul style="list-style-type: none">• Option 1 Cash Debit Card<ul style="list-style-type: none">○ 100% of cash value of Lump Sum Payment amount awarded (minus amounts already received from Lifetime Reimbursement Program)○ May be used like a credit card or at an ATM○ No issuer-imposed restrictions that would prevent a recipient you from transferring the entire balance of the debit card to a checking or other to your bank account○ Non-transferrable○ Expires one year after it is issued
<ul style="list-style-type: none">• Option 2 Dealer Service Debit Card<ul style="list-style-type: none">○ 150% of amount that otherwise would be paid as a Cash Debit Card (minus amounts already received from Lifetime Reimbursement Program)○ May only be used at an authorized Hyundai dealer (for Settlement Class Members who own(ed) or lease(d) Hyundai Class Vehicles) in payment towards merchandise, parts or service○ Non-transferrable○ Expires two years after it is issued.

- **Option 3**
New Car Rebate Certificate
 - 200% of the amount that otherwise would be paid as a Cash Debit Card (minus amounts already received from Lifetime Reimbursement Program)
 - May only be used toward the purchase of a new Hyundai vehicle (for Settlement Class Members who own(ed) or lease(d) Hyundai Class Vehicles).
 - Non-transferrable, except that it may be transferred to a family member (child, parent or sibling)
 - Expires three years after it is issued.

The value of any Cash Debit Card, Dealer Service Debit Card, or New Car Rebate Certificate shall remain the property of the issuer, HMA, unless and until it is expended by the Settlement Class Member. Upon expiration of any Cash Debit Card, Dealer Service Debit Card, or New Car Rebate Certificate, any unexpended funds shall remain the permanent property of the issuer (HMA). No issuer fees will be imposed on the recipient of a Cash Debit Card, Dealer Service Debit Card, or New Car Rebate Certificate.

STEP 3: Estimate Your Lifetime Reimbursement Program Compensation:

Current owners and lessees may choose between a Lump Sum Payment and payments from the Lifetime Reimbursement Program. Only current owners and lessees are eligible to get money for prior mileage, as well as periodic future payments as the Class Vehicle accumulates mileage in the future, from the Lifetime Reimbursement Program. High mileage drivers may receive greater amounts from the Lifetime Reimbursement Program.

If you register for the Lifetime Reimbursement Program, you will be eligible to receive benefits for as long as you own or lease your Class Vehicle.

The Lifetime Reimbursement Program is summarized in the response to Question 8 on page 11.

Detailed information about the Lifetime Reimbursement Program, including a tool that provides a reimbursement estimate, is available at www.HyundaiMPGClassSettlement.com. To get money from the Lifetime Reimbursement Program, eligible owners and lessees must sign up within nine (9) months of [Deadline for date that class notice must be mailed.] If you are already signed up for the Lifetime Reimbursement Program, you do not need to take any further action to remain in the program.

Eligible current owners and lessees who decide to stay in (or sign up for) the Lifetime Reimbursement Program may be entitled to Additional Compensation (see STEP 4).

STEP 4: Determine Whether You ~~Are Eligible for~~ Can Get Additional Compensation

~~Any~~ If you are a Current Original Owner, Current Lessee, or Current Fleet Owner of an Elantra, Accent, Veloster or Sonata Hybrid listed on Schedule A ~~and who you elects to remain in or register for~~ pick the Lifetime Reimbursement Program, ~~you can get~~ ~~may elect to receive the~~ ~~A~~additional ~~C~~ompensation ~~set forth below~~.

~~In addition, if you are any~~ Former Owner of an Elantra, Accent, Veloster or Sonata Hybrid listed on Schedule A ~~who elects to remain in or register for the Lifetime Reimbursement Program may elect to receive~~ ~~they~~you can ~~get~~ ~~A~~additional ~~C~~ompensation ~~but only set forth below~~ if: (i) ~~the Former Owner was~~you were the original ~~retail~~ owner of ~~such your~~ Class Vehicle (e.g., ~~the Former Owner~~you did not purchase the Class Vehicle as

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call [HMA TOLLFREE], or
E-mail hyundaimpgsettlement@jnrcorp.com.

a Fleet Vehicle); and (ii) ~~the Former Owner you were remained~~ the owner of ~~such the~~ Class Vehicle on February 12, 2013.

The Additional Compensation you can get is:

Current Original Owners Certain Former Owners (described above)	\$100 per Elantra, Accent, Veloster, and Sonata Hybrid Class Vehicles. You can receive this compensation in any form of compensation outlined in Table 1.
Current Lessees and Current Fleet Owners	\$50 per Elantra, Accent, Veloster, and Sonata Hybrid Class Vehicles. You can receive this compensation in any form of compensation outlined in Table 1.

You must submit a claim to get this Additional Compensation. To the extent that any Current Original Owner, Current Lessee, Current Fleet Owner, or Current Non-Original Owner of an Elantra, Accent, Veloster or Sonata Hybrid listed on Schedule A elects to receive a Lump Sum Payment, the foregoing “Additional Compensation” is already included in the Lump Sum Payment amounts listed on Schedule A.

HOW YOU CAN PARTICIPATE IN THE SETTLEMENT

10. How can I participate in the Settlement?

If you ~~wish to receive the want~~ benefits offered under this Settlement, then you will be required to submit a claim within nine (9) months of **[Deadline for date that class notice must be mailed]**. You can submit your claim electronically at www.HyundaiMPGClassSettlement.com or you can mail a claim form, ~~Y~~ which you can obtain get a paper claim form at www.HyundaiMPGClassSettlement.com or by calling **[HMA TOLLFREE]**.

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call **[HMA TOLLFREE]**, or
E-mail hyundaimpgsettlement@jnrcorp.com.

11. When would I get my Settlement benefits?

The Hon. George H. Wu, U.S. District Court Judge, will hold a hearing on [DATE], at [TIME] at the U.S. District Court for the District of Central California, Western Division, 312 North Spring Street, Los Angeles, CA 90012-4793, to decide whether to approve this Settlement. If the Court approves the Settlement, there may be appeals afterwards. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps even more than a year. You may continue to check on the progress of the Settlement by visiting the website www.HyundaiMPGClassSettlement.com or calling [HMA TOLLFREE].

12. What am I giving up to stay in the Class and receive a benefit?

Unless you exclude yourself, you are staying in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against HMA, KMA, Hyundai America Technical Center, Inc. (also doing business as Hyundai-Kia America Technical Center), Hyundai Motor Company, Kia Motors Corporation, all affiliates of the Hyundai Motor Group, or any other related entity about the legal issues in this case if the Settlement is approved. It also means that all of the Court's orders will apply to you and legally bind you.

However, nothing in this Settlement will prohibit you from pursuing claims for: (i) personal injury; (ii) damage to property other than to a Class Vehicle; or (iii) any and all claims that pertain to something other than a Class Vehicle.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to participate in this Settlement, but you want to keep the right to sue or continue to sue HMA or KMA, on your own, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself—or it is sometimes referred to as opting out of the Class.

13. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to “opt-out” or “be excluded from the Settlement.” Be sure to include your name, address, telephone number, your signature, the Vehicle Identification Number (VIN) of your vehicle (which is located on a placard on the top of the dashboard visible through the driver's side corner of the windshield), and refer to the case as *In Re: Hyundai and Kia Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx) (C.D. Cal.). You must mail your exclusion request postmarked no later than [OPT OUT DEADLINE] to:

To Class Counsel:

Robert B. Carey
Hagens Berman Sobol Shapiro LLP
11 West Jefferson Street, Suite 1000
Phoenix, AZ 85003

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call [HMA TOLLFREE], or
E-mail hyundaimpgsettlement@jnrncorp.com.

You can't exclude yourself on the phone or by e-mail.

If you ask to be excluded, you will not qualify for any of the Settlement benefits, and you cannot object to the Settlement. You will also not be legally bound by anything that happens in this lawsuit. Depending on the laws in your state, you may be able to sue (or continue to sue) HMA, KMA, and the related entities listed in ~~the response to the prior question~~ [Question 14](#).

14. If I don't exclude myself, can I sue HMA or KMA for the same thing later?

Unless you exclude yourself, you give up the right to sue HMA, KMA, Hyundai America Technical Center, Inc., (also doing business as Hyundai-Kia America Technical Center), Hyundai Motor Company, Kia Motors Corporation, all affiliates of the Hyundai Motor Group, and any other related entity for the claims that this Settlement resolves.

If you have a pending lawsuit against HMA, KMA, or the related entities listed [above](#), speak to your lawyer who represents you in that lawsuit immediately. You must exclude yourself from *this* Class to continue your own lawsuit if it concerns the same legal issues in this case. Remember, the exclusion deadline is **[OPT OUT DEADLINE]**.

15. If I exclude myself, can I get benefits from this Settlement?

If you exclude yourself, you will not be eligible for benefits under the Settlement. [If you exclude yourself and have already signed up for the Lifetime Reimbursement Program, you can keep any reimbursement you already received and you may continue receiving reimbursements pursuant to the Lifetime Reimbursement Program in the future, but you will not have the right to share in the benefits offered in the Settlement.](#)

[If you exclude yourself](#), ~~But~~ you will not be prohibited by this Settlement from suing, continuing to sue, or being part of a different lawsuit against HMA, KMA, and the other legal entities listed [above in Question 14](#) concerning the legal issues in this case.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in the case?

The Class Representatives have asked the Court to appoint their lawyers, the law firms of Hagens Berman Sobol Shapiro LLP and McCuneWright, LLP, as Class Counsel to represent you and the Class. Together, the lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and expenses of no more than **[AMOUNT]**. The Court may award less than this amount. Court-Appointed Liaison Counsel and Plaintiffs' counsel other than Class Counsel will also ask the Court for attorneys' fees and expenses. You can obtain updated information by visiting www.HyundaiMPGClassSettlement.com. HMA or KMA will separately pay the

14

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call **[HMA TOLLFREE]**, or
E-mail hyundaimpgsettlement@jnrncorp.com.

attorneys' fees and expenses that the Court awards. HMA or KMA will also separately pay the costs to administer the Settlement. The payment of settlement administration costs and attorneys' fees and expenses will not diminish the settlement funds available to class members.

15

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call [HMA TOLLFREE], or
E-mail hyundaimpgsettlement@jnrcorp.com.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the Settlement or some part of it.

18. How do I tell the Court that I don't like the Settlement?

If you stay in the Class, you can object to the Settlement if you don't like any part of it. The Court can only approve or deny the settlement. The Court cannot order that the parties agree to a different settlement. If the Court denies approval, no Settlement benefits will be available at this time and the lawsuit will continue. You should give reasons why you think the Court should not approve the Settlement. The Court will consider your views.

To object, you must send a letter saying that you object to the Settlement in *In Re: Hyundai and Kia Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx) (C.D. Cal.). Be sure to include your name, address, telephone number, your signature, the Vehicle Identification Number (VIN) of your vehicle (which is located on a placard on the top of the dashboard visible through the driver's side corner of the windshield), and the reasons you object to the Settlement. Mail the objection to the Clerk of the Court with a postmark no later than **[OBJECTION DEADLINE]**:

To the Court:

Clerk of Court
U.S. District Court, Central
District of California
Civil Intake
312 N. Spring St., Rm G-8,
Los Angeles, CA 90012

19. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you cannot object because the case no longer affects you.

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on **[DATE]**, at **[TIME]** before the Hon. George H. Wu in the U.S. District Court for the District of Central California, Western Division, 312 North Spring Street, Los Angeles, CA 90012-4793, to consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. Judge Wu will listen to people who have asked to speak at the hearing. The Court may also decide how much Class Counsel should be paid. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The hearing may be rescheduled without further notice. Updated scheduling information is available in person at the office of the Clerk of Court (see ~~response to~~ Question 18 on page **[]**) during

16

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call **[HMA TOLLFREE]**, or
E-mail hyundaimpgsettlement@jnrncorp.com.

business hours or from the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cacd.uscourts.gov>. You can also visit www.HyundaiMPGClassSettlement.com.

21. Do I have to come to the hearing?

You do not have to come to the hearing. Class Counsel will answer any questions Judge Wu may have. But you are welcome to come at your own expense. If you send a written objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *In Re: Hyundai and Kia Fuel Economy Litigation*, No. MDL 13-2424-GW(FFMx)." Be sure to include your name, address, telephone number, the Vehicle Identification Number (VIN) of your vehicle (which is located on a placard on the top of the dashboard visible through the driver's side corner of the windshield), and your signature. Your Notice of Intention to Appear must be postmarked no later than [Deadline Date], and be sent to the Clerk of the Court at the address listed in ~~the response to~~ Question 18 on page [redacted]. You cannot speak at the hearing if you exclude yourself. You can retain your own attorney to speak on your behalf, but you will be responsible for paying that attorney.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will remain in the Class but will not receive any benefits from the Settlement. In order to receive compensation, you must either submit a claim or participate in the Lifetime Reimbursement Program.

If you do not exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against HMA, KMA, or any of the other entities listed in ~~the response to~~ Question No. 14 about the legal issues in this case, ever again.

GETTING MORE INFORMATION

24. Are there more details about the Settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by writing to Class Counsel at the address listed in the response to Question 13 on page [redacted] or you can download a copy online ~~by visiting at~~ www.HyundaiMPGClassSettlement.com or request a copy by calling [HMA TOLLFREE].

25. How do I get more information?

You can visit the website at www.HyundaiMPGClassSettlement.com where you will find answers to common questions about the Settlement, plus other information to help you determine whether you are a member of the Class and whether you are eligible for the benefits offered in the Settlement. If the website does not contain the information you are looking for, you can also call toll-free at [HMA TOLLFREE].

You may also contact the Class Counsel listed in ~~the response to~~ Question 13 on page [redacted].

Other than a request to review the Court's files at the Clerk of the Court's Office, please do not contact the Clerk of the Court or the Judge with questions.

BY ORDER OF:

Hon. George H. Wu
U.S. District Court for the Central District of California

If you have questions or want more information, you can:
Visit www.HyundaiMPGClassSettlement.com
Call [HMA TOLLFREE], or
E-mail hyundaimpgsettlement@jnrcorp.com.

SCHEDULE A

VEHICLES AND CASH DEBIT CARD PAYMENT AMOUNTS

VEHICLE MODEL	CURRENT ORIGINAL OWNER	CURRENT NON-ORIGINAL OWNER	CURRENT FLEET OWNER	CURRENT LESSEE
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2013 Model Year

2013 Accent (automatic transmission; 1.6 liter engine)	\$590	\$295	\$305	\$335
2013 Accent (manual transmission; 1.6 liter engine)	\$590	\$295	\$300	\$330
2013 Azera (automatic transmission; 3.3 liter engine)	\$480	\$240	\$250	\$280
2013 Elantra (automatic transmission; 1.8 liter engine)	\$345	\$173	\$175	\$195
2013 Elantra (manual transmission; 1.8 liter engine)	\$345	\$173	\$175	\$195
2013 Elantra Coupe (automatic transmission; 1.8 liter engine)	\$240	\$120	\$125	\$140
2013 Elantra Coupe (manual transmission; 1.8 liter engine)	\$350	\$175	\$175	\$195
2013 Elantra GT (automatic transmission; 1.8 liter engine)	\$715	\$358	\$375	\$420
2013 Elantra GT (manual transmission; 1.8 liter engine)	\$480	\$240	\$250	\$280
2013 Genesis (automatic transmission; 3.8 liter engine)	\$715	\$358	\$375	\$420
2013 Santa Fe Sport 2WD Turbo (automatic transmission; 2.0 liter engine)	\$715	\$358	\$375	\$420
2013 Santa Fe Sport 2WD (automatic transmission; 2.4 liter engine)	\$715	\$358	\$375	\$420
2013 Santa Fe Sport 4WD Turbo (automatic transmission; 2.0 liter engine)	\$715	\$358	\$375	\$420
2013 Santa Fe Sport 4WD (automatic transmission; 2.4 liter engine)	\$480	\$240	\$250	\$280
2013 Tucson 2WD (automatic transmission; 2.0 liter engine)	\$480	\$240	\$250	\$280
2013 Tucson 2WD (automatic transmission; 2.4 liter engine)	\$240	\$120	\$125	\$140
2013 Tucson 2WD (manual transmission; 2.0 liter engine)	\$480	\$240	\$250	\$280
2013 Tucson 4WD (automatic transmission; 2.4 liter engine)	\$480	\$240	\$250	\$280
2013 Veloster Turbo (automatic transmission; 1.6 liter engine)	\$240	\$120	\$125	\$140
2013 Veloster (automatic transmission; 1.6 liter engine)	\$585	\$293	\$300	\$330
2013 Veloster (manual transmission; 1.6 liter engine)	\$345	\$173	\$175	\$195
2013 Veloster Turbo (manual transmission; 1.6 liter engine)	\$480	\$240	\$250	\$280

2012 Model Year

2012 Accent (automatic transmission; 1.6 liter engine)	\$530	\$265	\$275	\$290
2012 Accent (manual transmission; 1.6 liter engine)	\$510	\$255	\$265	\$280
2012 Azera (automatic transmission; 3.3 liter engine)	\$515	\$258	\$275	\$305
2012 Elantra (automatic transmission; 1.8 liter engine)	\$320	\$160	\$160	\$165
2012 Elantra (manual transmission; 1.8 liter engine)	\$320	\$160	\$160	\$165
2012 Genesis (automatic transmission; 3.8 liter engine)	\$450	\$225	\$240	\$270
2012 Genesis (automatic transmission; 4.6 liter engine)	\$600	\$300	\$315	\$355
2012 Genesis (automatic transmission; 5.0 liter engine)	\$600	\$300	\$315	\$355
2012 Genesis R-Spec (automatic transmission; 5.0 liter engine)	\$675	\$338	\$355	\$400
2012 Sonata Hybrid Electric Vehicle (automatic transmission; 2.4 liter engine)	\$320	\$160	\$160	\$170
2012 Tucson 2WD (automatic transmission; 2.0 liter engine)	\$320	\$160	\$170	\$190
2012 Tucson 2WD (automatic transmission; 2.4 liter engine)	\$365	\$183	\$190	\$210
2012 Tucson 2WD (manual transmission; 2.0 liter engine)	\$420	\$210	\$220	\$245
2012 Tucson 4WD (automatic transmission; 2.4 liter engine)	\$425	\$213	\$220	\$245
2012 Veloster (automatic transmission; 1.6 liter engine)	\$535	\$268	\$285	\$320
2012 Veloster (manual transmission; 1.6 liter engine)	\$360	\$180	\$190	\$200

2011 Model Year

2011 Elantra (automatic transmission; 1.8 liter engine)	\$320	\$160	\$160	\$160
2011 Elantra (manual transmission; 1.8 liter engine)	\$345	\$173	\$160	\$160
2011 Sonata Hybrid Electric Vehicle (automatic transmission; 2.4 liter engine)	\$280	\$140	\$140	\$140

HYUNDAI FUEL ECONOMY CLASS ACTION SETTLEMENT CLAIM FORM

If you own more than one affected vehicle, you must submit separate claim forms for each vehicle.

To make a claim for a Hyundai vehicle in the HYUNDAI/KIA FUEL ECONOMY LITIGATION settlement, you must complete and return this form (along with any required documentation) by U.S. mail, postmarked no later than **[9 months after deadline for class notice mailing]** to:

Hyundai Fuel Economy Class Action Settlement Center
P.O. Box 10759
Newport Beach, CA 92658
FAX: 949-260-4190
Email: hyundaimpgsettlement@jnrncorp.com

IMPORTANT: BEFORE FILLING OUT THIS FORM, READ THIS ENTIRE CLAIM FORM AND THE ACCOMPANYING CLASS NOTICE CAREFULLY. THE CLASS NOTICE CONTAINS ADDITIONAL INFORMATION REGARDING YOUR ELIGIBILITY FOR SETTLEMENT BENEFITS AND OTHER IMPORTANT INFORMATION.

If you do not have a copy of the [Class Notice](#), you can download a copy online for free by visiting www.HyundaiMPGClassSettlement.com or request a copy by calling **[HMA TOLLFREE]**.

STEP 1: Did you purchase or lease a vehicle listed below on or before November 2, 2012?

YES NO

If **YES**, please print your name, address and vehicle information check the box next to your vehicle model, which is listed below and then go to **STEP 2**. (“MY” in the list below stands for “Model Year.”)

If you checked **NO**, you are not a class member and **you are not eligible** for Settlement Benefits.

2013 Model Year Vehicles:

- | | |
|--|--|
| <input type="checkbox"/> 2013 MY Accent (automatic transmission; 1.6 liter engine) | <input type="checkbox"/> 2013 MY Santa Fe Sport 2WD (automatic transmission; 2.4 liter engine) |
| <input type="checkbox"/> 2013 MY Accent (manual transmission; 1.6 liter engine) | <input type="checkbox"/> 2013 MY Santa Fe Sport 4WD Turbo (automatic transmission; 2.0 liter engine) |
| <input type="checkbox"/> 2013 MY Azera (automatic transmission; 3.3 liter engine) | <input type="checkbox"/> 2013 MY Santa Fe Sport 4WD (automatic transmission; 2.4 liter engine) |
| <input type="checkbox"/> 2013 MY Elantra (automatic transmission; 1.8 liter engine) | <input type="checkbox"/> 2013 MY Tucson 2WD (automatic transmission; 2.0 liter engine) |
| <input type="checkbox"/> 2013 MY Elantra (manual transmission; 1.8 liter engine) | <input type="checkbox"/> 2013 MY Tucson 2WD (automatic transmission; 2.4 liter engine) |
| <input type="checkbox"/> 2013 MY Elantra Coupe (automatic transmission; 1.8 liter engine) | <input type="checkbox"/> 2013 MY Tucson 2WD (manual transmission; 2.0 liter engine) |
| <input type="checkbox"/> 2013 MY Elantra Coupe (manual transmission; 1.8 liter engine) | <input type="checkbox"/> 2013 MY Tucson 4WD (automatic transmission; 2.4 liter engine) |
| <input type="checkbox"/> 2013 MY Elantra GT (automatic transmission; 1.8 liter engine) | <input type="checkbox"/> 2013 MY Veloster Turbo (automatic transmission; 1.6 liter engine) |
| <input type="checkbox"/> 2013 MY Elantra GT (manual transmission; 1.8 liter engine) | <input type="checkbox"/> 2013 MY Veloster (automatic transmission; 1.6 liter engine) |
| <input type="checkbox"/> 2013 MY Genesis (automatic transmission; 3.8 liter engine) | <input type="checkbox"/> 2013 MY Veloster (manual transmission; 1.6 liter engine) |
| <input type="checkbox"/> 2013 MY Santa Fe Sport 2WD Turbo (automatic transmission; 2.0 liter engine) | <input type="checkbox"/> 2013 MY Veloster Turbo (manual transmission; 1.6 liter engine) |

2012 Model Year Vehicles:

- | | |
|--|--|
| <input type="checkbox"/> 2012 MY Accent (automatic transmission; 1.6 liter engine) | <input type="checkbox"/> 2012 MY Genesis R-Spec (automatic transmission; 5.0 liter engine) |
| | <input type="checkbox"/> 2012 MY Sonata Hybrid Electric Vehicle (automatic transmission; 2.4 liter engine) |

- 2012 MY Accent (manual transmission; 1.6 liter engine)
- 2012 MY Azera (automatic transmission; 3.3 liter engine)
- 2012 MY Elantra (automatic transmission; 1.8 liter engine)
- 2012 MY Elantra (manual transmission; 1.8 liter engine)
- 2012 MY Genesis (automatic transmission; 3.8 liter engine)
- 2012 MY Genesis (automatic transmission; 4.6 liter engine)
- 2012 MY Genesis (automatic transmission; 5.0 liter engine)
- 2012 MY Tucson 2WD (automatic transmission; 2.0 liter engine)
- 2012 MY Tucson 2WD (automatic transmission; 2.4 liter engine)
- 2012 MY Tucson 2WD (manual transmission; 2.0 liter engine)
- 2012 MY Tucson 4WD (automatic transmission; 2.4 liter engine)
- 2012 MY Veloster (automatic transmission; 1.6 liter engine)
- 2012 MY Veloster (manual transmission; 1.6 liter engine)

2011 Model Year Vehicles:

- 2011 MY Elantra (automatic transmission; 1.8 liter engine)
- 2011 MY Elantra (manual transmission 1.8 liter engine)
- 2011 MY Sonata Hybrid Electric Vehicle (automatic transmission; 2.4 liter engine)

First Name:

Last Name:

Address 1:

Address 2:

City: State:

Zip Code: - Telephone: -

Email:

Unique ID:

*Your Unique ID can be found on the Settlement Notice Mailer that you should have received in the mail. If you do not have your Unique ID, see the instructions in Step 7 below.

Your Vehicle:

Brand (Hyundai): Model:

Model Year: VIN:

*The VIN is located on a placard on the top of the dashboard and is visible through the driver's side corner of the windshield. It also appears on your vehicle registration card and probably appears on your vehicle insurance card.

#15020

Last Name:	<input type="text"/>	First Initial:	<input type="text"/>																
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Mail, fax or email this Claim Form and any required documentation to:

Hyundai Fuel Economy Class Action Settlement Center
P.O. Box 10759
Newport Beach, CA 92658
FAX: 949-260-4190
Email: hyundaimpgsettlement@jnrcorp.com

EXHIBIT 5



August 25, 2014

VIA EMAIL

Eric H. Gibbs (ehg@girardgibbs.com)
Girard Gibbs LLP
601 California Street, 14th Floor
San Francisco, California 94117

**Re: *In re Hyundai and Kia Fuel Economy Litigation*
Case No. 2:13-mj-2424-GW-FFM**

Dear Eric:

As the *Krauth/Hasper* Plaintiffs discussed with the Court and the Settling Parties at the August 21, 2104 hearing, there are still significant defects in the notice and claim forms that must be addressed before notice is sent out to Class Members. To summarize the problems we identified at the hearing and in our prior briefing, we provide the following comments regarding the: (1) Short-Form Mailer; (2) Long-Form Notice; (3) online claim website; and (4) paper Claim Form.¹ We provide these comments to assist Settling Parties in improving the clarity of the notice and claim forms, which will result in greater class participation in the settlement.

(1) Short-Form Mailer.

The Short-Form Mailer (Dkt. No. 304-2) still does not clearly and prominently explain the compensation options and the actions Class Members must take to avail themselves of the options.

The Settling Parties did improve the format of the Short-Form Mailer by including bold text to draw peoples' attention to the paragraphs about "Submitting a Claim," "Getting More Information," and "Deadlines." (Dkt. No. 304-2 at 4.) However, the formatting and font on the Short-Form Mailer should be revised to prominently display pertinent information about the settlement benefits and Class Members' rights. (See, e.g., Dkt. Nos. 311-1 at 5-6; 277 at 8.)

While the Settling Parties made some improvements to the content of the Short-Form Mailer, more details about the various settlement options are necessary. For example, instead of using specific descriptions and numeric values, the Settling Parties use vague phrases to describe the settlement options, like: "a larger dealership credit for goods and services," and "an even larger

¹ We continue to believe that no claim form is necessary under the circumstances of this Settlement. However, the Court has indicated that a claim form may be utilized with the understanding that the claims rate will be reviewed at or prior to final approval.

Mr. Eric Gibbs
August 25, 2014
Page 2 of 7

new car rebate certification,” and “Other settlement benefits exist.” (Dkt. No. 304-2 at 4.) As the *Krauth/Hasper* Plaintiffs proposed, the Short-Form Mailer should describe with more detail what the payment options are, explain who is entitled to certain payment options and provide numerical values (in specific dollar amounts or percentages) that give people a sense of what they can get under the various options. (See Dkt. Nos. 311-1; 266-1.)

Also, the Short-Form Mailer refers to the Reimbursement Program four times, but is either silent or vague as to what it is, how people get paid through it, who is best suited for it and that people already registered for the Reimbursement Program do not have to take any actions in response to the Short-Form Mailer if they want to continue getting payments through it. In response to our suggestion that the Short-Form Mailer include the language “If you are a class member and don’t respond, you will not get paid . . .” (Dkt. No. 311-1 at 5), Settling Parties stated:

This is inaccurate because a class member who does not “respond” can still receive compensation through the lifetime reimbursement program. Many of the recipients of the mailer already participate in the reimbursement program and this language may cause needless confusion for them. Individuals who are already in the reimbursement program and who wish to continue in the reimbursement program do not need to take action with respect to the settlement claims process. Those individuals just need to keep going to the dealer for mileage verification and there is no deadline by which they must do this. Also, class members who are not already in the reimbursement program but who wish to join reimbursement program need not “respond” to the settlement mailer or class notice. Such class members just have to register pursuant to the preexisting registration process for the lifetime reimbursement program.

(Exh. 1 [Email from Scott Grzenczyk to Laura Antonini, Aug. 20, 2014, Re: In re Hyundai and Kia Fuel Economy Litigation], item 5.) There is no language in the Short-Form Mailer to this effect. Furthermore, the Short-Form Mailer does not include any information that would enable someone to decide that they “wish to continue in the reimbursement program” or “wish to join the reimbursement program.” If it is the case that these Class Members do not need to take action in response to the Short-Form Mailer, it should contain the information in Settling Parties’ comment above, plus sufficient information to enable people to decide whether to stay in, or sign up for, the Reimbursement Program (as discussed below and at the August 21, 2014 hearing, it is unclear what website people are supposed to go to in order to sign up for the Reimbursement Program).

Finally, we continue to believe that the Short-Form Mailer should be mailed in an envelope with personalized details about the recipient’s vehicle on the outside so that Class Members can identify it as bona fide correspondence rather than confuse it with junk mail. (See Dkt. Nos. 311-1 at 7; 277 at 11, Ex. 1; 266 at 3.)

Mr. Eric Gibbs
August 25, 2014
Page 3 of 7

(2) Long-Form Notice.

In the Court's discussion of the Long-Form Notice, the Court questioned whether and how participation in the Reimbursement Program is a benefit of the Proposed Settlement when Class Members can opt out of the settlement and still participate in (and sign up for) the Reimbursement Program. (August 21, 2014 Tentative Ruling at 4-5.) We have the same questions and concerns. (See Dkt. No. 277 at 29-30.)

Additionally, the Long-Form Notice (Dkt. No. 304-1) should be revised to:

- Direct Class Members who want to sign up for the Reimbursement Program to the correct website where they can sign up. In an email to the *Krauth/Hasper* Plaintiffs, Settling Parties state, "class members can participate in the lifetime reimbursement program without submitting a claim form if they go to the *reimbursement program website* and register." (Exh. 1, item 6, emphasis added.) Nowhere on the Long-Form Notice is this information disclosed. Meanwhile, the Long-Form Notice directs people to the *settlement website* to sign up for the Reimbursement Program. (Dkt. No. 304-1 at 7.) Which website should Class Members use? If they sign up through the Reimbursement Program website rather than the settlement website, are they releasing their rights under the settlement? Class Members' rights should not be extinguished merely because they chose one website over another.
- Clearly and prominently inform former owners and lessees that they are only entitled to a Lump Sum Payment and not participation in the Reimbursement Program. Former owners and lessees are entitled to a Lump Sum Payment in an amount calculated using the Reimbursement Program formula (Dkt. No. 304-1 at 7, 8; Settlement Agreement, Dkt. No. 185-2 at § 3.1.3), but former owners and lessees cannot participate in, or receive payments through, the Reimbursement Program. However, in an email to the *Krauth/Hasper* Plaintiffs, Settling Parties state, "The lifetime reimbursement program is [] available to former owners/lessees." (Exh. 1, item 2.) This is false. The Reimbursement Program requires people to bring their cars into the dealership to have their mileage verified to receive continuous payments based on the number of miles they drive while they own or lease the vehicle. A former owner or lessee does not drive the vehicle anymore, so it would be impossible for him or her to bring the vehicle into the dealership to have its mileage verified. The Long-Form Notice should clearly and consistently refer to former owner and lessee compensation as a Lump Sum Payment.
- Clearly and prominently inform eligible former owners that they are entitled to the additional "4 x 40" compensation. The Long-Form Notice states that Class Members who get a Lump Sum Payment do not need to file a claim to get the additional "4 x 40" compensation. (Dkt. No. 304-1 at 10; see Exh. 1, item 8; see also August 21, 2014 Tentative Ruling at 4-5.) However, eligible former owners (who are Class Members getting a Lump Sum Payment) are required to submit a claim to get the additional "4 x 40"

Mr. Eric Gibbs
August 25, 2014
Page 4 of 7

compensation. (*Id.*) All references in the Long-Form Notice to the additional “4 x 40” compensation must be revised to reflect the fact that some Class Members getting a Lump Sum Payment must also separately elect the additional “4 x 40” compensation. This includes revising the descriptions of the additional “4 x 40” compensation in the table of rights on the first page and in the response to “Question 9.” (Dkt. No. 304-1 at 1-2, 7.)

- Include detail about how people get paid through the Reimbursement Program. The Long-Form Notice makes a vague reference to getting “periodic future reimbursement as the Class Vehicle accumulates mileage in the future” (Dkt. No. 304-1 at 6), but does not explain that the Reimbursement Program requires Class Members to continuously visit a dealership to get their mileage verified in order to receive “periodic future reimbursement” payments.
- Include detail about whom the Reimbursement Program option is best suited for. The Long-Form Notice states, “High mileage drivers may receive greater amounts from the Lifetime Reimbursement” Program. (Dkt. No. 304-1 at 9.) This is unclear and does not provide enough information for a Class Member to know if the Reimbursement Program is right for him or her. There should be statements like: “If you drive more than 15,000 miles per year and plan on owning your car for more than 5 years, the Reimbursement Program may be the best option for you” or “If you think your car will accumulate more than 75,000 miles, the Reimbursement Program may be the best option for you.”

We refer you to our previously filed redlines for language that would address these problems. (See Dkt. No. 311-1.)

(3) Online Claim Form Website.

We have not received any information about revisions to the online claim form website since just prior to the July 24, 2014 hearing. We anticipate the Settling Parties will revise or have revised the online claim form to clarify the language about payment options under the Proposed Settlement and Reimbursement Program, pursuant to the Court’s comments in the Tentative Ruling and at the hearing on August 21. On August 22, the Settling Parties provided Judge Wu with 15 new login credentials to test the online claim form website. As Judge Wu directed, please send us new login credentials for the online claim form website so we can review any changes made to the content and/or process of the online claim form website.

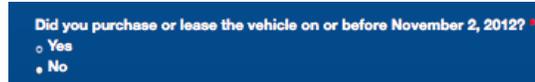
We have some additional suggestions for revisions to the online claim form.

There are many unnecessary steps in the online claim form; Settling Parties should eliminate them. Defendants are utilizing R.L. Polk & Co. to obtain “vehicle registration data from state motor vehicle departments (and similar state agencies)” in all 50 states. (Dkt. No. 307 at ¶¶7-8.) This data presumably includes dates when Class Vehicles were purchased/sold. And, as we

Mr. Eric Gibbs
August 25, 2014
Page 5 of 7

noted at the August 21 hearing, the title records kept by state motor vehicle departments contain vehicle mileage data. Defendants requested and were given 90 days from preliminary approval to obtain third party data; Judge Wu directed Defendants to check if they can obtain mileage data. By obtaining data from third party providers, the following steps can be eliminated from the online claim form:

- Class Members should not have to indicate whether they purchased or leased the vehicle on or before November 2, 2012:



Did you purchase or lease the vehicle on or before November 2, 2012? *

Yes

No

- Class Members should not have to indicate whether they owned (or leased) their vehicle as of December 23, 2013:



Select the category that best describes you *

Current Owner as of December 23, 2013
You are the original purchaser of the vehicle identified above and you still owned the vehicle as of December 23, 2013.

Former Owner as of December 23, 2013
You are a former owner of the vehicle identified above and you no longer owned the vehicle as of December 23, 2013.

- Former owners (and lessees) should not have to indicate the mileage at the time of sale or the date of sale:



Sold Mileage * Sold Date *

- Former owners eligible for the additional “4 x 40” compensation should not have to indicate whether they owned the vehicle on February 12, 2013:



Did you own the vehicle on February 12, 2013? *

Yes

No

Also, the following information should be incorporated into the online claim form website:

- The website should provide “[d]etailed information about the Lifetime Reimbursement Program,” which is not currently posted on the online claim form website even though the Long-Form Notice directs Class Members to the online claim form website for this information (Dkt. No. 304-1 at 6, 9);
- The online claim form should include a function to opt out online, so Class Members do not have to go through the burdensome process of downloading/requesting the Long-Form Notice, drafting an opt out request and mailing the opt out request to Settling Plaintiffs’ counsel (see Dkt. No. 236 at 22-23);

Mr. Eric Gibbs
August 25, 2014
Page 6 of 7

- The online claim form should include a clear and prominent explanation of the consequences of not filing a claim form (*id.*);
- The online claim form should include deadlines and phone numbers for questions (*id.*);
- Once a claim form is submitted, the confirmation page should include information about when Class Members can expect payment; and
- The links on the online claim form website to the Long-Form Notice, paper Claim Form and FAQ Sheet are not active. Once these documents are finalized, the links should work.

Finally, we have never seen the FAQ Sheet. We ask that the Settling Parties provide us with a copy of the text of the FAQ Sheet.

(4) Paper Claim Form.

The Settling Parties can eliminate several steps in the paper Claim Form (Dkt. No. 304-3):

- It is not necessary to require Class Members to write their name on every page of the paper Claim Form; in our view, the danger of Class Member fatigue outweighs the danger of the form becoming unstapled, particularly if Hyundai and Kia undertake their responsibility as settlement administrators carefully (see, e.g., Dkt. No. 277 at 20; Dkt. 311-1 at 2); and
- It is not necessary to require Class Members to identify their vehicle's make and model (STEP 1), especially since Class Members will be providing their VIN, which will enable Hyundai and Kia to confirm the make and model of the Class Member's vehicle.

The paper Claim Form does not accurately inform Class Members who pick the Reimbursement Program of what they must do to get their payments. The paper Claim Form should:

- Contain a clear and prominent disclosure to Class Members who want to participate in the Reimbursement Program (and who are not entitled to the additional "4 x 40" compensation) that they do not need to fill out and submit the paper Claim Form.
- Direct Class Members who want to sign up for the Reimbursement Program but have not yet done so to the correct website where they can sign up. As noted above, it is unclear whether they should go to the Reimbursement Program website to sign up, or the settlement website. (See Exh. 1, item 6; Dkt. No. 304-3 at 5.)

As discussed above, former owners and lessees are only entitled to a Lump Sum Payment and not participation in the Reimbursement Program. (See Dkt. No. 304-1 at 7, 8; Settlement Agreement,

Mr. Eric Gibbs
August 25, 2014
Page 7 of 7

Dkt. No 185-2 at § 3.1.3) Accordingly, the paper Claim Form should not require former owners and lessees to pick “only one of the options” between the Lump Sum Payment option and participation in the Reimbursement Program. (Dkt. No. 304-3 at 4.) The paper Claim Form should be revised to clearly and prominently inform former owners and lessees that they are only entitled to a Lump Sum Payment and eliminate the requirement that they choose between the Lump Sum Payment option and participation in the Reimbursement Program.

Also, the paper Claim Form is designed so that anyone who elects the Lump Sum Payment is instructed to bypass the step describing the additional “4 x 40” compensation and only those who elect the Reimbursement Program are directed to the step describing the additional “4 x 40” compensation. (See Dkt. No. 304-3 at 4-5.) As the paper Claim Form is written, eligible former owners, who are entitled to a Lump Sum Payment (and are required to submit a claim to get the additional “4 x 40” compensation), are instructed to bypass the step on additional “4 x 40” compensation. (*Id.*) All references in the paper Claim Form to the additional “4 x 40” compensation must be revised so that eligible former owners, who are entitled to a Lump Sum Payment, are not instructed to bypass the step describing the additional “4 x 40” compensation.

We believe that addressing our concerns will improve Class Members’ understanding of what they are entitled to under the Proposed Settlement and what actions they need to take to get paid and protect their rights. It is our understanding that you will share our comments with Settling Parties prior to the Settling Parties’ and Liaison Counsel’s meeting with Judge Wu on September 3, 2014.

Please let me know if you or other Settling Parties would like to discuss our comments.

Sincerely,

/s/ Laura Antonini
Laura Antonini

Enclosure

cc: Scott Grzenczyk, Girard Gibbs LLP (via email)

EXHIBIT 1

From: Scott M. Grzeczyk smg@girardgibbs.com
Subject: RE: In re Hyundai and Kia Fuel Economy Litigation
Date: August 20, 2014 at 7:34 PM
To: Laura Antonini laura@consumerwatchdog.org, Eric Gibbs EHG@girardgibbs.com
Cc: Shon Morgan shonmorgan@quinnemanuel.com, Joseph Ashby (josephashby@quinnemanuel.com) josephashby@quinnemanuel.com, BJeffers@dykema.com, michael.kidney@hoganlovells.com, rob@hbsslaw.com, johnd@hbsslaw.com, Harvey Rosenfield harvey@consumerwatchdog.org

Laura,

Please see below response from the Settling Parties:

The *Krauth* plaintiffs' proposed revisions to the notice and claim document include the following inaccuracies.

- 1. In the short-form mailer the *Krauth* plaintiffs propose this language: "Lump Sum payment is a one-time payment on cash debit card. If you currently own or lease your Hyundai vehicle, your lump amount depends on the year and make of your car."
 - o This is inaccurate because the settlement defines current owners based on ownership as of December 23, 2013. Class members who sold their vehicles after December 23, 2013 are current owners for purposes of the settlement.
 2. In the short-form mailer the *Krauth* plaintiffs propose this language: "Participation in Hyundai's Lifetime Reimbursement program is only available to people who currently own or lease their vehicle."
 - o This statement is false. The lifetime reimbursement program is also available to former owners/lessees.
- 3. In the claim form the *Krauth* plaintiffs propose deleting "former or" in this sentence on page three of the claim form: "You are a former or current lessee of the vehicle identified in STEP 1 AND you still leased the vehicle as of December 23, 2013. You are considered a Current Lessee"
 - o The proposed deletion makes the sentence inaccurate. For example, a former lessee who ceased leasing a vehicle on December 24, 2013, is considered a current lessee for purposes of this settlement.
- 4. In the long-form notice, in section 7, the *Krauth* plaintiffs propose this language: "In November 2012, HMA and KMA initiated the Lifetime Reimbursement Program to reimburse certain current and former owners and lessees of the Class Vehicles for the additional fuel costs resulting from the companies' November 2, 2012 fuel economy misstatements."
 - o This statement incorrectly conveys that the revised fuel economy estimates announced on November 2, 2012, were misstatements. This inaccuracy is repeated in the *Krauth* plaintiffs' proposed language in section 8: "The Lifetime Reimbursement Program provides people who owned or leased a Class Vehicle on or before November 2, 2012 with a cash debit card that reimburses them for the additional fuel costs resulting from Defendants' November 2, 2012 fuel economy misstatements."
- 5. In the short-form mailer the *Krauth* plaintiffs propose this language: "If you are a class member and don't respond, you will not get paid"
 - o This is inaccurate because a class member who does not "respond" can still receive compensation through the lifetime reimbursement program. Many of the recipients of the mailer already participate in the reimbursement program and this language may

... must already participate in the reimbursement program and this language may cause needless confusion for them. Individuals who are already in the reimbursement program and who wish to continue in the reimbursement program do not need to take action with respect to the settlement claims process. Those individuals just need to keep going to the dealer for mileage verification and there is no deadline by which they must do this. Also, class members who are not already in the reimbursement program but who wish to join reimbursement program need not “respond” to the settlement mailer or class notice. Such class members just have to register pursuant to the preexisting registration process for the lifetime reimbursement program.

-
6. In the claim form, in step 5, the *Krauth* plaintiffs propose this language: “Note: If you want to get money from the Lifetime Reimbursement Program and you have not already signed up for it, you must submit this claim form AND separately register.”
 - o This statement is inaccurate because class members can participate in the lifetime reimbursement program without submitting a claim form if they go to the reimbursement program website and register.
-
7. In the long-form notice, section 8, the *Krauth* plaintiffs propose this sentence: “The additional fuel costs are calculated based on three factors: (1) the number of miles the owner or lessee has driven”
 - o This inaccurately conveys that the reimbursement is only for miles driven by the owner or lessee (rather than other family members or other drivers of the vehicle). By contrast, the language proposed by settling parties avoids such a misunderstanding: “The reimbursement formula is based on three factors: (1) the number of miles a Class Vehicle has been driven”
-
8. In the long-form notice, section 9, the *Krauth* plaintiffs propose a separate bullet point titled “Additional Compensation” regarding the 4x40 compensation. Similarly, the *Krauth* plaintiffs’ proposed changes to the table on the first page of the long-form notice with a separate section for the 4x40 compensation.
 - o This inaccurately suggests that class members who elect the lump sum payment can separately elect the 4x40 compensation. The 4x40 compensation is built into the lump sum payments, so no separate election is necessary. Settling parties’ proposed including the discussion of the 4x40 compensation with the reimbursement program in section 9 because class members who remain in the reimbursement program can elect to receive 4x40 compensation. For the same reason, settling parties included the additional compensation discussion with the reimbursement program in the table at the beginning of the long-form notice.

Best,

Scott

Scott M. Grzencyk

GIRARD GIBBS LLP

601 California Street, 14th Floor

San Francisco CA 94108

Phone: (415) 981-4800

Fax: (415) 981-4846

smg@girardgibbs.com

www.girardgibbs.com

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From: Laura Antonini [mailto:laura@consumerwatchdog.org]
Sent: Tuesday, August 19, 2014 3:54 PM
To: Eric Gibbs
Cc: Scott M. Grzenczyk; Shon Morgan; BJeffers@dykema.com; michael.kidney@hoganlovells.com; rob@hbsslaw.com; johnd@hbsslaw.com; Harvey Rosenfield
Subject: Re: In re Hyundai and Kia Fuel Economy Litigation

Gentlemen,

Settling Parties stated in their Submission of Proposed Final Notice and Claim Documents that the *Krauth/Hasper* Plaintiffs' revisions to the notice and claim documents "reflected an inaccurate understanding of the proposed settlement or the lifetime reimbursement program." (Dkt. No. 304 at 1-2.)

We would like to know what we misunderstood. In the interest of saving the Court's and the parties' time at the hearing on Thursday, please identify and explain what we got wrong about the Proposed Settlement and Voluntary Reimbursement Program.

Thank you,
Laura

Laura Antonini
Staff Attorney
Consumer Watchdog
2701 Ocean Park Blvd, Suite 112
Santa Monica, CA 90405
Phone: (310) 392-0522 x318
Fax: (310) 392-8874
laura@consumerwatchdog.org
www.consumerwatchdog.org

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On Aug 9, 2014, at 7:37 AM, Eric Gibbs <EHG@girardgibbs.com> wrote:

Hi Laura,

Laura,

I'm not sure what you're referring to in terms of the process you outlined below, but as I explained we will compile the revisions from the Non-Settling Plaintiffs into a single document. This process becomes more difficult if we don't receive your revisions until the 11th. If there are competing or overlapping changes, we'll reach out to those firms to see if they can agree on a single set of revisions. If not, we'll forward the multiple proposals to the Settling Parties. We won't alter any revisions submitted by Non-Settling Plaintiffs without their consent. We'll send all Non-Settling Plaintiffs a copy of what is submitted to the Settling Parties.

The Court didn't invite multiple rounds of revisions and we're working on a fairly condensed timeframe. Before the Settling Parties file their papers on the 15th, we (as Liaison Counsel) will review the proposed filings to make sure that Non-Settling Plaintiffs' proposals – to the extent not incorporated into the “final” document the Settling Parties submit – are accurately conveyed to the Court in a redlined document. If the Settling Parties have suggested modifications to the language proposed by Non-Settling Plaintiffs, we'll do our best to coordinate that process if time allows. Again, no proposals submitted by Non-Settling Plaintiffs will be modified without their consent.

Thanks

Eric H. Gibbs
Girard Gibbs LLP
www.girardgibbs.com
(415) 981-4800

On Aug 7, 2014, at 5:53 PM, "Laura Antonini" <laura@consumerwatchdog.org> wrote:

Thanks Eric. Can someone please advise as to whether we will have an opportunity to review the final documents prior to Settling Parties filing them on August 15, and whether we can work according to the process proposed in my email below. Let me know.

Thank you,

Laura

Laura Antonini
Staff Attorney
Consumer Watchdog
2701 Ocean Park Blvd, Suite 112
Santa Monica, CA 90405
Phone: (310) 392-0522 x318
Fax: (310) 392-8874

laura@consumerwatchdog.org
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On Aug 5, 2014, at 12:28 PM, Eric Gibbs <EHG@girardgibbs.com> wrote:

We intend to incorporate everyone's changes, and work with people to the extent they have competing or overlapping changes. If we can't reconcile, I suppose we'll have to file multiple versions with the Court. We will not modify anyone's changes without their consent. If you need until the 11th to incorporate, we'll deal with it. I presume you'll be forwarding your changes to LC, which is what the Court instructed.

From: Laura Antonini [<mailto:laura@consumerwatchdog.org>]
Sent: Tuesday, August 05, 2014 12:05 PM
To: Eric Gibbs; Scott M. Grzenczyk; Shon Morgan; BJeffers@dykema.com;
michael.kidney@hoganlovells.com; rob@hbsslaw.com; johnd@hbsslaw.com
Cc: Harvey Rosenfield
Subject: In re Hyundai and Kia Fuel Economy Litigation

Gentlemen,

In the Court's July 24 minute order (Dkt. No. 293), Judge Wu set deadlines of August 11 for Non-Settling Plaintiffs to provide comments to the revised notice and claim documents, and August 15 for Settling Parties to file their next round of notice and claim documents "along with versions reflecting any further changes proposed by other plaintiffs' counsel."

We would like to know how you envision this process. After we submit our comments to you, will we have an opportunity to review the final documents prior to Settling Parties filing them on August 15? In the spirit of the Court's approach at the last hearing, we think it makes the most sense to have the opportunity to review what final changes you have made prior to filing the final docs. If we have no further suggestions, we will do no further. If, however, we have additional changes, we will want to submit them to the Court; we are assuming they will be included in your filing per Judge Wu's order. Please advise if you agree to this proposal.

Eric, per Scott's email on August 1, please clarify what you are proposing. Judge Wu set the deadline for August 11 and we may well need until August 11 to submit our comments to you. However, we will do our best to get the comments to you earlier if we can.

We also have some questions about the process Scott detailed in the email Non-Settling Plaintiffs' proposed revisions to the notice and claim documents. Once you receive comments from Non-Settling Plaintiffs, do you intend to alter them prior to forwarding to the Settling Parties? We assume you will send us a copy of whatever you send to the Settling Parties. Please advise on these points.

Thank you,

Laura

Laura Antonini
Staff Attorney
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Fax: (310) 392-8874
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EXHIBIT 6



September 19, 2014

VIA EMAIL

Eric H. Gibbs (ehg@girardgibbs.com)
Girard Gibbs LLP
601 California Street, 14th Floor
San Francisco, California 94117

**Re: *In re Hyundai and Kia Fuel Economy Litigation*
Case No. 2:13-ml-2424-GW-FFM**

Dear Eric:

Pursuant to the Court's September 10, 2014 Minute Order (Dkt. 323) and instructions at the September 10 hearing, the *Krauth/Hasper* Plaintiffs submit the following comments regarding the revised notice and claim form documents Scott Grzenczyk sent via email on September 12, 2014. We ask that you convey them directly to the other Settling Parties.¹

Short-Form Mailers

Hyundai's Short-Form Mailer

- First paragraph, first sentence: Replace "a larger dealership credit for goods and services" with "a dealership credit for goods and services for 150% of the amount you'd get as a one-time cash payment[.]" Referring to a specific, numerical value better informs Class Members than the vague adjective "larger."
- First paragraph, first sentence: Replace "an even larger new car rebate certificate" with "a new car rebate certificate for 200% of the amount you'd get as a one-time cash payment." Referring to a specific, numerical value better informs Class Members than the vague description "even larger."
- First paragraph, fourth sentence: Replace entire sentence ("Other settlement benefits exist.") with a sentence specifically describing those "other settlement benefits," such as: "Additional compensation may be available to you if you owned or leased a 2011, 2012, or 2013 model year Elantra, Accent, Veloster or Sonata Hybrid vehicle." At the September 10 hearing, Judge Wu asked Kia's counsel what "other settlement benefits" Kia's Short-Form Mailer was referring to. (9/10/14 Hrg. Tr. at 12:3-21.) In response,

¹ The *Krauth/Hasper* Plaintiffs submit these comments in addition to comments and suggested edits set forth in our prior briefing (Dkt. Nos. 236, 366, 277, 311) and oral comments to the Court.

Mr. Eric Gibbs
September 19, 2014
Page 2 of 9

Kia's counsel offered to delete the sentence from Kia's Short-Form Mailer, which Kia has done. (*Id.* at 12:22-23.) The sentence remains in Hyundai's Short-Form Mailer, presumably because Hyundai Class Members have "other settlement benefits" available in the form of the Additional "4 x 40" Compensation. Replacing the vague reference to "other settlement benefits" with specific information about those benefits will result in increased participation from "4 x 40" Class Members.

- Fourth paragraph, section re "Submitting a Claim and Determining Your Eligibility," three references to settlement website: Underline, bold, and increase font size of url address "www.HyundaiMPGClassSettlement.com." One of the primary functions of the Short-Form Mailer is to direct Class Members to the settlement website, where they can download and view the Long-Form Notice to learn about the settlement, use the reimbursement calculator to estimate the amount they could get through the Lifetime Reimbursement Program, submit a claim online, and download a paper Claim Form. Class Member participation turns on getting them to the settlement website. Thus, any references to the url address of the settlement website must be prominently and boldly displayed to catch peoples' attention.
- Fifth paragraph, section re "Getting More Information," option (1), reference to settlement website: Underline, bold, and increase font size of url address "www.HyundaiMPGClassSettlement.com." This edit should be made for reasons stated above.
- Fifth paragraph, section re "Getting More Information," option (4): Replace "Hagen" with "Hagens." The law firm's name is misspelled.
- Fifth paragraph, section re "Getting More Information," option (4): Revise text to say, "by contacting Class Counsel, Robert B. Carey of Hagens Berman Sobol Shapiro LLP, at (XXX) XXX-XXXX or 11 West Jefferson Street, Suite 1000, Phoenix, AZ 85003." At the September 10 hearing, Judge Wu asked that class counsel's phone number be listed "[s]o that would be another source for people if they want." (9/10/14 Hrg. Tr. at 10:23-11:12.) There is no phone number for class counsel in Hyundai's Short-Form Mailer.
- Sixth paragraph, section re "Deadlines," two references to settlement website: Underline, bold, and increase font size of url address "www.HyundaiMPGClassSettlement.com." This edit should be made for reasons stated above.

Kia's Short-Form Mailer

- First paragraph, first sentence: Replace "a larger dealership credit for goods and services" with "a dealership credit for goods and services for 150% of the amount you'd get as a one-time cash payment[.]" Referring to a specific, numerical value better informs Class Members than the vague adjective "larger."

Mr. Eric Gibbs
September 19, 2014
Page 3 of 9

- First paragraph, first sentence: Replace “an even larger new car rebate certificate” with “a new car rebate certificate for 200% of the amount you’d get as a one-time cash payment.” Referring to a specific, numerical value better informs Class Members than the vague description “even larger.”
- Fourth paragraph, section re “Submitting a Claim and Determining Your Eligibility,” three references to settlement website: Bold and increase font size of url address “www.KiaMPGClassSettlement.com.” This edit should be made for reasons stated above.
- Fifth paragraph, section re “Getting More Information,” option (1), reference to settlement website: Bold, and increase font size of url address “www.KiaMPGClassSettlement.com.” This edit should be made for reasons stated above.
- Fifth paragraph, section re “Getting More Information,” option (4): Replace “Hagen” with “Hagens.” The law firm’s name is misspelled.
- Fifth paragraph, section re “Getting More Information,” option (4): Revise text to say, “by contacting Class Counsel, Robert B. Carey of Hagens Berman Sobol Shapiro LLP, at (XXX) XXX-XXXX or 11 West Jefferson Street, Suite 1000, Phoenix, AZ 85003.” This edit should be made for reasons stated above.
- Sixth paragraph, section re “Deadlines,” two references to settlement website: Bold and increase font size of url address “www.KiaMPGClassSettlement.com.” This edit should be made for reasons stated above.

Long-Form Notices

Hyundai’s Long-Form Notice

- Page 7, Question 8 (and/or Page 11, STEP 3): Include an example with numerical values to explain who the Reimbursement Program is best suited for. (e.g., “If you drive more than 15,000 miles per year and plan on owning your car for more than 5 years, the Reimbursement Program may be the best option for you” or “If you think your car will accumulate more than 75,000 miles, the Reimbursement Program may be the best option for you”). At the September 10 hearing, Judge Wu suggested the Settling Parties include an example of how much a hypothetical Class Member would get under the Reimbursement Program. (See 9/10/14 Hrg. Tr. at 25:4 – 28:8.) No example is included in the Long-Form Notice.

Mr. Eric Gibbs
September 19, 2014
Page 4 of 9

- Pages 8 through 11, Question 9, STEP 2 and STEP 3: Explain how former owners and lessees can decide which option (Lump Sum Payment or participation in the Reimbursement Program) is best for them. (See 9/10/14 Hrg. Tr. at 25:1-15.)² For example, Page 9, STEP 2, says former owners and lessees are entitled to a Lump Sum Payment with the same cash value as what they would receive under the Reimbursement Program. Page 11, STEP 3, and Page 7, Question 8, discussing the Reimbursement Program, provide no relevant information to former owners and lessees explaining why the Reimbursement Program may be better for them than the Lump Sum Payment. The Reimbursement Program requires people to bring their cars into the dealership to have their mileage verified to receive continuous payments based on the number of miles they drive while they own or lease the vehicle. Former owners or lessees do not drive their vehicle anymore, so it would be impossible for them to bring a vehicle into the dealership to have its mileage verified. Also, they have no reason to visit a Hyundai dealership (unless they are shopping for a new car). Choosing the Reimbursement Program appears to offer no advantage to former owners and lessees (unless they drove a “4 x 40” vehicle). Signing up for the Reimbursement Program requires these Class Members to take additional steps to get the same compensation as the Lump Sum Payment (e.g., go to the settlement website to sign up, then go to a dealership to have the mileage of a car they don’t drive verified). More details are needed to enable former owners and lessees to make the right choice under the settlement.
- Pages 8 through 11, Question 9, STEP 4, last paragraph, first sentence: List “Former Owner” after “Current Non-Original Owner.” Based on the information in Question 9 of the Long-Form Notice, former “4 x 40” owners who pick the Lump Sum Payment cannot receive the Additional “4 x 40” Compensation. However, former “4 x 40” owners who pick the Reimbursement Program are entitled to the Additional “4 x 40” Compensation. This is not clear in the Long-Form Notice. (It is the *Krauth/Hasper* Plaintiffs’ position that former “4 x 40” owners who choose the Lump Sum Payment option should not be deprived of the Additional “4 x 40” Compensation. Unlike the Lump Sum Payment for current owners, the Additional “4 x 40” Compensation is *not* built in to the Lump Sum Payment for former owners. Furthermore, as discussed above, former owners who pick the Reimbursement Program have to go through additional hurdles to get compensation. Thus, limiting the Additional “4 x 40” Compensation to

² Under the Settlement Agreement, “[t]he compensation for a Former Owner shall be the amount that the Former Owner is qualified to receive pursuant to the Reimbursement Program.” (Settlement Agreement, Dkt. No. 185-2 at § 3.1.3.) Similarly, “[t]he compensation for a Former Lessee shall be the amount that the Former Lessee is qualified to receive pursuant to the Reimbursement Program.” (*Id.* at § 3.1.5.) Thus, the Settlement Agreement can only be read to provide that former owners and lessees are entitled to a Lump Sum Payment in the amount they would receive under the Reimbursement Program. This is inconsistent with the notice and claim documents.

Mr. Eric Gibbs
September 19, 2014
Page 5 of 9

those former owners who pick the Reimbursement Program will discourage Class Members from claiming the compensation.)

Kia's Long-Form Notice

- Page 7, Question 8: Include an example with numerical values to explain who the Reimbursement Program may be best suited for. See discussion in Hyundai's Long-Form Notice section above.
- Pages 8 through 11, STEP 2 and STEP 3: Explain how former owners and lessees can decide which option (Lump Sum Payment or participation in the Reimbursement Program) is best for them. See discussion in Hyundai's Long-Form Notice section above.

Paper Claim Forms

Hyundai's Paper Claim Form

- Pages 1 through 5, and 7, headers: Delete the boxes at the top of these pages requiring Class Members to write out their last name and first initial. It is not necessary to require Class Members to write their name on every page of the paper Claim Form because Class Members will be providing their full name in STEP 6, and, in our view, the danger of Class Member fatigue outweighs the danger of the form becoming unstapled, particularly if Hyundai and Kia undertake their responsibility as settlement administrators carefully.
- Page 1, bold text at top of page, second and third sentences following Hyundai's address: Add language at the end of the second sentence that says, "...showing that the fax was submitted by May 29, 2015." Add language at the end of the third sentence that says, "...showing that the email was sent by May 29, 2015." At the September 10 hearing, Judge Wu instructed Settling Parties to indicate to Class Members who submit a paper Claim Form via fax or email that "they should have some sort of record of the **date** in which they e-mailed or faxed." (9/10/14 Hrg. Tr. at 19:3-23, emphasis added.)
- Page 1, STEP 1: Delete this step requiring Class Members to identify their vehicle's make and model. This step is not necessary because Class Members will be providing their VIN in STEP 6, which will enable Hyundai to confirm the make and model of the Class Member's vehicle.
- Page 4, STEP 3, section re "Lifetime Reimbursement Program": Explain to Class Members who want to remain in or register for the Lifetime Reimbursement Program that they do not need to fill out and submit the paper Claim Form (unless they are a "4 x 40" Class Member). Add the language below (taken from Hyundai's Long-Form Notice at p.8):

Mr. Eric Gibbs
September 19, 2014
Page 6 of 9

- “If you have not previously registered for the Lifetime Reimbursement Program, you can do so by visiting www.HyundaiMPGClassSettlement.com. If you are already registered for the Lifetime Reimbursement Program, you do not need to take any further action to remain in the program. If you participate in the Lifetime Reimbursement Plan and you are an eligible current or former owner or lessee of a Hyundai Elantra, Accent, Veloster, or Sonata Hybrid, you may also be entitled to the additional compensation described below in [STEP 5]. If you are eligible for this additional compensation, you must submit a claim to receive it.”
- Pages 4, STEP 3, section re “Select only one of the options below”: As discussed above, it is the *Krauth/Hasper* Plaintiffs’ position that former “4 x 40” owners who choose the Lump Sum Payment option should not be deprived of the Additional “4 x 40” Compensation. Thus, STEP 3 should be revised so that former owners who choose to receive a Lump Sum Payment are not instructed to bypass the step on the Additional “4 x 40” Compensation.
- Page 5, STEP 5, first paragraph, fourth sentence, parenthetical expression following the term “original *retail* vehicle owner”: Revise parenthetical to say, “(e.g., you purchased the Class Vehicle at an authorized Hyundai dealership and you did not purchase the Class Vehicle as a Fleet Vehicle).” At the September 10 hearing, Judge Wu directed the Settling Parties to include language clarifying that an “original retail vehicle owner” refers to someone who both purchased a vehicle from an “authorized dealership” and purchased a vehicle that was not a fleet vehicle. (9/10/14 Hrg. Tr. at 14:22-16:11.) The Settling Parties only included half of this description; they failed to include language explaining that an “original retail vehicle owner” is someone who purchased a vehicle from an “authorized dealership.”
- Page 7, STEP 7, first bullet point: Delete entire sentence. For reasons set forth above, Class Members should not be required to write their name on every page.
- Page 7, STEP 7, last section of text in bold, first sentence: Delete the sentence “**PLEASE MAKE SURE YOU WRITE YOUR LAST NAME ON EACH PAGE OF THIS FORM.**” For reasons set forth above, Class Members should not be required to write their names on every page.
- Page 7, STEP 7, last section of text in bold, second and third sentences: Add language at the end of the second sentence that says, “...showing that the fax was submitted by May 29, 2015.” Add language at the end of the third sentence that says, “...showing that the email was sent by May 29, 2015.” These edits should be made for the reason set forth above.

Mr. Eric Gibbs
September 19, 2014
Page 7 of 9

Kia's Paper Claim Form

- General formatting of STEPS 2 through 6: Fix so that steps/corresponding text and check boxes are not broken across pages. At the September 10 hearing, Judge Wu instructed Kia to fix the formatting so “everything will be flowing so there won’t be big spaces in between” the text. (9/10/14 Hrg. Tr. at 22:16-22.) There are no big spaces in the document, but the document is now formatted with only one space in between each step, causing steps to break across pages, which makes it difficult to follow. Kia should insert page breaks between each step similar to Hyundai’s paper Claim Form. Page breaks between each step will ensure “everything will be flowing.”
- Pages 1 through 6, headers: Delete the boxes at the top of these pages requiring Class Members to write out their last name and first initial on every page. This requirement is unnecessary for reasons stated above. Also, on Page 4, Class Members are required to write their name twice: in the header and in STEP 5. This is completely unnecessary.
- Page 1, bold text at top of page, second and third sentences following Kia’s address: Add language at the end of the second sentence that says, “...showing that the fax was submitted by May 29, 2015.” Add language at the end of the third sentence that says, “...showing that the email was sent by May 29, 2015.” These edits should be made for reason set forth above.
- Page 1, STEP 1: Delete this step requiring Class Members to identify their vehicle’s make and model. This step is not necessary because Class Members will be providing their VIN in STEP 5, which will enable Kia to confirm the make and model of the Class Member’s vehicle.
- Page 3, STEP 3, section re “Lifetime Reimbursement Program”: Explain to Class Members who want to remain in or register for the Lifetime Reimbursement Program that they do not need to fill out and submit the paper Claim Form. Add the language below (taken from Kia’s Long-Form Notice at p.8):
 - “If you have not previously registered for the Lifetime Reimbursement Program, you can do so by visiting www.KiaMPGClassSettlement.com. If you are already registered for the Lifetime Reimbursement Program, you do not need to take any further action to remain in the program.”
- Page 4, STEP 5, subheading “Your Vehicle”: Fix the formatting so there is a space between the subheading and the text directly above the subheading, and move the subheading so it appears on the same page as the corresponding text and boxes following it.

Mr. Eric Gibbs
September 19, 2014
Page 8 of 9

- Page 5, STEP 6, first bullet point: Delete entire sentence. For reasons set forth above, Class Members should not be required to write their names on every page.
- Page 5, STEP 6, last section of text in bold, first sentence: Delete the sentence “**PLEASE MAKE SURE YOU WRITE YOUR LAST NAME ON EACH PAGE OF THIS FORM.**” For reasons set forth above, Class Members should not be required to write their names on every page.
- Page 6, STEP 6, last section of text in bold, second and third sentences: Add language at the end of the second sentence that says, “...showing that the fax was submitted by May 29, 2015.” Add language at the end of the third sentence that says, “...showing that the email was sent by May 29, 2015.” This edit should be made for the reason set forth above.

Settlement Website

The following comments are based on the state of Hyundai’s settlement website as of September 19, 2014 (we have never seen Kia’s website):

- The notice and claim forms direct Class Members who want to sign up for the Reimbursement Program to the settlement website to sign up, so the settlement website must have this capability. Currently, Class Members cannot sign up for the Reimbursement Program through the settlement website.
- The settlement website should provide “[d]etailed information about the Lifetime Reimbursement Program,” which is not currently posted even though the Long-Form Notices direct Class Members to the website for this information (see, e.g., Hyundai Long-Form Notice at 7).
- The online claim form on the settlement website now includes a new step for former owners to provide their “Purchase Mileage” and “Purchase Date” *in addition to* the “Sold Mileage” and “Sold Date.” This is onerous and should be deleted.³
- Delete the option offered to “4 x 40” Class Members on the online claim form that says, “No, Thanks. I opt to remain in the reimbursement program but do not wish to receive this additional compensation.” At the September 10 hearing, Judge Wu instructed the Settling Parties to remove identical language from the paper Claim Form. (9/10/14 Hrg. Tr. at 16:12 – 17:18.) It should not appear on the online claim form.
- The online claim form should include a function to opt out online, so Class Members do not have to go through the burdensome process of downloading/requesting the Long-

³ We continue to believe that many of the steps in the online claim form are unnecessary, as set forth in our August 25, 2014 letter to Mr. Gibbs.

Mr. Eric Gibbs
September 19, 2014
Page 9 of 9

Form Notice, drafting an opt out request and mailing the opt out request to Settling Plaintiffs' counsel.

- The online claim form should include a clear and prominent explanation of the consequences of not filing a claim form.
- The online claim form should include deadlines and phone numbers for questions.
- Once a claim form is submitted, the confirmation page should include information about when Class Members can expect payment.
- The links on the online claim form website to the Long-Form Notice, paper Claim Form and FAQ Sheet are not active. Once these documents are finalized, the links should work. (We have never seen the FAQ Sheet. We ask that the Settling Parties provide us with a copy of the text of the FAQ Sheet.)

Finally, in the Court's September 9, 2014 Minute Order, the Court stated that it had "not seen a copy of the Amended Settlement Agreement." Please provide us with any documents Settling Parties have provided to the Court, including any Amended Settlement Agreement.

Please let me know if you or other Settling Parties would like to discuss our comments.

Sincerely,

/s/ Laura Antonini
Laura Antonini

cc: Scott Grzenczyk, Girard Gibbs LLP (via email)

EXHIBIT 7

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Attorneys for the Bird, Krauth, and Hasper, et al. Plaintiffs

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

IN RE: HYUNDAI AND KIA FUEL
ECONOMY LITIGATION

Case No. 2:13-ml-02424-GW-FFM

OBJECTION OF LOUIS BIRD

Date: June 11, 2015
Time: 9:30 a.m.
Judge: Hon. George H. Wu
Courtroom: 10

OBJECTION OF LOUIS BIRD

Class member Louis Bird, by and through, undersigned counsel hereby lodges his objection to the settlement of this action.¹ Mr. Bird owns a 2011, Hyundai Elantra Limited bearing VIN Number KMH0H4AE080121730.

Mr. Bird is monitoring the claims rate through his counsel.

On February 5, 2015, Mr. Bird’s counsel received the first of three reports on the participation rates in the settlement. Settling Parties are supposed to provide the additional reports on March 6, 2015 and April 6, 2015. (Dkt. 353). The Court previously stated that it will hold a status conference after Settling Parties have submitted all three reports. (August 21, 2014 Hearing Transcript at 31:19-21). If the participation rates are low, the Court has suggested that it may require measures such as additional notice and extending the claims submission deadline in order to improve participation. (*Id.* at 32:22-24).

The final deadline to submit an objection is March 5, 2015, the date this objection is being submitted. Because the deadline to object falls before the time the Court has indicated it will review the participation rates, Mr. Bird submits this objection to preserve his right to object to the settlement if the participation level of class members in the settlement is inadequate.

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¹ In lieu of providing his personal contact information, Mr. Bird includes the contact information of his counsel.

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Respectfully submitted,

Dated: March 5, 2015

CONSUMER WATCHDOG

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