

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

**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

**ORDER GRANTING MOTION TO
DIRECT NOTICE OF PROPOSED
CLASS ACTION SETTLEMENT [263]**

Hyundai Shattering Sunroofs Lawsuit

**ORDER GRANTING SETTLEMENT NOTICE TO CLASS
CASE NO. 8:15-CV-02052-DOC-KES**

1 The parties to this litigation have entered into a Settlement Agreement, which
2 if approved, would resolve this putative class action. Plaintiffs Billy Glenn, Kathy
3 Warburton, Kim Fama, Corinne Kane, Roxana Fitzmaurice, and Jahan Mulla have
4 filed a motion to direct notice of the proposed class action settlement, which
5 Defendants Hyundai Motor America and Hyundai Motor Company support. The
6 Court has read and considered the Settlement Agreement and all exhibits thereto,
7 including the proposed claim form, notices, and informational brochure, and
8 concludes that it is appropriate to direct notice in a reasonable manner to all Class
9 members who would be bound by the proposal, since the parties' showing
10 establishes that the Court will likely be able to (i) approve the proposal under Rule
11 23(e)(2), and (ii) certify the class for purposes of judgment on the proposal. *See* Fed.
12 R. Civ. P. 23(e)(1)(B).

13 The Court now GRANTS the pending motion and makes the following
14 findings and orders:

15 1. Capitalized terms not otherwise defined herein shall have the same
16 meaning as set forth in the Settlement Agreement.

17 **LIKELY APPROVAL OF THE PROPOSED SETTLEMENT**

18 2. The Court has reviewed the terms of the Settlement Agreement, the
19 exhibits thereto, Plaintiffs' motion papers, the declarations of counsel, and all
20 argument made.

21 3. The Settlement Agreement is the product of over three years of
22 litigation, including two rounds of motions to dismiss briefing, several discovery
23 motions, Plaintiffs' motion to certify a litigation class, four *Daubert* motions, a
24 spoliation motion, and extensive discovery.

25 4. Based on its review, the Court finds that the Court will likely be able to
26 approve the proposed settlement as fair, reasonable, and adequate under Rule
27 23(e)(2). *See* Fed. R. Civ. P. 23(e)(1)(B)(i). The Settlement Agreement: (a) results
28 from efforts by Class Representatives and Class Counsel who adequately

1 represented the class; (b) was negotiated at arm's length with the assistance of
2 former United States Magistrate Judge Jay C. Gandhi; (c) provides relief for the
3 class that is adequate, taking into account: (i) the costs, risks, and delay of trial and
4 appeal; (ii) the effective proposed method of distributing relief to the class, including
5 the method of processing class-member claims; and (iii) the terms of the proposed
6 award of attorney's fees, including timing of payment; and (d) treats Class Members
7 equitably relative to each other.

8 **LIKELY CERTIFICATION OF CLASS**

9 5. The Court further finds that the Court will likely be able to certify the
10 Class for purposes of judgment on the proposal. *See* Fed. R. Civ. P. 23(e)(1)(B)(ii).
11 The Court preliminarily certifies the following Class pursuant to Rule 23(b)(3) of the
12 Federal Rules of Civil Procedure:

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

18 6. The Court finds that this action is likely to be certified as a class action,
19 for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3). The Court
20 preliminarily finds for settlement purposes that: (a) the Class certified herein
21 numbers at least in the hundreds of thousands of persons, and joinder of all such
22 persons would be impracticable, (b) there are questions of law and fact that are
23 common to the Class, and those questions of law and fact common to the Class
24 predominate over any questions affecting any individual Class Member; (c) the

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

1 claims of the Plaintiffs are typical of the claims of the Class they seek to represent for
2 purposes of settlement; (d) a class action on behalf of the Class is superior to other
3 available means of adjudicating this dispute; and (e) Plaintiffs and Class Counsel are
4 adequate representatives of the Class. Defendants retain all rights to assert that the
5 action may not be certified as a class action, other than for settlement purposes. The
6 Court also concludes that, because the action is being settled rather than litigated,
7 the Court need not consider manageability issues that might be presented by the trial
8 of a nationwide class action involving the issues in this case. *See Amchem Prods., Inc.*
9 *v. Windsor*, 521 U.S. 591, 620 (1997).

10 7. Pursuant to Rule 23(g), the Court appoints Eric H. Gibbs and David
11 Stein of Gibbs Law Group LLP and Kim D. Stephens and Jason T. Dennett of
12 Tousley Brain Stephens PLLC to serve as Class Counsel for the Class.

13 **NOTICE AND ADMINISTRATION**

14 8. The Court directs Defendants to fulfill their notice duties and
15 responsibilities specified in this Order and the Settlement Agreement.

16 9. IHS Markit / State Agency Class Information: IHS Markit is authorized
17 to obtain vehicle registration information concerning owners or lessees of class
18 vehicles from the appropriate state agencies for the sole purpose of mailing the
19 notice, and the relevant state agencies shall make the appropriate vehicle
20 registrations available to IHS Markit for this purpose only.

21 10. The Court finds that the provisions for Notice to the Class set forth in
22 the Settlement Agreement satisfy the requirements of due process and Federal Rule
23 of Civil Procedure 23 and provide the best notice practicable under the
24 circumstances, including individual notice to all members who can be identified
25 through reasonable effort. The Notice is reasonably calculated to apprise Class
26 Members of the nature of this litigation; the scope of the Class, the Class claims,
27 issues, or defenses; the terms of the Settlement Agreement; the right of Class
28 Members to appear, object to the Settlement Agreement, and exclude themselves

1 from the Settlement Class and the process for doing so; of the Final Approval
2 Hearing; and of the binding effect of a class judgment on the Class. The Court
3 therefore approves the proposed methods of providing Notice, and the Claim Form,
4 and directs HMA to proceed with providing Notice to Class Members, at its sole
5 cost, pursuant to the terms of the Settlement Agreement and this Order.

6 11. No later than April 26, 2019 (the “Notice Date”), HMA shall
7 substantially complete its notice obligations consistent with the specifications of the
8 Settlement Agreement, including by disseminating notice to all reasonably
9 identifiable Class members by U.S. Mail, email, and through publication of the
10 dedicated settlement website (with a link to the dedicated settlement website from
11 www.hyundaiusa.com/myhyundai).

12 12. No later than ten days before the hearing on final approval of this
13 settlement, Defendants shall provide an affidavit for the Court, with a copy to Class
14 Counsel, attesting that notice was disseminated in a manner consistent with the
15 Settlement Agreement, including its exhibits.

16 **OBJECTIONS AND EXCLUSIONS**

17 13. Class Members who wish to opt-out and exclude themselves from the
18 Class may do so by submitting such request in writing consistent with the
19 specification listed in the Class notice no later than June 25, 2019.

20 14. To be valid, each request for exclusion must:

- 21 a. State the Class member’s full name and current address,
- 22 b. Provide the model year and Vehicle Identification Number
23 (“VIN”) of his/her/its Class Vehicle(s) and the approximate
24 date(s) of purchase or lease, and
- 25 c. Specifically and clearly state his/her/its desire to be excluded
26 from the settlement and from the Class.

1 15. Defendants shall report the names of all Class members who have
2 submitted a request for exclusion to Class Counsel on a weekly basis, beginning 30
3 days after the Notice Date.

4 16. All Class members who do not opt out and exclude themselves shall be
5 bound by the terms of the Settlement Agreement upon entry of the Final Approval
6 Order and Judgment.

7 17. Any Class member who wishes to object to the Settlement must, no
8 later than June 25, 2019, submit a written notice of objection to the addresses listed
9 in the Class notice.

10 18. The written objection must contain the following:

- 11 a. The Class member's full name, current address, and current
12 telephone number;
- 13 b. The model year and VIN of his/her/its Class Vehicle(s);
- 14 c. A statement of the objection(s), including all factual and legal
15 grounds for the position;
- 16 d. Whether it applies only to the objector, to a specific subset of the
17 Class, or to the entire Class;
- 18 e. Copies of any documents the objector wishes to submit in
19 support;
- 20 f. A signature and date on the objection; and
- 21 g. A list of any other objections submitted by the objector, or by any
22 counsel assisting the objector, to any class action settlements
23 submitted in any court in the United States in the previous five
24 years (or, if the Class member or his or her counsel has not made
25 any such prior objection, the Class member shall affirmatively so
26 state in the written materials provided with the objection).

27 19. Lawyers asserting objections on behalf of Class members must: (a) file a
28 notice of appearance with the Court within 120 days of the entry of this Order; (b)

1 file a sworn declaration attesting to his or her representation of each Class Member
2 on whose behalf the objection is being filed or file (in camera) a copy of the contract
3 between that lawyer and each such Class Member; and (c) comply with the
4 procedures described in the Settlement Agreement.

5 20. If the objecting Class member intends to appear, in person or by
6 counsel, at the final approval hearing, the objecting Class member must so state in
7 the objection. Any Class member who does not state his or her intention to appear
8 in accordance with the applicable deadlines and other specifications, or who has not
9 filed an objection in accordance with the applicable deadlines and other
10 specifications, will be deemed to have waived any objections to the settlement and
11 will be barred from speaking or otherwise presenting any views at the final approval
12 hearing.

13 21. The filing of an objection allows Class Counsel or counsel for HMA to
14 notice such objecting person for and take his, her, or its deposition consistent with
15 the Federal Rules of Civil Procedure at an agreed-upon location, and to seek any
16 documentary evidence or other tangible things that are relevant to the objection.
17 Failure by an objector to make himself/herself/itself available for a deposition or
18 comply with expedited discovery requests may result in the Court striking the
19 objection and otherwise denying that person the opportunity to be heard. The Court
20 may tax the costs of any such discovery to the objector or the objector's counsel
21 should the Court determine that the objection is frivolous or made for improper
22 purpose.

23 22. These procedures and requirements for objecting are intended to ensure
24 the efficient administration of justice and the orderly presentation of any Class
25 member's objection to the settlement, in accordance with the due process rights of
26 all Class members.

27
28

1 PRELIMINARY INJUNCTION

2 23. All Class Members and/or their representatives, who do not timely and
3 properly exclude themselves from the Class are, pending the Court’s ruling on the
4 motion for final approval of the settlement, preliminarily barred and enjoined from
5 directly, indirectly, derivatively, in a representative capacity, or in any other
6 capacity, filing, commencing, prosecuting, maintaining, intervening in, participating
7 in, conducting, or continuing any action in any forum (state or federal) as individual
8 actions, class members, putative class members, or otherwise against the Releasees
9 (as that term is defined in the Settlement Agreement) in any court or tribunal
10 asserting any of the claims released by Releasors (as that term is defined in the
11 Settlement Agreement) under the terms of the Settlement Agreement, and/or from
12 receiving benefits from any lawsuit, administrative or regulatory proceeding, or
13 order in any jurisdiction, based on those released claims. In addition, all such
14 persons are hereby barred and enjoined from filing, commencing, or prosecuting a
15 lawsuit against Defendants (or against any of their related parties, parents,
16 subsidiaries, or affiliates) as a class action, a separate class, or group for purposes of
17 pursuing a putative class action (including by seeking to amend a pending complaint
18 to include class allegations or by seeking class certification in a pending action in
19 any jurisdiction) on behalf of Class Members who do not timely exclude themselves
20 from the Class, based on the claims released by Releasors under the Settlement
21 Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court find that issuance
22 of this preliminary injunction is necessary and appropriate in aid of the Court’s
23 continuing jurisdiction and authority over the Action.

24 FINAL APPROVAL HEARING AND SCHEDULE

25 24. The Court will hold a hearing on entry of final approval of the
26 settlement, an award of fees and expenses to Class Counsel, and service awards to
27 the Class Representatives at **8:30 a.m. on August 12, 2019**, in Courtroom 9D of the
28 United States District Court for the Central District of California, 411 West Fourth

1 Street, Santa Ana, California 92701-4516. At the final approval hearing, the Court
2 will consider: (a) whether the settlement should be approved as fair, reasonable, and
3 adequate for the Class, and judgment entered on the terms stated in the settlement;
4 and (b) whether Plaintiffs' application for an award of attorney fees and expenses to
5 Class Counsel and service awards to Class Representatives ("Fee Application")
6 should be granted.

7 25. Plaintiffs shall move for final settlement approval and approval of
8 attorney's fees, litigation expense reimbursements, and class representative service
9 awards no later than May 28, 2019. To the extent Plaintiffs file an omnibus motion
10 seeking both final approval and attorney's fees, they shall have leave to exceed the
11 page limit set by local rule but their motion shall not exceed 50 pages in length. No
12 later than July 25, 2019, Plaintiffs may file reply papers, if any.

13 26. The Court reserves the right to adjust the date of the final approval
14 hearing and related deadlines. In that event, the revised hearing date or deadlines
15 shall be posted on the settlement website referred to in the Class notice, and the
16 parties shall not be required to re-send or republish notice to the Class.

17
18 IT IS SO ORDERED.

19
20
21 Dated: February 25, 2019

David O. Carter

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