UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA ML 19-02905	Date	April 14, 2025
Title	In Re: ZF-TRW Airbag Control Units Products Liability Litigation		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE
D. Torrez	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) ORDER RE MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND DIRECTION OF NOTICE UNDER FED. R. CIV. P. 23(E) (DKT. 1027)**

I. Introduction

On August 8, 2019, this multi-district litigation ("MDL") was established and transferred to this Court. Dkt. 1. The MDL, which has included 20 member cases, concerns airbag control units ("ACUs") that are allegedly defective because they contain a specific component part that is vulnerable to electrical overstress ("EOS"). *Id.* at 2. The alleged defect ("Alleged Defect" or "ACU Defect") can result in the failure of airbags in a vehicle to deploy during a collision. *Id.*

On July 27, 2020, eight groups of defendants filed motions to dismiss, as well as a joint motion to dismiss. Dkt. 209. Those motions were heard on January 25, 2021, and were taken under submission. On February 9, 2022, an order issued granting the motions in part and denying the motions in part (the "Order"). Dkt. 396.

On May 26, 2022, a Consolidated Amended Class Action Complaint ("ACAC"), which is the operative one, was filed. Dkt. 477.

On March 17, 2025, the Hyundai and Kia Plaintiffs[1] ("Hyundai-Kia Plaintiffs" or "Plaintiffs") filed a Motion for Preliminary Approval of Class Action Settlement (the "Motion"). Dkt. 1027. The Motion presents a proposed Settlement of Plaintiffs' claims against the Hyundai and Kia Defendants[2] and Mobis Defendants[3] (collectively, the "Settling Defendants" or the "Hyundai-Kia Defendants"). *Id.* at 12. Through the Motion, Plaintiffs seek an order granting preliminary approval of the settlement and directing notice to the class under Fed. R. Civ. P. 23(e)(1); appointing Co-Lead Plaintiffs' Counsel and the Plaintiff Steering Committee ("PSC") firm as Settlement Class Counsel; appointing the Hyundai-Kia

[1] The Hyundai and Kia Plaintiffs are Larae Angel, Bobbi Jo Birk-LaBarge, John Colbert, Brian Collins, Gerson Damens, Bonnie Dellatorre, Dylan DeMoranville, Joseph Fuller, Tina Fuller, Lawrence Graziano, Michael Hernandez, Kinyata Jones, Diana King, Richard Kintzel, Carl Paul Maurilus, Kenneth Ogorek, Burton Reckles, Dan Sutterfield, Amanda Swanson, and Lore Van Houten. Dkt. 1027 at 1 n.1.
[2] The Hyundai and Kia Defendants are Defendants Hyundai Motor Company, Hyundai Motor America, Kia Corporation, and Kia America, Inc. Dkt. 1027 at 1 n.2.
[3] "Mobis Defendants" means Hyundai Mobis Co., Ltd. and Mobis Parts America, LLC. Dkt. 1027 at 1 n.3.

Plaintiffs as Settlement Class Representatives; and scheduling a final approval hearing. *Id.* at 52.

A hearing on the Motion proceeded on April 7, 2025, and the Motion was taken under submission. For the reasons stated in this Order, the Motion is **GRANTED IN PART**.

II. <u>Background</u>

A. The Parties

There are 53 plaintiffs named in the ACAC, who purchased or leased vehicles from the Vehicle Manufacturer Defendants. Dkt. 477 ¶ 64. Twenty of them, the Hyundai-Kia Plaintiffs, brought claims against the Settling Defendants. The Defendants named in the ACAC are companies from several different corporate groups: ZF, STMicro, Kia, Hyundai, Hyundai Mobis, Fiat Chrysler, Toyota, Honda and Mitsubishi. *Id.* ¶ 23.

There are five groups of defendants that constitute the "Vehicle Manufacturer Defendants," which are alleged to be "companies that make and sell completed vehicles and their affiliates." *Id.* ¶ 41. The Settling Defendants are one of these groups. *Id.* ¶ 43. There are three groups of defendants that constitute the "Supplier Defendants." *Id.* ¶¶ 25, 42.

B. Substantive Allegations

It is alleged that the Settling Defendants, as well as other Vehicle Manufacturer Defendants, manufactured vehicles with defective ACUs ("Class Vehicles"). Dkt. 477 ¶¶ 6, 7, 9.

It is alleged that ACUs are connected by electrical wiring to crash sensors located on the front of vehicles. *Id.* ¶ 6. The crash sensors detect activity in the front of the vehicle and send corresponding electrical signals to the ACU, which receives and interprets these signals. *Id.* When certain thresholds are met, the ACU issues a command to the vehicle's safety system to deploy the airbags and tighten the seatbelts to protect passengers from an imminent collision. *Id.* Within the ACU, the application-specific integrated circuit ("ASIC") processes the signal from the crash sensors and activates the airbags and seatbelts. *Id.* ¶¶ 7, 10.

It is alleged that when an ACU malfunctions, it can cause a vehicle's airbags and seatbelts to fail to perform their function of restraining and protecting those inside a vehicle. *Id.* ¶ 6. One threat to the functionality of ACUs, as well as other automatic electronics, are large transients. *Id.* ¶ 465. Transients are "short duration, high magnitude voltage peaks, commonly referred to as surges or bursts." *Id.* It is alleged that "[f]or decades, participants in the automotive industry—including all the Defendants in this litigation—have known that transients can be generated inside and outside a motor vehicle" and can cause damage to electrical equipment such as ACUs. *Id.* ¶ 466. Because transients threaten the ability of ACUs and ASICs to activate safety restraints in a collision, a properly designed ACU and ASIC can withstand transients. *Id.* ¶ 471. If an ACU is not protected from transients, it can experience EOS. *Id.* ¶¶ 465–71.

It is alleged that the ACUs at issue in this action (the "ZF-TRW ACUs") are defective because they contain a DS84 ASIC, which is more susceptible than competing microchips to EOS due to transients

(the "Defect"). *Id.* ¶¶ 7, 472–85. It is alleged that the DS84 ACU was commercially attractive to Defendants because it was less expensive and was marked as a "cost effective ACU." *Id.* ¶ 567. Because of the alleged ACU Defect, the vehicles that contain those ACUs are allegedly "less desirable and less valuable than vehicles with properly functioning [ACUs]." *See id.* ¶ 1479.

It is alleged that Defendants have known about the ACU Defect for many years. *See id.* ¶ 1129. It is alleged that the Supplier Defendants and Vehicle Manufacturer Defendants conspired to conceal the ACU Defect so that they could maximize profit. *See* Dkt. 477-1 ¶¶ 1603–04, 1744–45, 1876–77, 2012–13, 2143–44. It is alleged that every Vehicle Manufacturer Defendant placed misleading statements about vehicle safety, airbags, and/or seatbelts on or in at least some of their group's Class Vehicles. Dkt. 477 ¶¶ 1129–62, 1218–54. It is also alleged that the Vehicle Manufacturer Defendants made misleading advertisements. *Id.* ¶¶ 1163–1217.

It is alleged that Defendants' fraudulent statements caused financial harm to Plaintiffs by inducing them to pay more than they otherwise would have for their vehicles, or to purchase vehicles when they would not otherwise have done so. Dkt. 477-1 ¶¶ 1618–19, 1759–60, 1892–93, 2027–28, 2158–59.

III. Summary of Settlement Agreement and Notice

A. Class Definition

The settlement agreement between Plaintiffs and the Settling Defendants ("Settlement Agreement" or "Agreement") defines the "Class" as follows:

> [A]ll persons or entities who or which, on the date of the issuance of the Preliminary Approval Order, own or lease, or previously owned or leased, Subject Vehicles distributed for sale or lease in the United States or any of its territories or possessions. Excluded from this Class are: (a) Hyundai and Kia, their officers, directors, employees, and outside counsel; their affiliates and affiliates' officers, directors and employees; their distributors and distributors' officers and directors; and Hyundai's and Kia's Dealers and their officers and directors; (b) the Mobis Defendants, their officers, directors[,] employees, and outside counsel, and their affiliates and affiliates' officers, directors, and employees; (c) Settlement Class Counsel, Plaintiffs' counsel, and their employees; (d) judicial officers and their immediate family members and associated court staff assigned to this case; (e) all persons or entities who previously released their economic loss claims with respect to the issues raised in the Action in an individual settlement with Hyundai and Kia, with the Mobis Defendants, or with any of them; (f) persons or entities who or which timely and properly exclude themselves from the Class.

Settlement Agreement, Dkt. 1027-1, Ex. 1 § II.A.7.

"Subject Vehicles" are defined as "those Hyundai and Kia vehicles listed on Exhibit 2 that contain or contained ZF-TRW ACUs and were distributed for sale or lease in the United States or any of its territories or possessions." *Id.*, Ex. 1 § II.A.50. Exhibit 2 to the Settlement Agreement provides the following list:

SUBJECT VEHICLES

Recalled Vehicles

Model Years	**Make and Model**
Certain 2011-2013	Hyundai Sonata
Certain 2011-2012	Hyundai Sonata Hybrid
2010-2012 and certain 2013	Kia Forte
2010-2012 and certain 2013	Kia Forte Koup
2011-2012 and certain 2013	Kia Optima
2011-2012	Kia Optima Hybrid
2011-2012	Kia Sedona

Unrecalled Vehicles

Model Years	**Make and Model**
Certain 2011-2013 and all 2014-2019	Hyundai Sonata
Certain 2011-2012 and all 2013-2019	Hyundai Sonata Hybrid
2018-2023	Hyundai Kona
2022-2023	Hyundai Kona N
2019-2021	Hyundai Veloster
Certain 2013	Kia Forte
Certain 2013	Kia Forte Koup
Certain 2013 and all 2014-2020	Kia Optima
2013-2016	Kia Optima Hybrid
2014	Kia Sedona

Id., Ex. 2 at 68.

The Settlement Agreement defines "Released Parties" as follows:

> Settling Defendants, and each their past, present and future parents, predecessors, successors, spin-offs, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, dealers, including the Hyundai and Kia Dealers, representatives, suppliers, vendors, advertisers, marketers, service providers, distributors and subdistributors, repairers, agents, attorneys, insurers, administrators and advisors. The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein. Notwithstanding the foregoing, "Released Parties" does not include the Excluded Parties.

Id., Ex. 1 § II.A.38.

The Settlement Agreement defines "Excluded Parties" as: "other than the Released Parties, all defendants named in the Actions and each of their past, present, and future parents, predecessors, successors, spin-offs, assigns, distributors, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, affiliates, officers, directors, employees, associates, dealers, agents and related companies." *Id.*, Ex. 1 § II.A.17.

B. Relief to Class Members and Other Payments

The Settlement Agreement provides that the total Settlement Amount is $62,100,100.90. *Id.*, Ex. 1 § II.A.41. The Settlement Agreement provides that the parties will establish a Qualified Settlement Fund ("QSF"), pursuant to Internal Revenue Code § 468B to be held by an escrow agent ("Escrow Agent"). *Id.*, Ex. 1 § III.A.1. The Agreement provides that all payments to be made by the Settling Defendants pursuant to the Agreement shall be made by wire transfer into an Escrow Account, established and controlled consistent with and pursuant to an Escrow Agreement with the Escrow Agent. *Id.*

The Agreement provides that certain notice and settlement administration costs accrued prior to final approval of the Settlement will be paid by the Settling Defendants as they are accrued and invoiced. *Id.*, Ex. 1 § III.A.3. The Agreement provides that the Settling Defendants will deposit $5,000,000, into the Escrow Account by no later than thirty (30) days after the Preliminary Approval Order, from which the Settlement Administrator shall pay notice and settlement administration costs as they accrue. *Id.* The Agreement provides that the Settling Defendants shall deposit $43,600,100.90 into the QSF no later than fourteen (14) days following entry of the Final Approval Order to fund the Settlement Fund. *Id.* The Agreement provides that, if the Court does not grant Final Approval, all funds remaining in the Escrow Account and the QSF shall revert to the Settling Defendants, and any funds paid into the QSF and not returned shall be credited towards any eventual settlement. *Id.* The Agreement provides that the Settlement Fund is to be used for the following purposes:

> (a) [T]o pay valid and approved claims submitted by eligible Class Members to the Out-of-Pocket Claims Process; (b) to pay notice and related costs; (c) to pay for settlement and claims administration, including expenses associated with the Settlement Special Administrator and his consultants, taxes, fees, and related costs; (d) to make residual cash payments to Class Members pursuant to Section III.C of this Agreement; (e) to pay Settlement Class Counsel's fees and expenses as the Court awards; (f) to make service award payments to individual Plaintiffs; and (g) to pay Taxes. The Settlement Fund may also be utilized for additional outreach and notice costs that the Parties jointly agree, after consulting with the Settlement Special Master, is necessary in furtherance of the terms of this Settlement.

Id.[4]

a) Settlement Cash Benefits

The Settlement Agreement provides that all Class Members may submit claims for cash compensation including, "(a) [R]eimbursement for reasonable out-of-pocket expenses incurred to obtain a Recall repair for a Recalled Vehicle, and (b) residual payments of up to $350 for a Recalled Vehicle and $150 for an Unrecalled Vehicle." *Id.*, Ex. 1 § III.B–C.

b) Residual Distribution

[4] As discussed at the hearing on April 7, 2025, the former Settlement Special Master is now deceased. Accordingly, the parties have agreed to designate a different person to fill this role.

The Settlement shall be non-reversionary, meaning that none of the funds will revert to the Settling Defendants. Dkt. 1027 at 19–20. The Settlement Agreement provides that "funds that remain after all out-of-pocket expense payments and all other payments listed in Section III.A.3 have been made shall be distributed on a *per capita* basis to all Class Members who submitted out-of-pocket claims and to all Class Members who registered for a residual payment only." Dkt. 1027-1, Ex. 1 § III.C.1.

The Settlement Agreement provides that if there are any remaining funds after all valid, complete, and timely claims for out-of-pocket and residual payments and Court-awarded fees and expenses are paid, the Parties anticipate a redistribution of the remaining funds to Class Members unless and until it is economically infeasible to do so. *Id.*, Ex. 1 § III.C.2. The Settlement Agreement provides that any minimal final balance will then be directed *cy pres*, subject to Court approval. *Id.*

c) Recall Campaign

In addition to cash compensation, the Settlement Agreement provides for an extensive recall outreach campaign to encourage Class Members to participate in Hyundai and Kia's open Recalls for the DS84 ACU Defect. Dkt. 1027 at 20. The Settlement Agreement allocates up to $3.5 million in expenditures to this Outreach Program, and any unspent balance will be deposited in the Settlement Fund for distribution to class members. *Id.* (citing Dkt. 1027-1, Ex. 1 § III.G).

d) Fees and Payments Deducted from Settlement Fund

(1) Class Representatives' Service Award

The Settlement Agreement does not state an amount that Plaintiffs will seek in service awards to Class Representatives. The Agreement states that the Settlement Fund shall be used to make service award payments to individual Plaintiffs. Dkt. 1027-1, Ex. 1 § III.A.3.

The briefing in support of the Motion states that Settlement Class Counsel intend to apply for service awards of up to $2500 for each of the Hyundai-Kia Plaintiffs. Dkt. 1027 at 22.

(2) Attorney's Fees Award

Similarly, the Settlement Agreement does not state an amount that Plaintiffs' counsel will seek in attorney's fees. The declaration of co-lead counsel for Plaintiffs ("Co-Lead Counsel Declaration") states that Settlement Class Counsel anticipate they will ask for a fee award of up to 33% of the $62.1 million Settlement Amount, which will also include reasonable expenses. Dkt. 1027-1 ¶ 12.

(3) Third Party Administrator Costs

The Settlement Agreement provides that JND Legal Administration LLC ("JND") shall serve as the Settlement Notice Administrator, subject to approval by the Court. *Id.*, Ex. 1 § II.A.46. JND projects that the total cost of the notice and claims administration program will range "from approximately $2,829,000 to $4,087,000 based on settlement participation rates of 5–10%". Dkt. 1027 at 21. In support of the Motion, it is argued that this range is reasonable and necessary, given the size of the

Class (approximately 3.7 million Subject Vehicles). *Id.*

e) Inspection Program

The Agreement provides that if the subsequent motion for final approval of the settlement is granted, Hyundai and Kia shall institute the Settlement Inspection Program. Dkt. 1027-1, Ex. 1 § III.E.1. The protocol for the Settlement Inspection Program is described in Exhibit 3 to the Settlement Agreement. *Id.*, Ex. 3. The Settlement Inspection Program will operate for ten years, starting from the date that the Preliminary Approval Order is entered. *Id.* at 69. The Settlement Agreement provides that Hyundai and Kia will offer an inspection for Subject Vehicles that are involved in a moderate or severe frontal crash and upon notification of claim that "a ZF-TRW [ACU], seatbelt pretensioner and/or frontal airbag did not deploy as intended." *Id.* at 69–70.

The Settlement Agreement provides that, upon receipt of notice of a claim that meet the criteria above, Hyundai or Kia will inspect the Subject Vehicle as follows:

1. For Hyundai and Kia vehicles built after September 1, 2012, Hyundai or Kia will contact the then-current owner/lessee of the Subject Vehicle to request authority to:
   a. Download the Event Data Recorder data ("EDR") to the extent the EDR is accessible;
   b. For Hyundai vehicles, perform a "GDS" Healthcheck relating to the vehicle's electrical systems;
   c. For Kia vehicles, use the Kia KDS diagnostic tool to read airbag system data; and
   d. Perform a visual inspection and photographically document the Subject Vehicle, including but not limited to the Subject Vehicle's damage, and, to the extent practicable, the ZF-TRW ACU's wire harness and front impact sensors.

2. For vehicles built before September 1, 2012, Hyundai or Kia will contact the then-current owner/lessee of the Subject Vehicle to request authority to:
   a. For Hyundai vehicles, perform a "GDS" Healthcheck relating to the vehicle's electrical systems;
   b. For Kia vehicles, use the Kia KDS diagnostic tool to read airbag system data; and
   c. Perform a visual inspection and photographically document the Subject Vehicle, including but not limited to the Subject Vehicle's damage, and, to the extent practicable, the ZF-TRW ACU's wire harness and front impact sensors.

3. For Hyundai vehicles built after September 1, 2012, if the inspection steps described in Paragraphs I.1.a and I.1.b, above, are not successful and/or if the data download is incomplete or does not provide coherent data, and the results otherwise are consistent with ACU failure, Hyundai will escalate the inspection to recover, with the customer's consent, the Subject Vehicle's ACU and attempt a further download.

4. For Kia vehicles built after September 1, 2012, if the inspection steps described in Paragraphs I.1.a and I.1.c, above, are not successful and/or if the data download is incomplete or does not provide coherent data, and the results otherwise are consistent

with ACU failure, Kia will escalate the inspection to recover, with the customer's consent, the Subject Vehicle's ACU and attempt a further download.

5. For vehicles built before September 1, 2012, if the inspections results do not provide coherent data, and are otherwise consistent with ACU failure, Hyundai and Kia will escalate the inspection to recover, with the customer's consent, the Subject Vehicle's ACU and attempt a further download.

6. If Hyundai or Kia determines in good faith that the ACU does not communicate with the crash data retrieval tool correctly or that the ACU returned a partial or interrupted crash record or no crash record for the at-issue incident, and if Hyundai or Kia do not otherwise determine that ACU failure did not occur, with the customer's consent, the ACU will be sent to ZF-TRW with a request for further inspection. The request will specifically ask for ZF-TRW to check for diagnostic trouble codes that indicated a shutdown or reset during the crash and to measure the resistance to ground on the ACU.

Id. at 70–71.

The Agreement provides that, to the extent that the inspection reveals that there is an EOS condition, Hyundai or Kia shall provide the Settlement Special Master with the photographs and other information related to the inspection. *Id.* at 71. The Settlement Special Master will be required to provide Hyundai and Kia's counsel, and Co-Lead Counsel, with a quarterly report providing the number of EOS events along with the model and model year of each such vehicle. *Id.*

C. Notice and Payment Plan

1. In General

The Settlement Agreement provides a process for notifying Class Members of the settlement. *Id.*, Ex. 1 § IV. Notice will be sent to the Class through, *inter alia,* direct mailed notices, digital notice, a Settlement website and Long Form Notice. *Id.*, Ex. 1 § IV.A.

The Settlement Notice Administrator shall be responsible for, without limitation:

> (a) [P]rinting, mailing, e-mailing, or arranging for the mailing or e-mailing of the direct mailed notices; (b) handling returned mail not delivered to Class Members; (c) attempting to obtain updated address information for any direct mailed notices returned without a forwarding address; (d) making any additional mailings required under the terms of this Agreement; (e) responding to requests for the Settlement Notice or other documents; (f) receiving and maintaining on behalf of the Court any Class Member correspondence regarding requests for exclusion and/or objections to the Settlement; (g) forwarding written inquiries to Co-Lead Counsel or their designee for a response, if warranted; (h) establishing a post-office box for the receipt of any correspondence; (i) responding to requests from Co-Lead Counsel and/or Hyundai's and Kia's Counsel; (j) establishing a website and toll-free voice response unit with message capabilities to which Class

> Members may refer for information about the Actions and the Settlement; (k) coordinating with and assisting the Settlement Special Administrator regarding the Claims Process, payments, and related administrative activities, including but not limited to assisting with efforts to identify and prevent fraudulent claims; and (l) otherwise implementing and/or assisting with the dissemination of the Settlement Notice.

Id., Ex. 1 § IV.C.1.

The declaration of Jennifer M. Keough, Chief Executive Officer, President and Co-Founder of JND ("Keough Declaration"), has also been submitted in support of the Motion. Dkt. 1027-2. The Keough Declaration includes a description of the proposed notice program ("Notice Program Overview"). *Id.* ¶¶ 15–17. The Notice Program is designed to reach "the vast majority of Class Members." *Id.* ¶ 16.

The Notice Program Overview states that Defendants will provide a list of eligible VINs to JND. *Id.* ¶ 20. It will then use the VINs to work with third-party data aggregation services to acquire potential Class Members' contact information from the Departments of Motor Vehicles ("DMVs") for all current and previous owners and lessees of the Hyundai and Kia Class Vehicles. *Id.*

The Notice Program Overview states that, after receiving the contact and VIN information from the DMVs, JND will promptly load the information into a case-specific database for the Settlement. *Id.* ¶ 21. Once the data is loaded, JND will identify any undeliverable addresses or duplicate records and assign a unique identification number ("Unique ID") to each Class Member. *Id.* ¶ 22. The Notice Program Overview states that JND "will conduct a sophisticated email append process" and, prior to sending the Email Notice, "will evaluate the email for potential spam language to improve deliverability." *Id.* ¶ 23. The Notice Program Overview states that an "unsubscribe" link will be included at the bottom of the email, to allow Class Members to opt out of any additional email notices, reducing potential complaints relating to the email campaign. *Id.* ¶ 27.

The Notice Program Overview describes the responsive process that is used when an email "bounces" back. *Id.* ¶¶ 28–29. Emails that are returned will either be characterized as "Hard Bounces," which occur when the ISP rejects the email due to a permanent reason, and "Soft Bounces," which occur when the email is rejected for temporary reasons. *Id.* ¶ 28. Following a Soft Bounce, JND will attempt to re-send the Email Notice up to three additional times. *Id.* ¶ 29. If an email bounces after the third re-send, it will be considered undeliverable. *Id.* Emails that result in Hard Bounces will also be considered undeliverable. *Id.* JND will then mail a Postcard Notice to all known Class Members for whom an Email Notice bounces back undeliverable or for whom a valid email address is not obtained. *Id.* ¶ 30.

The Notice Program Overview identifies other notices, including: reminder notices to stimulate claims; supplemental digital notice; an internet search campaign; a press release; a settlement website; and a toll-free number, dedicated P.O. Box and email address to receive and respond to Class Member Correspondence. *Id.* ¶¶ 33–46.

A copy of the proposed notice to be sent to Class Members ("Proposed Notice") is attached to the Keough Declaration. *Id.*, Ex. B. The Proposed Notice summarizes the terms of the Settlement Agreement and the benefits to be provided to Class Members. *Id.* at 69–71. It identifies the Subject vehicles and informs potential Class Members that they may be eligible for the benefits described if

they "own, lease, or previously owned or leased [a] Hyundai and Kia Class Vehicle[]." *Id.* at 69. It directs Class Members to visit the settlement website to determine whether their vehicles are within the Class. *Id.* The Proposed Notice informs Class Members that Co-Lead Counsel intends to ask the Court to award an as-yet identified percentage of the settlement to "cover reasonable attorneys' fees and costs" and a service award for the Class Representatives. *Id.* at 71.

2. <u>Opt-Outs and Objections</u>

Class Members will be notified that they may participate, object to, or exclude themselves from the Settlement Agreement. *Id.* at 71. The Notice instructs Class Members who wish to object to, or exclude themselves from, the Settlement Agreement to visit the Settlement Website. *Id.*

The Settlement Agreement provides that Class Members who wish to be excluded from the Class must mail a written request for exclusion to the Settlement Notice Administrator at the address provided in the Long Form Notice. Dkt. 1027-1, Ex. 1 § V.A. The Settlement Agreement provides that Class Members who wish to object must file a written objection with the Court, on or before a date ordered by the Court in the Preliminary Approval Order. *Id.*

D. Release of Claims

The Settlement Agreement provides for a general release of claims against the Settling Defendants by Class Members. *Id.*, Ex. A § VII.B. It provides as follows:

> In consideration for the relief provided above, Plaintiffs and each Class Member, on behalf of themselves and any other legal or natural persons and entities who or which may claim by, through or under them, including their executors, administrators, heirs, assigns, predecessors and successors, agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, losses and damages and relief of any kind and/or type regarding the subject matter of the Actions, including, but not limited to, injunctive or declaratory relief compensatory, exemplary, statutory, punitive, restitutionary damages, civil penalties, and expert or attorneys' fees and costs, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or noncontingent, derivative, vicarious or direct, asserted or un-asserted, and whether based on federal, state or local law, statute, ordinance, rule, regulation, code, contract, tort, fraud or misrepresentation, common law, violations of any state's or territory's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, or other laws, unjust enrichment, any breaches of express, implied or any other warranties, violations of any state's Lemon Laws, the Racketeer Influenced and Corrupt Organizations Act, or the Magnuson-Moss Warranty Act, or any other source, or any claims under the Trade Regulation Rule Concerning the Preservation of Consumers' Claims and Defenses 16. C.F.R. § 433.2, or any claim of any kind, in law or in equity, arising from, related to, connected with, and/or in any way involving the Actions.

Id.

The Settlement Agreement also provides that, notwithstanding this release, "Plaintiffs and Class Members are not releasing and are expressly reserving all rights relating to claims for personal injury, wrongful death, or actual physical property damage arising from an incident involving a Subject Vehicle, including the deployment or non-deployment of an airbag." *Id.*, Ex. 1 § VII.D. Additionally, the Agreement provides that "Plaintiffs and Class Members are not releasing and are expressly reserving all rights relating to claims against Excluded Parties, with the exception of" the released claims described above. *Id.*, Ex. 1 § VII.E. The Settlement Agreement also provides:

> Plaintiffs expressly understand and acknowledge, and all Plaintiffs and Class Members will be deemed by the Final Approval Order and Final Judgment to acknowledge and waive Section 1542 of the Civil Code of the State of California . . . Plaintiffs and Class Members expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights.

Id., Ex. 1 § VII.H.

E. CAFA Notice

The Settlement Agreement states that, "[a]t the earliest practicable time, and no later than 10 days after the Parties file this Agreement with the Court, the Settling Defendants shall send or cause to be sent to each appropriate state and federal official the materials specified in 28 U.S.C. § 1715 and otherwise comply with its terms." *Id.*, Ex. 1 § IV.B.1.

IV. <u>Analysis</u>

A. Class Certification

1. <u>Legal Standards</u>

The first step in considering whether preliminary approval of the Settlement Agreement should be granted is to determine whether a class can be certified. "[T]he Ninth Circuit has taught that a district court should not avoid its responsibility to conduct a rigorous analysis because certification is conditional: Conditional certification is not a means whereby the District Court can avoid deciding whether, at that time, the requirements of the Rule have been substantially met." *Arabian v. Sony Elecs., Inc.*, No. 05-CV-1741-WQH (NLS), 2007 WL 627977, at *2 n.3 (S.D. Cal. Feb. 22, 2007) (quoting *In re Hotel Tel. Charges*, 500 F.2d 86, 90 (9th Cir. 1974)). "When, as here, the parties have entered into a settlement agreement before the district court certifies the class, reviewing courts 'must pay undiluted, even heightened, attention to class certification requirements.' " *Staton v. Boeing Co.*, 327 F.3d 938, 952–53 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).

That the parties have reached a settlement "is relevant to a class certification." *Amchem Prods., Inc. v.*

Windsor, 521 U.S. 591, 619 (1997). Consequently, when:

> Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial. But other specifications of the Rule—those designed to protect absentees by blocking unwarranted or overbroad class definitions—demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Id. at 620 (internal citations omitted); *see also Gallego v. Northland Grp. Inc.*, 814 F.3d 123, 129 (2d Cir. 2016) ("In the context of a request for settlement-only class certification, the protection of absentee class members takes on heightened importance") (citing *Amchem Prods., Inc.*, 521 U.S. at 620).

The first step for class certification is to determine whether the proposed class meets each of the requirements of Fed. R. Civ. P. 23(a). *Dukes*, 564 U.S. at 350–51; *Hanon v. Dataproducts Corp*., 976 F.2d 497, 508 (9th Cir. 1992). These are: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Fed. R. Civ. P. 23(a)(1)–(4). Further, "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc." *Dukes*, 564 U.S. at 350. If these four prerequisites are met, the proposed class must also meet one of the requirements of Fed. R. Civ. P. 23(b) for a class action to be certified. *Valentino v. Carter-Wallace, Inc*., 97 F.3d 1227, 1234 (9th Cir. 1996).

Plaintiffs rely on Rule 23(b)(3). Dkt. 941 at 41–44. It provides, in relevant part, that a class proceeding "may be maintained" if "questions of law or fact common to class members predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b).

2. <u>Application</u>

a) Fed. R. Civ. P. 23(a) Requirements

(1) <u>Numerosity</u>

Rule 23(a)(1) requires that a class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). " '[I]mpracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Ests., Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (quoting *Advert. Specialty Nat'l Ass'n v. FTC*, 238 F.2d 108, 119 (1st Cir. 1956)). Although there is no specific numeric requirement, courts generally have found that a class of at least forty 40 members is sufficient. *Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010). "[I]t is not necessary to state the exact number of class members when the plaintiff's allegations 'plainly suffice' to meet the numerosity requirement." *In re Cooper Cos. Inc. Secs. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009) (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 281–82 (C.D.Cal.1985)) (finding sufficient numerosity of shareholder class based on 36 million shares outstanding).

In support of the Motion, it is stated that the Class is made up of current and former owners and lessees of approximately 3.7 million Hyundai and Kia Subject Vehicles. Dkt. 1027 at 42. This is sufficient to satisfy the numerosity requirement.

(2) Commonality

Rule 23(a)(2) provides that a class may be certified only if "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality requires a showing that the "class members 'have suffered the same injury,' [and] does not mean merely that they have all suffered a violation of the same provision of law." *Dukes*, 564 U.S. at 350 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). The class claims "must depend upon a common contention" that is "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* "Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule." *Hanlon*, 150 F.3d at 1019. In assessing commonality, "even a single common question will do." *Dukes*, 564 U.S. at 359 (internal quotation marks omitted). In general, the commonality element is satisfied where the action challenges "a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005).

In support of the Motion, it is stated that "the Class claims arise from the Settling Defendants' alleged uniform conduct of omitting material information about a safety defect in the Hyundai and Kia Subject Vehicles while misleading consumers about the effectiveness and reliability of the vehicles' safety features." Dkt. 1027 at 43–44. It is then stated that, "[c]ourts routinely find commonality where, as here, the class' claims arise from a defendant's uniform fraudulent conduct." *Id.* (citing *In re ZF-TRW Airbag Control Units Prods. Liab. Litig.*, No. 19-ML-02905-JAK (MRWx), 2023 WL 6194109, at *11 (finding commonality satisfied for the Toyota settlement where "Plaintiffs have identified at least one common question as to whether [Defendants'] alleged omissions and uniform misrepresentations to Class Members were fraudulent"); *In re Volkswagen "Clean Diesel" Mktg.*, No. 15-MD-02672-CRB, 2022 WL 17730381, at *3 (N.D. Cal. Nov. 9, 2022) ("In cases like this one, where fraud claims [about vehicle performance] arise out of a uniform course of conduct, commonality is routinely found."); *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 17-MD-02777-EMC, 2019 WL 536661, at *6 (N.D. Cal. Feb. 11, 2019) (commonality satisfied by defendants' "common course of conduct" in alleged emissions cheating scheme)).

Plaintiffs have identified at least one common question: Whether the Settling Defendants' alleged omissions and misrepresentations to Class Members were fraudulent. Dkt. 1027 at 43–44. For this reason, the commonality requirement is satisfied.

(3) Typicality

The typicality requirement is met if the "representative claims are 'typical,' " i.e., "if they are reasonably co-extensive with those of absent class members." *Hanlon*, 150 F.3d at 1020 (quoting Fed. R. Civ. P. 23(a)(3)). Representative claims "need not be substantially identical." *Id.* The test for typicality is whether " 'other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the

same course of conduct.' " *Hanon*, 976 F.2d at 508 (quoting *Schwartz*, 108 F.R.D. at 282). Like commonality, typicality is construed broadly. *Hanlon*, 150 F. 3d at 1020. The commonality and typicality requirements of Rule 23(a) tend to merge. *Dukes*, 564 U.S. at 349 n.5.

Plaintiffs allege that the same course of conduct injured the Hyundai-Kia Plaintiffs and other Class Members in the same manner. Dkt. 1027 at 44. Each Class Member paid for a Hyundai or Kia Subject Vehicle with an undisclosed defective DS84 ACU and relied on Hyundai's or Kia's alleged misrepresentations about the reliability of its safety features when deciding to purchase or lease their Subject Vehicles. *Id.* This satisfies the typicality requirement.

(4) Adequacy of Lead Plaintiffs and Class Counsel

Rule 23(a)(4) requires that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020. "Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011). "Adequacy of representation also depends on the qualifications of counsel." *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1007 (9th Cir. 2018) (citing *In re N. Dist. of Cal., Dalkon Shield IUD Prods. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982), *abrogated on other grounds by Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227 (9th Cir. 1996)). "[T]he named representative's attorney [must] be qualified, experienced, and generally capable to conduct the litigation." *Sali*, 909 F.3d at 996 (alterations in original) (quoting *Jordan v. Los Angeles County*, 669 F.2d 1311, 1323 (9th Cir. 1982), *vacated on other grounds by County of Los Angeles v. Jordan*, 459 U.S. 810 (1982)).

In support of the Motion, it is stated that the Hyundai-Kia Plaintiffs are "entirely aligned [with the Class Members] in their interest in proving that [Defendants] misled them and share the common goal of obtaining redress for their injuries." Dkt. 1027 at 45 (citing *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., and Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2016 WL 4010049, at *11 (N.D. Cal. July 26, 2016)).

There is no evidence that the Class Representatives have interests that are antagonistic to those of other Class Members. Thus, the Class Representatives are adequate.

It is also argued that Co-Lead Counsel and the PSC "have undertaken an enormous amount of effort and expense in advancing the Hyundai and Kia Plaintiffs' claims." Dkt. 1027 at 46. They contend that counsel "consistently devoted whatever resources were necessary to reach a successful outcome throughout the six years since this consolidated litigation began." *Id.* It is then argued that the amount of the proposed attorney's fees and service awards "are consistent with levels awarded in the Ninth Circuit." *Id.* Accordingly, in support of the Motion it is argued that Counsel, like the Hyundai-Kia Plaintiffs, also satisfy Rule 23(a)(4). *Id.*

For purposes of preliminary approval, the proposed award of attorney's fees and incentive awards for Plaintiffs appear reasonable. The proposed fee and incentive awards are not so disproportionate to the

relief provided to the Class to warrant a finding that the Class Representatives and counsel are not adequate representatives. *Cf. Staton*, 327 F.3d at 975–78 (rejecting incentive awards to 29 class representatives of up to $50,000 each). Further, issues about the attorney's fees and incentive awards are more appropriately addressed when considering whether the Settlement Agreement is reasonable and fair. *See id.* at 958 ("Although we later question whether the settlement agreement . . . was the result of disinterested representation, that question is better dealt with as part of the substantive review of the settlement . . . Otherwise, the preliminary class certification issue can subsume the substantive review of the class action settlement."). Thus, Class Counsel are adequate.

For the foregoing reasons, the adequacy requirement is satisfied.

b) Rule 23(b)(3) Requirements

(1) Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods.*, 521 U.S. at 623. The predominance analysis assumes that the Rule 23(a)(2) commonality requirement has already been established, *Hanlon*, 150 F.3d at 1022, and "focuses on whether the 'common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication.' " *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 557 (9th Cir. 2019) (quoting *Hanlon*, 150 F.3d at 1022). Individual questions arise where " 'members of a proposed class will need to present evidence that varies from member to member,' while a common question is one where 'the same evidence will suffice for each member . . . [or] the issue is susceptible to generalized, class-wide proof.' " *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quoting 2 William B. Rubenstein, *Newberg on Class Actions* § 4:50, at 196–97 (5th ed. 2012)). Where the issues of a case "require the separate adjudication of each class member's individual claim or defense, a Rule 23(b)(3) action would be inappropriate." *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001) (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1778 at 535–39 (2d ed. 1986)).

"Predominance is not, however, a matter of nose-counting. Rather, more important questions apt to drive the resolution of the litigation are given more weight in the predominance analysis over individualized questions which are of considerably less significance to the claims of the class." *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016) (internal citations omitted). "Therefore, even if just one common question predominates, 'the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately.' " *In re Hyundai*, 926 F.3d at 557–58 (quoting *Tyson Foods, Inc.*, 577 U.S. at 453).

Further, the requirements of Fed. R. Civ. P. 23(b)(3) "must be considered in light of the reason for which certification is sought—litigation or settlement." *Id.* at 558. Where a settlement "obviates the need to litigate individualized issues that would make a trial unmanageable," a class may be certifiable for the purposes of settlement even if certification would not be appropriate for the purposes of litigation. *Id.*

As noted, Plaintiffs' claims arise from the Settling Defendants' alleged failure to disclose the ACU Defect, while marketing their vehicles as safe. Dkt. 1027 at 48. Several questions that are common to all Class Members are then identified, including "when Defendants first learned of the ACU Defect, and

whether Defendants' representations and omissions about the Subject Vehicles' airbags and safety systems were misleading to reasonable consumers." *Id.* These questions do not turn on an assessment of individual facts. Whether the actions of the Settling Defendants were fraudulent is a question that is central to Plaintiffs' claims, and which is suitable for resolution on a classwide basis. For these reasons, the predominance requirement is satisfied.

(2) Superiority

Rule 23(b)(3) requires a showing that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This issue is evaluated by considering the following factors: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *Id.*

The benefits of resolving the claims at issue in a class action outweigh the interest of any Class Member who could pursue and control an individual action. There are approximately 3.7 million Subject Vehicles covered by the Class definition. Dkt. 1027 at 42. It is argued that the maximum damages sought by each Class Member "are exceedingly small in comparison to the substantial cost of prosecuting individual claims." *Id.* at 49. In light of the large number of Class Members and the cost of bringing individual claims in comparison to the modest, potential recoveries, it would be substantially less efficient for Class Members to pursue their claims on an individual basis. Further, Class Members may not have a strong incentive to pursue their claims individually given their small, potential recoveries. Nothing suggests that the management of this action has been, or will be, difficult. Moreover, that the parties have reached a settlement would obviate any potential management issues. For these reasons, the superiority requirement is satisfied.

* * *

For the foregoing reasons, it has been shown that the Class should be conditionally certified for the purpose of settlement.

B. Preliminary Approval of the Settlement Agreement

1. Legal Standards

Fed. R. Civ. P. 23(e) requires a two-step process in considering whether to approve the settlement of a class action. First, a court must make a preliminary determination whether the proposed settlement "is fundamentally fair, adequate, and reasonable." *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (quoting *Staton*, 327 F.3d at 952). In the second step, which occurs after preliminary approval, notification to class members, and the compilation of information as to any objections by class members, a court determines whether final approval of the settlement should be granted. *See, e.g.*, *Nat'l Rural Telecomms. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

At the preliminary stage, "the settlement need only be *potentially* fair." *Acosta*, 243 F.R.D. at 386 (emphasis in original). This is due, in part, to the policy preference for settlement, particularly in the context of complex class action litigation. *See Officers for Just. v. Civ. Serv. Comm'n of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation.").

As the Ninth Circuit has explained:

> [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Id.

Notwithstanding this deference, "[w]here . . . the parties negotiate a settlement agreement before the class has been certified, 'settlement approval requires a higher standard of fairness and a more probing inquiry than may normally be required under Rule 23(e).' " *Roes, 1–2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019) (quoting *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012) (internal quotation marks omitted)). "Specifically, 'such [settlement] agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair.' " *Id.* at 1048–49 (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (alteration in original)). This scrutiny "is warranted 'to ensure that class representatives and their counsel do not secure a disproportionate benefit at the expense of the unnamed plaintiffs who class counsel had a duty to represent.' " *Id.* at 1049 (quoting *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (internal quotation marks omitted)).

In evaluating fairness, a court must consider "the fairness of a settlement as a whole, rather than assessing its individual components." *Lane*, 696 F.3d at 818–19 (citing *Hanlon*, 150 F.3d at 1026). A court is to consider and evaluate several factors as part of its assessment of a proposed settlement. The following non-exclusive factors, originally described in *Hanlon*, are among those that may be considered during both the preliminary and final approval processes:

> (1) the strength of the plaintiffs' case;
> (2) the risk, expense, complexity, and likely duration of further litigation;
> (3) the risk of maintaining a class action status throughout the trial;
> (4) the amount offered in settlement;
> (5) the extent of discovery completed and the stage of the proceedings;
> (6) the experience and views of counsel;
> (7) the reaction of the class members to the proposed settlement; and
> (8) any evidence of collusion between the parties.

See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458–60 (9th Cir. 2000).

Each factor does not necessarily apply to every settlement, and other factors may be considered. For example, courts often assess whether the settlement is the product of arms-length negotiations. *See Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."). As noted, in determining whether preliminary approval is warranted, a court is to decide whether the proposed settlement has the potential to be deemed fair, reasonable and adequate in the final approval process. *Acosta*, 243 F.R.D. at 386.

Amended Fed. R. Civ. P. 23(e) provides further guidance as to the requisite considerations in evaluating whether a proposed settlement is fair, reasonable and adequate. A court must consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
>> (i) the costs, risks, and delay of trial and appeal;
>> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>> (iv) any agreement required to be identified under Rule 23(e)(3);[5] and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The factors set forth in Fed. R. Civ. P. 23(e) distill the considerations historically used by federal courts to evaluate class action settlements. *See* Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment. As the comments of the Advisory Committee explain, "[t]he goal of [the] amendment [was] not to displace any factor" that would have been relevant prior to the amendment, but rather to address inconsistent "vocabulary" that had arisen among the circuits and "to focus the court and the lawyers on the core concerns" of the fairness inquiry. *Id.*

2. Application

a) Whether the Class Representatives and Plaintiffs' Counsel Have Adequately Represented the Putative Class

As discussed above in connection with the issue of class certification, Plaintiffs and their counsel have adequately represented the Class. Counsel have prosecuted this case vigorously since the litigation began in 2019. Dkt. 1027 at 24–25.

In support of the Motion, it is argued that Settlement Class Counsel has undertaken significant efforts to uncover the facts about the ACU Defect in the Subject Vehicles. *Id.* at 24. "This included the retention

[5] Fed. R. Civ. P. 23(e)(3) provides that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal."

of technical experts to pursue and assess discovery, and the continued investigation and refinement of the Settlement Class's claims and liability theories, the fruits of which are detailed in two lengthy consolidated Complaints including the 1,300-page operative pleading." *Id.*

It is also argued that Settlement Class Counsel has "stayed focused and committed to obtaining a favorable result for the Class, including a vigorous defense through two rounds of pleading challenges, and dedicating substantial time and resources to Settlement negotiation processes that spanned across two and [a] half years plus." *Id.* at 24–25.

It is further asserted that the Hyundai-Kia Plaintiffs have been "actively engaged" in the litigation. *Id.* at 25. For example, they have preserved documents and information related to their claims; they have collected and provided responsive information and materials to counsel for production to Defendants; and they have worked with counsel to prepare responses to multiple sets of detailed interrogatories and to review and evaluate the proposed Settlement Agreement. *Id.*

"The extent of the discovery conducted to date and the stage of the litigation are both indicators of [Class] Counsel's familiarity with the case and of Plaintiffs having enough information to make informed decisions." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008). Here, the procedural history supports the assertion that Settlement Class Counsel is very familiar with the underlying facts, and that Plaintiffs have a sufficient basis to make an informed decision about settlement.

For these reasons, this factor weighs in favor of granting preliminary approval of the Settlement Agreement.

b) Whether the Settlement Was Negotiated at Arm's Length

Courts evaluate the settlement process as well as the terms to which the parties have agreed to ensure that "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Rodriguez*, 563 F.3d at 965. (quoting *Hanlon*, 150 F.3d at 1027). Three factors may raise concerns of collusion: (1) "when counsel receive[s] a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded"; (2) "when the parties negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds"; and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *In re Bluetooth Headset Prods.*, 654 F.3d at 947 (internal quotation marks and citations omitted).

There is no evidence of fraud, overreaching or collusion among the parties. The parties undertook "serious, informed, and arm's-length negotiations over some 2.5 years, which included multiple in-person negotiation sessions and still further remote sessions via videoconference and telephone." Dkt. 1027 at 25. The in-person mediation sessions, which culminated in the proposed Settlement Agreement, were overseen by Court-appointed Settlement Master, the late Patrick A. Juneau. *Id.* This extensive and meaningful exchange of information demonstrates that the parties were well-informed, and the litigation was adversarial.

Further, the Settlement Fund is non-reversionary, with any unclaimed balance set for redistribution to

Class Members at the close of the 18-month claims program. *Id.* at 13. Only if such additional payments are not economically feasible to distribute, will any final balance be directed *cy pres* subject to Court approval. *Id.* at 20. This ensures that all the money secured by the Settlement will inure to the benefit of the Hyundai and Kia Settlement Class, and that none of the funds will revert to the Settling Defendants. *Id.*

Nor is there a clear-sailing provision in the Settlement Agreement. The Agreement states that "[t]he Settling Defendants and Co-Lead Counsel represent that they have not discussed the amount of fees and expenses to be paid prior to agreement on the terms of this Agreement." Dkt. 1027-1, Ex. 1 § VIII.A. The Agreement also states that the Settling Defendants reserve the right to oppose the anticipated motion for attorney's fees. *Id.* Thus, the parties have not allocated a disproportionate amount of the settlement to be paid to counsel.

For the foregoing reasons, this factor weighs in favor of granting preliminary approval of the Settlement Agreement.

c) Whether the Relief Provided for the Class Is Adequate

(1) <u>Strength of Plaintiffs' Claims, and the Costs, Risks and Delays of Trial and Appeal</u>

"It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *Officers for Just.*, 688 F.2d at 628. "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625. "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys "R" Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014); *see also Rodriguez*, 563 F.3d at 965 ("In reality, parties, counsel, mediators, and district judges naturally arrive at a reasonable range for settlement by considering the likelihood of a plaintiffs' or defense verdict, the potential recovery, and the chances of obtaining it, discounted to present value.").

The Settlement Agreement provides for a total Settlement Amount of $62.1 million to address the damages to the Class. Dkt. 1027 at 28. It also provides relevant, non-monetary benefits including: an Outreach Program to drive Recall participation; a loaner vehicle program to ensure that recall repairs are performed with minimal inconvenience; a long-term New Parts Warranty; and the Settlement Inspection Program, which will help ensure investigation of any relevant incidents for 10 years ahead. *Id.*

In support of the Motion, significant risks of continued litigation are identified. Thus, "while the Hyundai and Kia Plaintiffs maintain that the ACAC states valid, cognizable claims, the majority of their dozens of state law claims against the Hyundai and Kia Defendants have not yet survived the pleading stage." *Id.* at 31. The Hyundai and Kia Defendants also "continue to contest that Plaintiffs' state a cognizable RICO claim," challenge the "state consumer protection and unjust enrichment claims," challenge the warranty claims and "invoke various statutes of limitation and timeliness arguments." *Id.* Mobis similarly raises challenges to RICO and to personal jurisdiction. *Id.* Accordingly, litigation could continue for

years, with large costs and several challenges. By contrast, the Settlement provides Class Members with guaranteed timely compensation and benefits.

These considerations support the conclusion that the Settlement Agreement is reasonable.

(2) The Effectiveness of Any Proposed Method of Distributing Relief to the Class

The proposed method of distributing relief to the class is fair and reasonable. The Notice Program, which is designed to reach "virtually all members of the class," should be effective. Dkt. 1027-2 ¶ 16.

Class Members may submit claims for cash compensation, the New Parts Warranty and the Hyundai and Kia Class Vehicle inspection program using the same claim form. Dkt. 1027-2, Ex. B. Claim forms will be made available to Class Members through a variety of means, including direct email notice, direct mail notice and a settlement website. Dkt. 1027-2 ¶ 15. Class Members may submit claim forms either electronically or by hard copy. *See id.* ¶ 43.

A copy of the claim form has been submitted in connection with the Motion. Dkt. 1027-2, Ex. H. To claim compensation, Class Members need only submit basic documentation, *e.g.*, substantiation of out-of-pocket costs, to claim the right to compensation. Dkt. 1027 at 32. The Parties developed the streamlined claim form in consultation with the Settlement Notice and Claims Administrator. *Id.*. The proposed process for submitting claims is not excessively burdensome, and it should be effective in distributing relief to the Class. Therefore, this factor weighs in favor of granting the Motion.

(3) The Terms of Any Proposed Award of Attorney's Fees

As noted, the Settlement Agreement states that Counsel did not discuss the amount of fees and expenses to be paid prior to consensus on the terms of what became the Settlement Agreement. Attorney's fees and expenses are to be paid from the Settlement Fund, which is non-reversionary. *Id.* at 33. This factor also supports granting the Motion.

d) Whether the Proposal Treats Putative Class Members Equitably Relative to Each Other

The Settlement Agreement provides that each Class member is subject to the same release and has an opportunity to submit a claim for compensation through a simple, streamlined claim form. *See* Dkt. 1027-1, Ex. 1 §§ III.C; VII. This method of distributing relief is fair and reasonable. Accordingly, this factor weighs in favor of granting the Motion.

* * *

A consideration of the applicable factors demonstrates that the Settlement is sufficiently fair, reasonable and adequate to warrant preliminary approval. Accordingly, the Motion is **GRANTED** as to the request that the Settlement be preliminarily approved.

C. Incentive Awards

1. Legal Standards

"[N]amed plaintiffs . . . are eligible for reasonable incentive payments." *Staton*, 327 F.3d at 977. To determine the reasonableness of incentive awards, the following factors may be considered:

> 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995).

2. Application

Plaintiffs intend to apply for service awards of up to $2500 for each of the 20 Hyundai-Kia Plaintiffs. Dkt. 1027 at 39. Plaintiffs have submitted a joint declaration by Plaintiffs' Co-Lead Counsel in support of the Motion (the "Joint Declaration"). Dkt. 1027-1. The Joint Declaration estimates that each of the Hyundai-Kia Plaintiffs spent approximately 30 hours on this litigation. *Id.* ¶ 34. If approved, this service award would result in an hourly rate of approximately $83.33. The Joint Declaration states that each Hyundai-Kia Plaintiff has devoted significant time to serve the interests of the Settlement Class over the last six years. *Id.* ¶ 33. Their activities have included:

> [P]roviding extensive factual information to assist counsel with drafting the complaints; regularly communicating with counsel to stay abreast of developments in this litigation; searching for relevant and responsive materials about their Subject Vehicles, and providing those materials to counsel for production in discovery; conferring with counsel to prepare and finalize detailed responses to Interrogatories; working with counsel to review and evaluate the terms of the proposed Settlement Agreement; and expressing their continued willingness to protect the Class until the Settlement is approved and its administration completed.

Id.

Based on a consideration of Plaintiffs' active role in the litigation, the number of hours spent on the case, and the six-year period that it has been pending, incentive awards in the amount of $2500 are reasonable. This determination will be subject to de novo review in connection with a motion for final approval.

D. Attorney's Fees

1. Legal Standards

Attorney's fees and costs "may be awarded . . . where so authorized by law or the parties' agreement." *In re Bluetooth Headset Prods.*, 654 F.3d at 941. However, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed

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to an amount*.” Id.* “If fees are unreasonably high, the likelihood is that the defendant obtained an economically beneficial concession with regard to the merits provisions, in the form of lower monetary payments to class members or less injunctive relief for the class than could otherwise have [been] obtained.” *Staton*, 327 F.3d at 964. Thus, a district court must “assure itself that the fees awarded in the agreement were not unreasonably high, so as to ensure that the class members’ interests were not compromised in favor of those of class counsel.” *Id.* at 965.

District courts have discretion to choose between a lodestar method and the percentage method to evaluate the reasonableness of a request for an award of attorney’s fees in a class action. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010). A court may also choose one method and then perform a cross-check with the other. *See, e.g.*, *Staton*, 327 F.3d at 973.

When using the percentage method, a court examines what percentage of the total recovery is allocated to attorney’s fees. *See id.* at 968. Usually, the Ninth Circuit applies a “benchmark award” of 25%. *Id.* However, awards that deviate from the benchmark have been approved. *See Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989) (“Ordinarily, . . . fee awards [in common fund cases] range from 20 percent to 30 percent of the fund created.”); *Schroeder v. Envoy Air*, *Inc*., No. 16-CV-4911-MWF (KSx), 2019 WL 2000578, at *7 (C.D. Cal. May 6, 2019) (“[T]he ‘benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors,’ ” including “ ‘(1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases.’ ”).

“The lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.” *In re Bluetooth Headset Prods.*, 654 F.3d at 941. After the lodestar amount is determined, a trial court “may adjust the lodestar upward or downward using a ‘multiplier’ based on factors not subsumed in the initial calculation of the lodestar.” *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000). Such factors “‘includ[e] the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.’” *Stetson v. Grissom*, 821 F.3d 1157, 1166–67 (9th Cir. 2016) (internal quotation marks omitted) (quoting *In re Bluetooth Headset Prods.*, 654 F.3d at 941–42).

2. Application

An anticipated request for attorney’s fees and expenses is included in the Joint Declaration. Dkt. 1027-1 ¶¶ 12–13. In support of the Motion, it is stated that Plaintiffs will file a motion for an award of attorney’s fees, costs and service awards at least four weeks before the objection/opt-out deadline. Dkt. 1027 at 33. The Motion states that it is anticipated that Settlement Class Counsel will request an award of up to 33% of the $62.1 million Settlement Amount in attorney’s fees and expenses, *i.e.*, an award of approximately $20.5 million. *Id.* The Joint Declaration states that “[t]he requested fee is warranted under the facts and history of this case, including the enormous amount of work, effort and expense Settlement Class Counsel have put into this MDL and reaching a favorable resolution of the Hyundai-Kia Plaintiffs’ claims against the Settling Defendants.” Dkt. 1027-1 ¶ 13.

A preliminary statement as to fees has been submitted in connection with the Joint Declaration. *See id.* ¶¶ 17–18; Exs. A & B. This information is attached to the Joint Declaration in two spreadsheets: Exhibit A and Exhibit B. These spreadsheets present "a summary of the common benefit work performed by Participating Counsel." *Id.* ¶ 17. Exhibit A is organized by the 13 specific task categories set forth in the Court's Order re Protocol for Common Benefit Work and Expenses (the "Common Benefit Order" or the "CBO"), and "lists the law firms, names, positions, numbers of hours worked, hourly rate, and fees for each of the attorney and staff members who performed common benefit work." *Id.* Exhibit B presents the same information, but is "organized by attorney/staff member, and includes a grand total of all the fees across all timekeepers and all law firms." *Id.* ¶ 18.

The CBO imposes limitations on the hourly rates for Participating Counsel as follows: $895/hour for partners; $350–$600/hour for associates; $415/hour for document review attorneys; and $175–275/hour for paralegals and assistants. *Id.* ¶ 19. The data summarized in these spreadsheets has not been fully audited, the figures are not final and it is anticipated that the data may change for the forthcoming motion for attorney's fees and expenses. *Id.* ¶ 21.

The Joint Declaration states that a significant amount of work remains. *Id.* ¶ 27. This work will be required to: (1) obtain final approval of the Settlement; (2) protect the Settlement on appeal (if any appeals are lodged); and (3) oversee and help implement the Settlement over the 1.5 years-long Claims Period. *Id.* The Joint Declaration anticipates that this work will require approximately 650 hours, for a total additional lodestar of $425,000. *Id.*

a) Percentage Approach

As noted, Settlement Class Counsel anticipate requesting an award of up to 33% of the $62.1 million Settlement Amount for attorney's fees and expenses. Dkt. 1027 at 33. This results in a potential award of $20,493,000.

It is argued that, although the anticipated fee request is described as 33% of the Settlement Amount, the requested percentage is actually much lower after taking into account both the monetary and non-monetary benefits obtained for the Settlement Class. *Id.* Accordingly, it is argued that the anticipated fee request will be a significantly lower percentage of the total Settlement value. *Id.* Thus, the anticipated attorney's fees request "will be well in line with awards regularly approved in this Circuit." *Id.* at 34.

The Ninth Circuit has set a 25% "benchmark award" for fees. *See, e.g.*, *Staton*, 327 F.3d at 968. However, as discussed, an award exceeding the benchmark is not *per se* unreasonable. An upward adjustment from the benchmark may be warranted in light of the results achieved, the risks of litigation, non-monetary benefits conferred by the litigation, customary fees in similar cases, the contingent nature of the fee, the burden carried by counsel, or the reasonable expectations of counsel. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002). Such an adjustment may be warranted here, where substantial payments and meaningful non-monetary benefits have been obtained for Class Members, the case has proceeded for six years and Counsel took the case on contingency. Counsel have not yet submitted a formal request as to fees, however, based on the current information, a 33% recovery award is within the range of what is reasonable under the circumstances.

b) Lodestar Cross-Check

Plaintiffs' Counsel have submitted tables containing their rates and hours worked to date. *See* Dkt. 1027-1, Exs. A–B. They also state that, because time entries are still being audited, the requested lodestar submitted in connection with the forthcoming motion for an award of attorney's fees will likely increase. *Id.* ¶ 21.

The total adjusted lodestar to date (using the capped billing rates) is $48,283,968.91. *Id.* ¶ 22. The total lodestar with each timekeeper's standard hourly rate(s) is $57,250,561.72, for a reduction of approximately 15.6% ($8.97 million) from the market-rate fees of participating counsel. *Id.* From these figures, Counsel have subtracted the lodestar previously allocated to the Toyota settlement ($11,520,547.22 with capped rates; $12,800,004.84 with market rates) and the Mitsubishi Settlement ($1,418,050.37 with capped rates; $1,618,188.94 with market rates). *Id.* ¶ 23.

Counsel explain that "in complex, multi-defendant litigation like this, in which work is performed to advance multiple claims both collectively and specifically, it is common for counsel to apportion a percentage of the total lodestar attributable to a particular settling defendant, because it is not practicable to disaggregate the common benefit work across each individual defendant." *Id.* ¶ 24. For that reason, Counsel has estimated the lodestar attributable to the Hyundai-Kia Plaintiffs' claims in the declaration. *Id.* Counsel used this methodology to arrive at a fee apportionment in the previous settlements with Toyota and Mitsubishi in this litigation and in other MDLs with multiple defendants and claims, including *In re Volkswagen "Clean Diesel"* (N.D. Cal.). *Id.*

Counsel estimate the work fairly and reasonably attributed to efforts that benefited the proposed Hyundai-Kia Settlement Class and the prosecution of their claims as follows: from the total, 65% of Counsel's efforts to the six Vehicle Manufacturer groups, and the remaining 35% to the supplier Defendants (ZF and STMicro). *Id.* ¶ 25. Within the amount allocated to the Vehicle Manufacturer Defendants, Counsel estimate that approximately 30% of that work is reasonably assigned to the Settling Defendants. *Id.* ¶ 26. Counsel state that this apportionment is supported by the following: (a) the size and scale of the Hyundai-Kia Settlement Class, which consists of approximately 3.7 million of the 15 million Class Vehicles at issue in this MDL; (b) efforts in responding to the Settling Defendants' and the other Defendants' two rounds of pleading challenges to the Complaints; (c) the discovery, investigative and expert work that developed and advanced the Hyundai-Kia Plaintiffs' claims to this favorable resolution; and (d) the focused time and efforts to negotiate the proposed Settlement terms with the Settling Defendants over the course of more than two and a half years. *Id.*

Counsel state that, in addition to the extensive common benefit work performed to date, significantly more work will be required. *Id.* ¶ 27. As noted, it is estimated that Plaintiffs' Counsel will devote an additional $425,000 in time charges to finalize, protect and implement the Settlement. *Id.*

Based on the foregoing estimates and calculations, Plaintiffs estimate that the lodestar at issue for purposes of the forthcoming attorney's fees request, using the applicable CBO rate caps, will be approximately $9,415,373.94. *Id.* ¶ 28. They estimate that the final lodestar, including the anticipated future work, is expected to be $9,840,373.94. *Id.* Counsel state that, with respect to the maximum fees request of up to $20,493,033.30 including expenses, this yields a reasonable multiplier of approximately 2.13 without future fees, and 2.04 with future fees included. *Id.* ¶ 29.

(1) Whether the Rates Claimed are Reasonable

As noted, the rates that may be charged by Class Counsel are capped by the CBO Order. Dkt. 111. That order was without prejudice to a review "of the reasonableness of any fee request even if its bases comply with this Order, including as to hourly rates." *Id.* at 1. Counsel state that, for many timekeepers, the Court-capped hourly rates fall well below their standard and customary rates. Dkt. 1027-1 ¶ 19.

Plaintiffs' use of the Court-capped hourly rates provides support for the reasonableness of the rates claimed. However, they have not provided any additional evidence to support the reasonableness of the hourly rates, as is ordinarily required. The rates claimed appear reasonable, but Plaintiffs shall provide evidence supporting their reasonableness in connection with the anticipated attorney's fees motion.

(2) Whether the Hours Charged Are Reasonable

Plaintiffs' Counsel have provided tables showing the hours worked to date on this matter. Those tables reflect that Counsel have worked a total of 117,717.6 hours on this matter. *See* Dkt. 1027-1, Ex. A. That work was performed in connection with 13 different areas. *Id.* As noted above, these tables include hours worked as to the claims against all Defendants in this matter. Plaintiffs have estimated that $9,415,373.94 of the total lodestar to date of $48,283,968.91 is attributable to work with respect to the claims against the Settling Defendants.

The hours charged are generally reasonable. However, because the information submitted presently is not final, this issue is subject to de novo review in connection with the anticipated motion for final approval.

c) Conclusion on Attorney's Fees

The evidence submitted in connection with Plaintiffs' Motion for Preliminary Approval shows that, to date, the amount of attorney's fees submitted by Plaintiffs' Counsel are within a reasonable range. However, in connection with any motion for final approval of the settlement, Plaintiffs' Counsel shall submit more detailed evidence in support the claimed hourly rate for each attorney, as well as additional evidence and explanation to support the calculation of the total value of the recovery to the Class. Plaintiffs' Counsel shall also provide the final time charts discussed above. For purposes of Preliminary Approval, an attorney's fees award in the range of $18,000,000 to $20,500,000 is approved.

E. Appointment of Class Representative and Class Counsel

For the reasons stated above, Plaintiffs' Counsel and the Hyundai-Kia Plaintiffs have been adequate representatives of the Class. Therefore, the Hyundai-Kia Plaintiffs are approved as Class Representatives, and Co-Lead Counsel and the members of the PSC are approved as Class Counsel. Class Counsel includes the following entities: Baron & Budd, P.C.; Lieff Cabraser Heimann & Bernstein, LLP; Adhoot & Wolfson, PC; Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.; Bleichmar Fonti & Auld LLP; Boies, Schiller & Flexner LLP; Casey Gerry Schenk Francavilla Blatt & Penfield, LLP; DiCello

Levitt Gutzler LLC; Gibbs Law Group LLP; Keller Rohrback LLP; Kessler Topaz Meltzer and Check LLP; Podhurst Orseck, P.A.; Pritzker Levine LLP; Robbins Geller Rudman & Dowd LLP; and Robins Kaplan LLP. *See* Dkt. 1027-4 ¶ at 9–10.

F. Appointment of a Settlement Administrator

The Parties have proposed the appointment of Patrick J. Hron ("Hron") as the Settlement Special Administrator, and JND Legal Administration LLC ("JND") as the Settlement Notice Administrator. Dkt. *Id.* at 14.

The Parties agree and mutually propose Hron to serve as Settlement Special Administrator in light of his experience in successfully administering similar automotive settlements of this scale. Dkt. 1027 at 22 (citing Dkt. 1027-3 ¶¶ 3–7). Hron worked closely with prior Special Master Juneau in mediations in this case and in the similar Toyota settlement claims process in this litigation. *Id.* The estimated fees and costs for Hron are to be $200,000–$400,000, and paid from the Settlement Fund. *Id.*

The "parties selected JND Settlement Administration as the Settlement Notice Administrator based on JND's extensive experience in administering large-scale notice programs in complex class and automotive cases." *Id.* at 21. The Keough Declaration describes Jennifer M. Keough's extensive experience and credentials relevant to administering notice of the Settlement. *See* Dkt. 1027-2. Keough states that JND has administered hundreds of class action settlements and Keough, as the CEO and President, is involved in all facets of JND's operations, including monitoring the implementation of notice and claims administration programs. *Id.* ¶ 1. Based on the evidence provided, JND appears to be an appropriate administrator.

JND projects that total costs of administration of the Notice Program will range from approximately $2,829,000 to $4,087,000 based on settlement participation rates of 5–10%. Dkt. 1027 at 21. It is argued that this range of costs is "reasonable and necessary to ensure adequate notice and claims administration." *Id.*

For the foregoing reasons, Hron is approved as the Settlement Special Administrator and JND is approved as Settlement Notice Administrator. In connection with any motion for final approval, Plaintiffs shall submit evidence supporting the amount requested for settlement administration costs.

G. Proposed Notice

1. <u>Legal Standards</u>

Rule 23(e)(1)(B) requires that a court "direct notice in a reasonable manner to all class members who would be bound by" a proposed class settlement. Notice is satisfactory if it " 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.' " *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)).

2. <u>Application</u>

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As stated, the Notice Program includes a Long Form Notice, Press Release, direct mailed and/or emailed notice, digital notice and internet search campaign and a comprehensive Settlement website that are each clear and complete. Dkt. 1027 at 50. It is anticipated that the proposed Notice Program will reach "virtually all Class Members" and the "reminder notice effort, supplemental digital effort, internet search campaign, and distribution of a press release to over 5,000 media outlets throughout the U.S. and its territories or possessions will further enhance that reach." Dkt. 1027-2 ¶ 48.

Accordingly, the Proposed Notice satisfies the requirements of Rule 23(e)(1)(B). Thus, the Proposed Notice and the Notice Program are approved.

V. Conclusion

For the reasons stated in this Order, the Motion is **GRANTED**.

The following schedule is adopted:

EVENT	DEADLINES
Initial Class Notice to be Disseminated	No later than April 21, 2025
Plaintiffs' Motion for Final Approval and Attorney's Fees and Expenses	No later than July 15, 2025
Exclusion/Objection Deadline	August 25, 2025
Reply Memoranda in Support of Final Approval and Fee/Expense Motion	No later than September 8, 2025
Deadline to file Notice of Intent to Appear	September 19, 2025
Fairness Hearing	September 29, 2025, at 8:30 a.m.

IT IS SO ORDERED.

______ : ______

Initials of Preparer LC3