

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE NAVISTAR MAXXFORCE ENGINES
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION

Case No: 14-CV-10318

MDL No. 2590

**This filing applies to:
All Class Cases**

Judge Joan B. Gottschall

**DECLARATION OF JASON T. DENNETT IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES**

I, Jason T. Dennett, declare as follows:

1. I am a member of Tousley Brain Stephens PLLC, counsel for Plaintiffs in this action. I submit this declaration in support of Motion For Attorneys' Fees. I have personal knowledge of the facts set forth herein and am competent to testify thereon.

2. The chart below is a true and correct summary of the time expended by the attorneys and other professional staff members of our firm who performed legal services in connection with this action and the corresponding rates for their legal services. The schedule was prepared from daily time records prepared and maintained in the normal course of business by our firm.

TOUSLEY BRAIN STEPHENS TIME				
NAME	TITLE	HOURS	RATE(S)	TOTAL
Bulthuis, James	Partner	541.5	\$420 - \$525	\$244,173.00
Dennett, Jason	Partner	1801.4	\$350 - 710	\$1,245,145.50
Humphreys, Jacob	Partner	2075	\$350 - \$450	\$895,529.00
Stephens, Kim	Partner	257	\$350 - \$825	\$202,055.00
Powell, Kaleigh	Associate	32.9	\$325	\$10,692.50
Rashby, Eve	Paralegal	29.8	\$330	\$9,834.00
Shiel, Cecily	Associate	120.5	\$400	\$48,200.00
Solomon, Rebecca	Associate	24.7	\$410	\$10,127.00
Williams, Leaf	Associate	388.4	\$350 - \$450	\$152,090.00
Morin, Nadine	Paralegal	25.2	\$270	\$6,804.00
TOTAL		5296.4		\$2,824,650.00

3. I performed a line-by-line review of each Tousley Brain Stephens time entry in this matter and cut or reduced time where appropriate in the exercise of billing judgment. The time submitted was reasonable and necessary for the prosecution of this case. It does not reflect all of the time Tousley Brain Stephens incurred during this matter.

4. Tousley Brain Stephens PLLC has extensive experience in class action litigation and has prosecuted numerous multi-million dollar class actions, including cases in the areas of consumer protection, product liability, securities, and employment. Tousley Brain Stephens PLLC's firm resume is attached as Exhibit 1.

5. The firm's rates have been approved as reasonable and appropriate by numerous U.S. District Court judges in similar matters. Most recently the Court in *Glenn v. Hyundai*, U.S. District Court for the Central District of California, Case Number 8:15-cv-02052, approved the current rates listed above for Jason Dennett at \$710, Kim Stephens at \$825, James Bulthuis at \$525, Leaf Williams at \$450, and Cecily Shiel at \$400. The Court's Order is

attached as Exhibit 2.

6. The qualifications and case contributions of each Tousley lawyer who spent more than 30 hours on this matter are described below.

7. I graduated from the University of Oregon law school in 2000 and served as a judicial extern for the Honorable Ann Aiken, U.S. District Court, District of Oregon. My litigation background is diverse, including securities, partnership disputes, shareholder oppression, trust litigation, and numerous trials and arbitrations. I currently concentrate my practice in class action litigation emphasizing consumer products and data privacy.

8. I headed the root cause analysis team in this case. That team worked first with a clients' in-house mechanics and later with liability experts to determine what caused the defect at issue. Those experts taught me what I needed to know about modern diesel emissions technologies and Navistar's application of those technologies. I then took or second chaired the majority of the depositions of Navistar's engineers who worked on the class engines and reduced that testimony into the facts supporting class certification. I also worked with the damages experts to provide them the underlying liability basis for their opinions.

9. Jacob Humphreys is a 2009 graduate of Seattle University School of Law. He has a litigation and trial background in both criminal and civil matter. While at Tousley Brain Stephens, Mr. Humphreys concentrated his practice on commercial litigation and class action matters.

10. Mr. Humphreys headed the document review in this matter, running a team of dozens of lawyers that reviewed millions of pages of documents. Mr. Humphreys developed a

deep knowledge of the key documents and timeline of this case which was a tremendous resource for the lawyers taking depositions.

11. James Bulthuis graduated from Willamette Law School in 2011. He is a commercial and class action litigator with substantial trial experience.

12. Mr. Bulthuis represented plaintiffs at more than twenty of Navistar's inspections of plaintiffs' facilities around the country between 2016 and 2018. *See* Declaration of James Bulthuis in Support of Plaintiffs' Motion for Class Certification.

13. Kim D. Stephens is one of Tousley Brain Stephens PLLC's senior litigators. He received his law degree (with honors) in 1981 from the University of Washington, and served as a judicial extern clerk for the Honorable Eugene A. Wright, Ninth Circuit Federal Court of Appeals. After that clerkship, he joined Haggard, Tousley & Brain, the predecessor to Tousley Brain Stephens PLLC. Mr. Stephens concentrates his practice in complex commercial and class action litigation with special emphasis on consumer, securities, financial, construction products, and business law matters. He has been appointed special attorney general to handle cases for the state of Washington, lead counsel to manage both state and federal class actions, and has extensive experience litigating multiple plaintiff, multi-district and class action cases involving securities fraud, environmental contamination, products liability, data breach, anti-trust and consumer fraud issues in state and federal courts.

14. Mr. Stephens contributed high-level strategic guidance to the Navistar team on diverse topics including initial liability theories, discovery planning, and damages. He also spent considerable time on planning settlement approaches and on the settlement negotiation.

15. Leaf Williams graduated from American University College of Law in 2009. While at Tousley Brain Stephens, Ms. Williams concentrated her practice on commercial litigation and class action matters.

16. Ms. Williams ran the document production team prior to Mr. Humphreys assuming that role and was a key resource early on in the case.

17. Cecily Shiel is a 2015 graduate of the University of Washington, where she was chief managing editor of the Washington Law Review. She served as a judicial extern to the Honorable Robert S. Lasnik of the U.S. District Court for the Western District of Washington and the Honorable Bradley A. Maxa of the Washington Court of Appeals – Division II. She served as a law clerk to Justice Charlie Wiggins of the Washington Supreme Court. Ms. Shiel concentrates her practice on class action litigation.

18. Kaleigh Powell is a 2017 graduate of the University of Washington, served as the President of the Moot Court Honor Board, a Managing Editor on the Washington Law Review. She served as a law clerk to the Honorable Robert H. Cleland in the Eastern District of Michigan. Ms. Powell concentrates her practice on class action litigation.

19. Ms. Shiel and Ms. Powell provided legal research support for the class certification briefing team.

20. Tousley Brain Stephens PLLC's work in this case was at all times entirely contingent on the outcome.

21. The chart below is a true and correct copy of the expenses our firm incurred in connection with this case. These expense items are billed separately and are not included in the

firm's billing rates. These expenses are based on our firm's business records and were reasonably incurred in the course of our work in this matter.

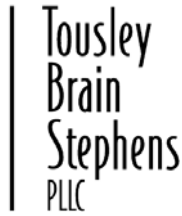
TOUSLEY BRAIN STEPHENS COSTS	
CATEGORY	AMOUNT
COST FUND	\$ 102,500.00
FEDEX	\$ 814.23
PHONE	\$ 540.50
IN-HOUSE COPY	\$ 2,753.30
HOTELS	\$ 31,783.33
MEALS	\$ 5,350.70
MILEAGE	\$ 136.09
AIR TRAVEL	\$ 38,996.59
DEPOSITION	\$ 4,933.06
LEGAL RESEARCH	\$ 12,442.32
COURT FEES	\$ 215.40
SERVICE FEES	\$ 242.36
GROUND TRANSPORTATION	\$ 11,099.27
MISC	\$ 786.15
TOTAL	\$ 212,593.30

I declare under penalty of perjury of the laws of the state of Washington and the United States that the foregoing is true and correct.

DATED this 4th day of September, 2019, at Seattle, Washington.

Jason T. Dennett

EXHIBIT 1



ATTORNEYS
1700 SEVENTH AVENUE, SUITE 2200
SEATTLE, WASHINGTON 98101
TELEPHONE 206.682.5600
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TOUSLEY BRAIN STEPHENS PLLC has extensive experience in class action litigation and has prosecuted numerous multi-million dollar class actions, including the following cases in the areas of product liability, data privacy, consumer protection, securities, and employment:

Product Liability

- Appointed class counsel in *Glenn v. Hyundai*, U.S. District Court for the Central District of California to represent a nationwide class of people who purchased Hyundai vehicles with panoramic sunroofs. Plaintiffs alleged the sunroofs were prone to spontaneous shattering. The settlement, which extended the warranty for the class, provided repair costs and \$200 cash for anyone who experienced shattering, and a \$1,000 trade in allowance to anyone who no longer wished to own a vehicle with a panoramic sunroof, was valued at over \$30 million.
- As co-lead counsel in the *In re Louisiana-Pacific Inner Seal Siding* class action, U.S. District Court, District of Oregon, we initially settled one of the largest product liability class action settlements in the United States for \$275 million. In November 1998, this settlement was augmented by additional commitments for a total of more than \$500 million, over \$240 million of which was paid to Washington residents.

- As co-lead counsel in the *Richison v. American Cemwood Corp.*, Superior Court, San Joaquin County, California, we settled this litigation, related to defective shingles, creating a guaranteed \$105-million settlement fund for a national class in the first phase of litigation. The second phase, against Cemwood's insurers, created an additional \$83-million settlement fund in 2003.
- As co-lead counsel in the *Behr Wood Sealants* settlement, Superior Court, San Joaquin County, California, we created a national settlement fund in 2003 of up to \$107.5 million, plus \$25 million in attorneys' fees.
- As co-lead counsel in a national product liability class action against Weyerhaeuser Company in San Francisco Superior Court, *Williams et al. v. Weyerhaeuser Company*, we settled the claims against Weyerhaeuser for approximately \$85 million.
- As co-lead counsel for the plaintiff class in *Clemans v. New Werner Co, et al.*, U.S. District Court, Western District of Washington, we successfully obtained free replacement ladders for a national class of approximately 300,000 consumers. The class alleged that Werner pull-down attic ladders were unreasonably dangerous because of defective hinges. The settlement was valued at \$48 million dollars.
- Co-counsel for national class of homeowners with allegedly defective roofing shingles in *In re IKO Roofing Shingle Products Liability Litigation*, 757 F.3d 599 (USCA 7th Cir. 2014). The settled for extended warranties, replacement shingles or cash value of replacement shingles all with an estimated value of \$30 million.
- As co-counsel for a health benefits trust in *Neurontin Marketing Sales Practices*

and Products Liability Litigation, we represented a national class alleging that in an effort to boost profits, Pfizer, Inc. and Warner-Lambert Co. sold the drug Neurontin for uses for which it was neither approved by the U.S. Food and Drug Administration nor medically effective. Pfizer Inc. agreed to pay \$325 million to resolve the class's claim that Pfizer defrauded insurers and other healthcare benefit providers by its off label marketing of Neurontin.

- As co-lead counsel in *Delay v. Hurd Millwork Co.*, Superior Court, Spokane County, Washington, we represented a Western States class of individuals that purchased windows allegedly filled with inert gas. The case settled for \$5.3 million.
- As sole class counsel in *Barrett v. PABCO*, Superior Court, King County, Washington, a national roofing shingles product liability case, we settled the case on an unlimited claims-made basis in 2006. That settlement more than doubled the value of compensation available to homeowners under a Washington State Attorney General Consent Decree, and opened claims to every qualified homeowner in the nation, including those who were not original purchasers of the roofing product.
- As co-lead counsel in *Grays Harbor Christian School v. Carrier Corporation*, U.S. District Court, Western District of Washington, we successfully represented national consumers to whom Carrier allegedly sold defective high efficiency furnaces. The case settled on a national and international basis when Carrier agreed to compensate consumers for past failures and fix the alleged defect for

free in the future. Three million consumers were covered under the settlement, which was valued at more than \$300 million.

- As co-lead counsel in *Zwicker v. General Motors, Inc.*, U.S. District Court, Western District of Washington, we represented more than four million consumers who purchased vehicles with defective speedometers. The court granted final settlement approval, which entitles most class members to have their speedometers fixed for free.
- As co-lead counsel in *Splater et al. v. Thermal Ease Hydronic Systems, Inc. et al.*, Superior Court, King County, Washington, we represented a class of Washington consumers with defective tubing in their homes and obtained a seven-figure settlement for our clients.
- As co-lead class counsel in *Stanley and Betty Pelletz v. Weyerhaeuser Company et al.*, U.S. District Court, Western District of Washington, we represented a class of consumers who alleged that their ChoiceDek decking was defective because it developed black and gray mold spots throughout the decking and railing. The settlement allows class members a free deck cleaning along with application of a mold inhibitor and deck replacement or a full refund if the cleaning does not work.
- As co-lead counsel in *Ross, et al. v. Trex Company, Inc.*, U.S. District Court, Northern District of California, we represented a national class of building owners with Trex decking products that delaminated, flaked and crumbled. Allegations related to that defect settled with class members receiving replacement product or cash.

- As co-lead class counsel in *Mahan v. Trex Company, Inc.*, U.S. District Court, Northern District of California, we represented a national class of building owners with Trex decking products that grew mold and mildew internally. The settlement provided three tiers of cash and product relief to affected homeowners.
- As co-lead counsel in *Carideo v. Dell*, U.S. District Court, Western District of Washington, we represented a class of Dell computer owners whose laptop computers overheated. The case settled with class members receiving partial reimbursement for the cost of their laptop.
- Appointed co-lead counsel in the MDL proceedings against Monsanto Company related to the release of Round-up resistant wheat. We successfully obtained a settlement for soft white wheat farmers in the Pacific Northwest related to the May 2013 discovery of genetically-modified wheat on an Eastern Oregon farm, which resulted in market disruptions to the exports of soft white wheat. Monsanto agreed to pay \$2.5 million into a settlement fund for farmers and wheat growers in Washington, Oregon, and Idaho.

Data Privacy

- Appointed sole interim lead counsel in *In re Premera Blue Cross Custody Data Security Breach Litigation*, multi-district litigation pending in the U.S. District Court for the District of Oregon. The lawsuit alleges that Premera allowed a massive breach of its data systems, permitting hackers access to the personal, medical, and financial information of more than 11 million Premera subscribers

and employees. A \$32 million cash and \$42 million injunctive relief settlement has received preliminary approval.

- Co-lead counsel in *Armon v. Washington State Univ.*, No. 17-2-23244-1 SEA. This data breach case involved a stolen hard drive containing personal information of over one million individuals. Preliminary approval was granted of \$5.26 million, plus injunctive relief.
- Served on the plaintiffs' steering committee in multi-district litigation to prosecute claims of financial institutions in the *In re The Home Depot, Inc. Customer Data Security Breach Litigation*, No. 14-md-02583 (N.D. Georgia) related to its 2014 data breach. The financial institutions sought to recover losses they incurred in reissuing cancelled credit cards and paying fraud claims. The financial institutions alleged that Home Depot intentionally neglected its data security to maximize profits. Hon. Thomas W. Thrash, Jr., United States District Court Judge for the Northern District of Georgia, granted final approval to a \$43.5 million settlement to cover financial institution losses, attorneys' fees and costs. On July 25, 2019, the Eleventh Circuit vacated the \$15.3 million fee award and remanded to Judge Thrash for reconsideration.

Consumer

- Appointed sole class counsel in *Ikuseghan v. Multicare Health System, U.S.* District Court for the Western District of Washington to represent a nationwide class asserting Telephone Consumer Protection Act (TCPA) claims. In approving the settlement and fee award, the court noted that "class counsel obtained an extraordinarily good result for the class following an arm's-length negotiation.

Under the approved settlement, class members will receive as much as they would have received had they successfully litigated their claims under the TCPA. This recovery is significantly superior to other TCPA class action settlements that have been approved in this Circuit.” With individual class member recoveries ranging from \$2,500 to over \$19,000 per approved claim, the settlement is believed to be the largest individual class member recovery in any TCPA case.

- As co-lead counsel in a consumer fraud class action, *Odom v. Microsoft, et al.*, Superior Court, King County, Washington, we successfully settled this action in 2010 after six years of hard-fought litigation. We alleged that Microsoft Corporation and Best Buy Stores, Inc. established MSN Internet accounts and trial subscriptions in the names of class members without their knowledge or approval and charged their credit or debit cards for this unauthorized, unused service. The case settled with each class member receiving a refund of up to \$75 for the MSN charges they paid.
- As co-lead counsel in *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173 (2007), we successfully represented purchasers of vehicles, parts, and services against certain automobile dealers in Washington who were illegally charging purchasers Business and Occupation tax. The class members received full refunds of all illegally collected taxes in addition to attorneys’ fees and costs.
- As co-lead counsel in *Cole v. Wells Fargo Bank N.A.*, U.S. District Court, Western District of Washington, we successfully settled this case on behalf of a national class of consumers charged excessive fees on their accounts. Class members received full refunds of all excessive fees, together with interest,

attorneys' fees and costs. Judge Lasnik, W.D. WA, noted this settlement was an example of the kind of justice class actions could achieve.

- As co-lead counsel in *Michael Spafford, Jr. v. Echostar Communications, Corporation*, U.S. District Court, Western District of Washington, we successfully obtained an injunction on behalf of Washington consumers prohibiting defendant from using automatic dialing and announcing devices to sell satellite television subscriptions and equipment in violation of Washington law.

Securities

- As sole class counsel in *Johnson v. Amgen Boulder, Inc.*, we represented a national class that invested approximately \$50 million with the world's largest biotechnology company to fund the development of a genetically engineered molecule. That case settled for payments totaling \$82 million.
- As sole class counsel in *Trimble et al. v. Holmes Harbor Sewer District et al.*, Superior Court, Island County, Washington, we represented a national class of bondholders. We achieved a 100% recovery for investors who had purchased unlawfully issued bonds through several broker dealers.
- As sole class counsel in *Wolf et al. v. Asiamerica et al.*, Superior Court, King County, Washington, we represented a national class in a securities fraud action against an international leveraged buy-out corporation. The case settled for approximately 120% of the class's investment, plus attorneys' fees and costs.
- As liaison counsel in *In re Washington Mutual Mortgage-Backed Securities Litigation*, U.S. District Court, Western District of Washington, we represented a class of purchasers of mortgage-backed certificates issued and underwritten by

Washington Mutual and related entities. The named Plaintiffs alleged that the defendants violated federal securities laws by misrepresenting the underwriting procedures used to originate the mortgage loan collateral. The case settled for \$26 million.

Employment

- As co-lead counsel in *Barnett et al. v. Wal-Mart Stores, Inc.*, Superior Court, King County, Washington, we represented a class of more than 88,000 current and former employees who worked in Wal-Mart's Washington stores. The case settled after almost eight years of litigation for up to \$35 million.
- As co-lead counsel in *Kirkpatrick v. Ironwood Communications, Inc.*, U.S. District Court, Western District of Washington, we represented hourly employees in Washington and Oregon, who alleged the company failed to pay them for all hours worked, failed to provide them rest and meal breaks, and made unlawful deductions to their paychecks. The case settled for confidential sums.
- As co-lead counsel in *Godfrey v. Chelan County Public Utility District*, U.S. District Court, Eastern District of Washington, we represented a class of utility employees who alleged that they performed work for the Utility District without being paid for their work. The case settled with the Utility District compensating the employees and paying attorneys' fees and costs.
- As co-lead counsel in *McGinnity v. AutoNation, Inc.*, a private, class arbitration, we obtained a \$2.34 million arbitration award on behalf of a class of AutoNation

car dealership workers who were unlawfully denied their earned paid vacation benefits.

- As class Counsel in *Morden v. T-Mobile USA, Inc.*, U.S. District Court, Western District of Washington, we obtained certification of a nationwide collective action of current and former employees of a major wireless telecommunication carrier, which had been allegedly misclassified as exempt from wage and hour laws. The parties reached a \$2 million settlement of the case.

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EXHIBIT 2

JS-6

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

BILLY GLENN, *et al.*,

Plaintiffs,

v.

HYUNDAI MOTOR AMERICA, *et al.*,

Defendants.

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

**FINAL ORDER AND
JUDGMENT [272]**

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1 Plaintiffs’ Motion for Final Settlement Approval and Award of Attorney’s Fees,
2 Litigation Costs, and Service Awards came before the Court for hearing on August
3 12, 2019, pursuant to the Court’s Order Granting Motion to Direct Notice of
4 Proposed Class Action Settlement dated February 25, 2019 (“Order Directing
5 Settlement Notice”) (Dkt. No. 267). Having considered the parties’ Settlement
6 Agreement, and all papers filed and proceedings had herein,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

- 8 1. This Court has subject matter jurisdiction over this action.
- 9 2. Capitalized terms not otherwise defined herein shall have the same
10 meaning as set forth in the parties’ Settlement Agreement.

11 3. The Court finds, following a rigorous analysis and for purposes of
12 settlement only, that the following settlement Class satisfies the requirements of
13 Federal Rule of Civil Procedure 23:

14
15 *All persons and entities who bought or leased a Class Vehicle in the United States,*
16 *excluding its territories, as of the date of Preliminary Approval (February 25,*
17 *2019), and all persons who bought or leased a Class Vehicle while on active*
18 *military duty in the Armed Forces of the United States as of the date of Preliminary*
*Approval.*¹

19 (a) Hyundai sold and leased hundreds of thousands of new Class Vehicles.
20 Some of those vehicles have been resold in the years since the vehicles were
21 originally sold and leased. Thus the total number of Class members exceeds
22

23
24 ¹ Excluded from the Class are Defendants; any affiliate, parent, or subsidiary
25 of HMA or HMC; any entity in which HMA or HMC has a controlling
26 interest; any officer, director, or employee of HMA or HMC; any successor
27 or assign of HMA or HMC; any judge to whom this Action is assigned, his or
28 her spouse, and all persons within the third degree of relationship to either of
them, as well as the spouses of such persons; and anyone who purchased a
Class Vehicle solely for the purpose of resale (e.g., new or used car
dealerships).

1 the total number of Class Vehicles originally sold. As a result, joinder of all
2 Class Members would be impracticable.

3
4 (b) There are questions common to the Class, and those questions common to
5 the Class predominate over questions affecting individual Class Members: All
6 Class Members bought or leased Hyundai vehicles with panoramic sunroofs;
7 Plaintiffs claim the sunroofs are prone to shattering and claim that Hyundai
8 concealed that information from them. Defendants, without admitting the
9 existence of any defect (let alone concealment of a defect), have agreed to
10 provide relief to the Class of purchasers and lessees to address the risk of
11 shattering. The Class is thus sufficiently cohesive. To the extent differences of
12 state law exist, the common questions nevertheless predominate. Because the
13 action is being settled rather than litigated, the Court need not consider
14 manageability issues that might be presented by the trial of the issues in this
15 case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

16 (c) The claims of Plaintiffs are typical of the claims of the Class they seek to
17 represent for purposes of settlement: Hyundai sold them a vehicle with a
18 sunroof that is allegedly prone to shattering. This common course of conduct
19 gives rise to the same reasonably co-extensive claims for all class members for
20 purposes of settlement.

21
22 (d) A class action is superior to other available methods for the fair and
23 efficient adjudication of this controversy: forcing individual vehicle owners to
24 litigate their cases is an inferior method of adjudication given the costs of the
25 litigation, need for expert testimony, and the benefits of concentrating claims
26 in this forum.

1 (e) Plaintiffs have and will fairly and adequately protect the interests of the
2 Class. Plaintiffs have no interests antagonistic to those of the Class, and have
3 retained counsel experienced and competent to prosecute this matter on behalf
4 of the Class.

5
6 Defendants retain all rights to assert that the action may not be certified as a
7 class action, other than for settlement purposes.

8
9 4. The Court finds that notice has been disseminated to the Class in
10 compliance with the Court’s Order Directing Settlement Notice and that the notice
11 given was the best notice practicable under the circumstances, fully satisfied due
12 process, and met the requirements of Rule 23 of the Federal Rules of Civil
13 Procedure. The Court further finds that notice provisions of 28 U.S.C. § 1715 were
14 complied with in this case.

15 5. The Court has reviewed each of the 18 objections to the settlement,
16 concludes that none of the objections warrant disapproval of the parties’ settlement,
17 and thus overrules the objections. More specifically:

- 18 a. The Court overrules the objections that Hyundai should recall or
19 buy back the Class Vehicles. Although those remedies could
20 arguably provide benefits beyond those negotiated, the extant
21 settlement constitutes a fair compromise of Plaintiffs’ and Class
22 members’ claims;
- 23 b. The Court overrules the objections that the extended warranty
24 provided by the settlement should be of longer duration. The
25 negotiated extension and expansion of the warranty provides
26 meaningful benefits. The criticism that the warranty could
27 hypothetically be longer does not justify denying settlement
28 approval;

- 1 c. The Court overrules the objections that the settlement should
2 include compensation in higher dollar amounts than those that
3 were negotiated. Again, the amounts provided for by the
4 settlement provide fair, reasonable, and adequate relief in
5 exchange for the release of Class members' claims. The fact that
6 some Class members would like to receive more does not trump
7 the benefits provided;
- 8 d. The Court overrules the objection that Class members should be
9 eligible to receive \$200 if they experience shattering in the future;
10 it was reasonable for the parties to limit this compensation to
11 shattering that occurred before notice of the alleged defect was
12 provided under the settlement;
- 13 e. The Court overrules the objection that Class members should be
14 eligible to receive \$200 even if they were not inside their Class
15 Vehicle when the sunroof shattered; again, it was reasonable for
16 the parties to limit this award so as to compensate only those who
17 were surprised, scared, or otherwise negatively affected because
18 they were inside the vehicle when the glass broke.
- 19 f. The Court overrules the objection that trade-in compensation
20 should be provided to those who traded-in their vehicles before
21 receiving notice of the settlement; it was a reasonable decision by
22 the parties to negotiate a temporal restriction for trade-in
23 compensation so that the settlement could provide up to \$1,000
24 for such claims while requiring only minimal proof from
25 claimants;
- 26 g. The Court overrules the objection that the settlement improperly
27 releases personal injury claims; the settlement release does not
28 release personal injury claims (except for claims for shock,

surprise, annoyance, inconvenience, or similar harm from having witnessed sunroof shattering unaccompanied by physical injury);

h. The Court overrules the objection that Class members should be compensated for time spent on sunroof repairs; the settlement provides fair, reasonable, and adequate benefits in that it provides full reimbursement of past sunroof shattering repair costs, among other benefits; and

i. The Court overrules the objection that the litigation lacked merit; the claims brought were not frivolous and the compensation being provided for their release is fair, reasonable, and adequate in light of the relative strength of the claims and defenses of the parties.

6. The Court finds that the proposed settlement is fair, reasonable, and adequate under Rule 23(e)(2), is in the best interests of the class, and should be and hereby is fully and finally approved. *See* Fed. R. Civ. P. 23(e)(1)(B)(i). The Settlement Agreement: (a) results from efforts by Class Representatives and Class Counsel who adequately represented the class; (b) was negotiated at arm’s length with the assistance of former United States Magistrate Judge Jay C. Gandhi; (c) provides relief for the class that is fair, reasonable, and adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effective proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of the proposed award of attorney’s fees, including timing of payment; and (d) the settlement treats Class Members equitably relative to each other.

7. The Court finds the attorney fees requested by Class Counsel to be fair and reasonable, given Class Counsel’s lodestar of \$5,797,056.25, the results achieved through this litigation, and the contingent nature of the fee. The Court has reviewed the records submitted by Class Counsel and finds Class Counsel reasonably spent 9,895.20 hours representing the Class’s interests through this

1 litigation, that Class Counsel’s hourly rates are reasonable and in line with the
2 prevailing rates in the community for complex class action litigation, and that the
3 \$738,226.00 in costs incurred to prosecute the litigation were reasonable.

4 Accordingly, Class Counsel is hereby awarded \$5,400,000 in attorney’s fees
5 (inclusive of reimbursement of counsel’s litigation costs and the class representative
6 service awards). This amount is to be paid by Hyundai pursuant to the terms of the
7 Settlement Agreement. (Settlement Agreement, Sec. V.2.)

8 8. The Court further finds the requested service awards are fair and
9 reasonable, given the time and effort expended by the Class Representatives on
10 behalf of the Class. The six Class Representatives are hereby awarded \$5,000 each,
11 to be paid by Defendant (included as part of the \$5,400,000 attorney’s fee award,
12 not in addition to that award) pursuant to the terms of the Settlement Agreement.
13 (Settlement Agreement, Sec. V.2.)

14 9. The Release set forth in the Settlement Agreement, in Section VI, is
15 incorporated herein and, as of the Effective Date and by operation of this Order, is
16 binding and effective on all Class Members who have not properly excluded
17 themselves from the Class. The Settlement Agreement, including the full Release in
18 Section VI that is incorporated herein, can be found on the Court’s publicly
19 available docket at ECF No. 264-1.

20 10. Below is a list setting forth the name of each person who properly
21 excluded themselves from the Class in compliance with the procedures set forth in
22 the Preliminary Approval Order. The persons identified below shall be neither
23 entitled to the benefits from the Settlement nor bound by this Final Order and
24 Judgment:

- 25 a. Natasha Holly;
- 26 b. Robin Pelt;
- 27 c. Nathan and Jennifer Donner;
- 28 d. Joseph Rivera;

- 1 e. Diane and Montana Trudeau;
- 2 f. Richard Cook;
- 3 g. Gary Fitzgerald;
- 4 h. Saeed Sooudi;
- 5 i. Beverly Richard;
- 6 j. Brian and Lorena Vander Huel;
- 7 k. Melissa Torres;
- 8 l. Joseph Sain;
- 9 m. Eric Altman;
- 10 n. Corine Diby;
- 11 o. Martha Clarke;
- 12 p. Steven Chromey;
- 13 q. Mark Forth;
- 14 r. Keith Powell;
- 15 s. Gloria Rowan;
- 16 t. Donald Anderson;
- 17 u. Theresa Blain;
- 18 v. Tammy Gordon;
- 19 w. Michael Kean;
- 20 x. Ernest Stokes; and
- 21 y. Scott Ciesla.

22 11. There being no just reason for delay, the Court, in the interests of
23 justice, expressly directs the Clerk of the Court to enter this Final Order and
24 Judgment, and hereby decrees that, upon entry, it be deemed a final judgment.
25 Without affecting the finality of this Judgment in any way, this Court hereby retains
26 continuing jurisdiction over (a) implementation of the settlement; (b) further
27 proceedings, if necessary, on applications for attorneys' fees, expenses, and costs in
28 connection with the action and the settlement; and (c) the Parties and the Class

1 Members for the purpose of construing, enforcing, and administering the Settlement
2 Agreement and all orders and judgments entered in connection therewith.

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4 IT IS SO ORDERED.

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7 Dated: August 26, 2019

David O. Carter
HON. DAVID O. CARTER
U.S. DISTRICT COURT JUDGE

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