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

16 IN RE: HYUNDAI AND KIA FUEL  
17 ECONOMY LITIGATION

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

18 **MEMORANDUM OF POINTS AND**  
19 **AUTHORITIES IN SUPPORT OF**  
20 **CERTAIN NON-SETTLING**  
21 **PLAINTIFFS' MOTION FOR**  
22 **ATTORNEYS' FEES AND**  
23 **EXPENSES**

Hearing Date: February 26, 2014

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CERTAIN**  
**NON-SETTLING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND**  
**EXPENSES**

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1 **I. INTRODUCTION**

2 Before this MDL Transferee Court held its first status conference, plaintiffs in  
3 three cases in this multidistrict litigation – which includes fifty-two cases – agreed to a  
4 nationwide class settlement with Hyundai, which Kia later joined. When they  
5 announced the proposed settlement at the first status conference, many plaintiffs’  
6 counsel immediately expressed skepticism of the proposed settlement and the process  
7 that led to the settlement. As a general matter, the Ninth Circuit instructs that class  
8 settlements reached under such circumstances require heightened scrutiny and vigilant  
9 review by the District Court.

10 Not surprisingly, this Court quickly recognized that it was necessary for those  
11 who had not negotiated the settlement to provide an independent, adversarial component  
12 to the entire process. In other words, under the circumstances, it would be difficult for  
13 the Court to approve the proposed settlement unless it had been vetted by, and ultimately  
14 achieved the support of, those plaintiffs in 49 cases who had not negotiated the  
15 agreement – i.e. the Non-Settling Plaintiffs. An unstructured vetting process among so  
16 many firms, however, could prove overly expensive, inefficient, and duplicative for the  
17 Court and the parties.

18 The Court met those seemingly competing demands by involving the Non-Settling  
19 Plaintiffs in the confirmatory discovery process and appointing Liaison Counsel to help  
20 facilitate and coordinate the overall discovery and settlement-related activities between  
21 the Court, the Settling Parties and the Non-Settling Plaintiffs. Doing so ensured  
22 independent and efficient scrutiny of the proposed settlement by way of the traditional  
23 adversarial process. Non-Settling Plaintiffs’ efforts enabled them to make an informed  
24 decision about the proposed settlement and, among other things, negotiate material  
25 improvements to the settlement that should significantly ease class members’ ability to  
26 claim the settlement proceeds. Absent those efforts, this Court would have had

1 difficulty ensuring that the settlement was fair, reasonable, adequate, and likely to  
2 receive court approval.

3 Liaison Counsel submits this memorandum on behalf of the following Non-  
4 Settling Plaintiffs' counsel<sup>1</sup> requesting the payment of attorneys' fees and expenses in  
5 this matter.

- 6 • Ahdoot & Wolfson, PC, counsel in *Sutta v. Hyundai Motor America*, Case No.  
7 8:13-cv-417-GW-FFM
- 8 • Berman DeValerio and Bell Davis Pitt, counsel in *Dunst v. Hyundai Motor*  
9 *America*, Case No. 2:13-cv-1352-GW-FFM; *Patterson v. Kia Motors America*,  
10 Case No. 2:14-cv-327-GW-FFM
- 11 • Berger & Montague, P.C., counsel in *Kurash, et al. v. Hyundai Motor*  
12 *America, et al.*, Case No. 8:12-cv-2164-GW-FFM
- 13 • Bonsignore, PLLC, counsel in *Iocovozzi v. Kia Motors America*, Case No.  
14 8:13-cv-159-GW-FFM; *Brown v. Kia Motors America*, Case No. 8:13-cv-441-  
15 GW-FFM; *Woodward v. Kia Motors America*, Case No. 8:13-cv-443-GW-  
16 FFM; *Cestaro v. Hyundai Motor America*, Case No. 8:13-cv-442-GW-FFM;  
17 *Terhost v. Kia Motors America*, Case No. 8:13-cv-476-GW-FFM; *Martyn v.*  
18 *Hyundai Motor America*, Case No. 8:13-cv-475-GW-FFM
- 19 • Cafferty Clobes Meriwether & Sprengel, LLP, counsel in *Figuroa v. Hyundai*  
20 *Motor America*, 8:13-cv-373-GW-FFM
- 21 • Crowley Norman LLP and Payne Mitchell Law Group, LLP, counsel in  
22 *Washburn v. Kia Motors Corporation, et al.*, Case No. 2:13-cv-1136-GW-FFM
- 23 • Davis & Norris LLP, counsel in *Maturani v. Hyundai Motor America*, Case  
24 No. 2:13-cv-813-GW-FFM
- 25 • Doyle Lowther LLP, counsel in *Wilton, et al. v. Kia Motors America*, Case No.  
26 8:12-cv-1917-GW-FFM

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27 <sup>1</sup> This memorandum's use of the term "Non-Settling Plaintiffs" refers generally to all  
28 plaintiffs other than those from the *Brady, Hunter*, and *Espinosa* actions who are  
represented by the McCune Wright and Hagens Berman firms. The memorandum is,  
however, submitted only on behalf of the listed Non-Settling Plaintiffs and their counsel.

- 1 • Edelman, Combs, Lattuner & Goodwin, LLC, counsel in *Rottner v. Hyundai*
- 2 *Motor America*, Case No. 2:13-cv-815-GW-FFM
- 3 • Finkelstein, Blankinship, Frei-Pearson & Garber LLP, counsel in
- 4 *Graewingholt v. Hyundai Motor America*, Case No. 8:12-cv-1963-GW-FFM
- 5 • Girard Gibbs LLP, Liaison Counsel and counsel in *Maharaj, et al. v. Hyundai*
- 6 *Motor America*, Case No. 8:13-cv-70-GW-FFM
- 7 • Glancy Binkow & Goldberg LLP, counsel in *Sutta v. Hyundai Motor America*,
- 8 Case No. 8:13-cv-417-GW-FFM
- 9 • Goldenberg Schneider, LPA and Minnillo & Jenkins, LPA, counsel in *Sanders,*
- 10 *et al. v. Hyundai Motor America*, Case No. 2:13-cv-817-GW-FFM
- 11 • Gustafson Gluek PLLC, counsel in *Weber, et al v. Hyundai Motor America*,
- 12 Case No. 8:13-cv-27-GW-FFM
- 13 • John P. Nash, Attorney, Inc., counsel in *Graewingholt v. Hyundai Motor*
- 14 *America*, Case No. 8:12-cv-1963-GW-FFM
- 15 • Hyde & Swigart, counsel in *Bayard v. Hyundai Motor America*, Case No.
- 16 8:13-cv-257-GW-FFM
- 17 • Kaplan Fox & Kilsheimer LLP, counsel in *Young v. Kia Motors America*, Case
- 18 No. 2:13-cv-167-GW-FFM
- 19 • Kazerouni Law Group, APC, counsel in *Bayard v. Hyundai Motor America*,
- 20 Case No. 8:13-cv-257-GW-FFM
- 21 • Law Offices of Todd M. Friedman, counsel in *Bayard v. Hyundai Motor*
- 22 *America*, Case No. 8:13-cv-257-GW-FFM
- 23 • Mauriello Law Firm, APC, counsel in *Carullo v. Kia Motors America*, Case
- 24 No. 8:12-cv-2174-GW-FFM
- 25 • Milstein Adelman, LLP, counsel in *Figueroa v. Hyundai Motor America*, Case
- 26 No. 8:13-cv-373-GW-FFM
- 27 • MLG Automotive Law, APLC, counsel in *Young v. Kia Motors America*, Case
- 28 No. 2:13-cv-167-GW-FFM
- Pomerantz, Grossman, Hufford, Dahlstrom and Gross LLP, counsel in *Gordon*
- v. Hyundai Motor America*, Case No. 2:13-cv-1125-GW-FFM
- Shepherd, Finkelman, Miller & Shah, LLP, counsel in *Gordon v. Hyundai*
- Motor America*, Case No. 2:13-cv-1125-GW-FFM



- 1 • Simmons Hanly Conroy and McCallum, Methvin & Terrell, P.C., counsel in  
2 *Gudgalis v. Hyundai Motor America*, Case No. 2:13-cv-1128-GW-FFM;  
3 *Quiroz v. Kia Motors America, Inc.*, Case No. 8:12-cv-2091-GW-FFM;  
4 *Woodruff v. Kia Motors America, Inc.*, Case No. 2:13-cv-1124-GW-FFM;  
5 *Armstrong v. Kia Motors America*, Case No. 2:13-cv-1122-GW-FFM;  
6 *Hoessler v. Kia Motors America*, Case No. 2:13-cv-1129-GW-FFM; *Leggett v.*  
7 *Kia Motors Corporation*, Case No. 2:13-cv-1134-GW-FFM; and *Hammond v.*  
8 *Hyundai Motor America*, Case No. 2:13-cv-1132-GW-FFM
- 9 • Tate Law Group, LLC; Savage & Turner, P.C.; and Law Office of Drew  
10 McElroy, counsel in *Iocovozzi v. Kia Motors America*, Case No. 8:13-cv-159-  
11 GW-FFM; *Setser v. Kia Motors America*, Case No. 8:13-cv-387-GW-FFM;  
12 *Fellers v. Kia Motors America*, Case No. 8:13-cv-384-GW-FFM; *Bonsignore*  
13 *v. Kia Motors America*, Case No. 8:13-cv-386-GW-FFM; *Brown v. Kia Motors*  
14 *America*, Case No. 8:13-cv-441-GW-FFM; *Woodward v. Kia Motors America*,  
15 Case No. 8:13-cv-443-GW-FFM; *Myers v. Hyundai Motor America*, Case No.  
16 8:13-cv-444-GW-FFM; *Cestaro v. Hyundai Motor America*, Case No. 8:13-cv-  
17 442-GW-FFM; *Terhost v. Kia Motors America*, Case No. 8:13-cv-476-GW-  
18 FFM; *Martyn v. Hyundai Motor America*, Case No. 8:13-cv-475-GW-FFM;  
19 *Elliott v. Hyundai Motor America*, Case No. 8:13-cv-385-GW-FFM
- 20 • Whatley Kallas, LLP, counsel in *Wilton v. Kia Motors America*, Case No.  
21 8:12-cv-1917-GW-FFM

22 The purpose of this joint memorandum is to avoid burdening the Court with multiple  
23 memoranda that make the same arguments regarding the factual background of the  
24 litigation, the role of Non-Settling Plaintiffs generally, and the legal bases for awarding  
25 attorneys' fees in this matter.

26 This joint memorandum is not intended to advocate for any particular Non-  
27 Settling Plaintiffs' request. Instead, each firm (or group of firms) requesting payment of  
28 attorneys' fees and expenses is submitting a declaration supporting its request and  
describing its efforts in the litigation, and may also submit any additional briefing it (or  
they) deem appropriate. For the Court's convenience, the individual requests are listed  
in the attached Appendix.

1 **II. FACTUAL BACKGROUND**

2 **A. Hyundai and Kia Announce Inaccurate Fuel Economy Ratings and**  
3 **Litigation Begins**

4 On November 2, 2012, Hyundai and Kia announced that, after discussions with  
5 the Environmental Protection Agency, the companies had voluntarily restated the fuel  
6 economy for approximately 900,000 model year 2011-2013 vehicles. The companies  
7 stated that the fuel economy overstatements were the result of procedural errors at their  
8 Korean test facility, and that they were taking actions to correct their testing protocols.  
9 Hyundai and Kia also announced that they were implementing a voluntary  
10 reimbursement program to compensate affected customers. The process for receiving  
11 compensation, however, appeared cumbersome such that consumers would be unlikely  
12 to take advantage of it. Vehicle owners across the country brought lawsuits alleging,  
13 among other things, that Hyundai and Kia had misrepresented the vehicles' fuel  
14 economy and implemented a faulty reimbursement program. Shortly thereafter,  
15 proceedings began before the Judicial Panel for Multidistrict Litigation to determine  
16 whether the related cases should be transferred to a single judge for pretrial proceedings.  
17 On February 6, 2013, the JPML transferred the related cases to this Court.

18 **B. The Settling Parties Agree to an Early Settlement**

19 On February 8, 2013, the Court set a status conference for February 14, 2013, to  
20 discuss the JPML's decision and its effect on the litigation. *See* Dkt. No. 3. At the  
21 February 14<sup>th</sup> status conference, counsel for the *Brady, Hunter, and Espinosa* plaintiffs  
22 – the McCune and Hagens Berman firms – announced that they had reached a proposed  
23 nationwide settlement with Hyundai.

24 At this point, the Court had not had the opportunity to conduct *any* case  
25 management in the MDL. No firm(s) had been appointed as interim class counsel  
26 pursuant to Federal Rule of Civil Procedure 23(g)(3). Thus, the Court was left with over  
27 fifty independent class actions, with only counsel for three of those cases having  
28

1 participated in negotiating the proposed settlement. Counsel for a number of other  
2 proposed class actions who had not been involved in the settlement negotiations  
3 expressed dismay at the prospect of having their clients' claims – and the claims of the  
4 proposed classes they sought to represent – settled without the Court's involvement and  
5 objected to the appointment of the McCune and Hagens Berman firms to lead the  
6 litigation. *See, e.g.* Plaintiffs' Joint Status Conference Brief, Dkt. No. 6 (objections of  
7 *Krauth, Hasper, and Young* plaintiffs); Objections to Proposed Leadership Structure,  
8 Dkt. No. 8 (objections of *Iocovozzi* plaintiffs). They also expressed skepticism  
9 regarding a settlement that was reached without the benefit of any discovery or merits  
10 litigation and explained that additional information was necessary before they could  
11 evaluate the proposed settlement. *See* Plaintiffs' Joint Status Conference Brief, Dkt. No.  
12 6, at 4-8; February 28, 2013 Hearing Transcript, Dkt. No. 13, at 15:15-24.

13 In hearings on February 28, 2013, and March 28, 2013, the Court noted that  
14 because the McCune and Hagens Berman firms had not been appointed class counsel,  
15 they could not bind the other plaintiffs, who would need to agree to the proposed  
16 settlement:

17 And so, therefore, if you have not -- if your case has not -- if you haven't  
18 participated in a proposed settlement that has been reached, what defense  
19 counsel needs to do and what the defendants need to do is go to you and  
20 basically try to convince you that the settlement that they have reached  
21 should be binding on your clients, because at that point there has been no  
settlement reached and the case simply goes forward as to you.

22 Feb. 28, 2013 Hearing Transcript, Dkt. No. 13, at 29:9-16. Furthermore, the Court  
23 appeared to acknowledge that approval of the proposed settlement would hinge, in part,  
24 on the support it received (or did not receive) from the Non-Settling Plaintiffs:

25 [I]f it comes time for the Court to approve some sort of nationwide  
26 settlement and, you know, of the 38 plaintiffs' counsel, you know, only two  
27 object significantly and the rest agree is different than if we have a situation  
28 where if we have 38 cases out there and 20 of the 38 strenuously disagree,  
not necessarily to say that they will win just simply on numbers, because it's

1 not a numbers game at that point in time, but it is -- you know, obviously,  
2 one of the things that the Court does consider is the extent to which there are  
3 objections to any settlement. So you might want to just consider that in  
terms of the discussions.

4 *Id.*, at 36:4-15; *see also* Aug. 15, 2013 Hearing Transcript, Dkt. No. 138, at 40:23-41:3  
5 (“let me indicate to both . . . settling plaintiffs and the defendant, you know, again, this  
6 whole exercise is to see if we can get a majority, if not all, of the nonsettling plaintiffs to  
7 agree on the settlement that you guys are cobbling at this point in time; that’s the whole  
8 point of this exercise”). The Court reiterated this understanding at the December 9,  
9 2013, hearing. *See* Dec. 9, 2013 Hearing Transcript, Dkt. No. 198, at 46:8-18. The  
10 importance of reducing objections to the settlement from all (or nearly all) counsel was  
11 particularly important because of the risk that named plaintiffs representing overlapping  
12 classes – none of whose counsel had been appointed class counsel – would have  
13 divergent views on the settlement.

14 The Court also correctly recognized that for Non-Settling Plaintiffs to assess the  
15 proposed settlement – and foster the consensus needed for approval of the settlement  
16 (with any necessary revisions) – they would need to obtain discovery regarding the  
17 strengths and weaknesses of plaintiffs’ claims:

18 I do agree with you in this sense. As I have indicated, and I indicated earlier  
19 on, the parties who have reached a settlement, in order for them to make that  
20 settlement, or to finalize that settlement, pretty much have to minimize  
objections from other plaintiffs and other plaintiffs’ counsel.

21 And I do agree that insofar as informational materials are concerned, they  
22 cannot expect counsel in other cases to agree unless they have a specific  
23 basis to formulate an agreement or a disagreement.

24 Declaration of Scott Grzencyk (“Grzencyk Decl.”), Ex. A, Mar. 28, 2013 Hearing  
25 Transcript, at 14:1-10. *See also id.*, at 23:15-20 (“And [Non-Settling Plaintiffs] are not  
26 going to be able to realize [whether the settlement is good] one way or the other until  
27 they get the documents”). The Court recognized that Non-Settling Plaintiffs obtaining  
28

1 the discovery they needed and evaluating the proposed settlement is “a lengthy and time-  
2 consuming process, but it's a process that has to be done.” Feb. 28, 2013 Hearing  
3 Transcript, Dkt. No. 13, at 24:3-16.

4 **C. Non-Settling Plaintiffs Participate in Discovery According to the**  
5 **Guidelines Established by the Court**

6 Between March and December 2013, Settling Plaintiffs and Non-Settling  
7 Plaintiffs engaged in the necessary confirmatory discovery process contemplated and  
8 approved by the Court. As Hyundai explained, “all parties worked together to design  
9 and carry out a process for all plaintiffs to obtain the discovery necessary to confirm that  
10 the proposed settlement is fair and reasonable.” *In re Hyundai and Kia Fuel Economy*  
11 *Litigation*, MDL No. 2424 (J.P.M.L), Dkt No. 118 (Hyundai Motor America’s  
12 Opposition to Motion to Vacate Conditional Transfer Order) (“Hyundai JPML Brief”),  
13 at 5. For example, the parties worked together to set a discovery schedule and adjust it  
14 as appropriate. *See* Liaison Counsel’s June 19, 2013 Status Report, Dkt. No. 120.  
15 Throughout confirmatory discovery, the Court was regularly apprised of the status of  
16 discovery and the actions being taken by Non-Settling Plaintiffs. Non-Settling  
17 Plaintiffs’ role in confirmatory discovery was also one of the primary topics of  
18 discussion at all status conferences. The Court stressed the importance of Non-Settling  
19 Plaintiffs being able to request discovery, and not merely being a spectator to discovery  
20 being done by Settling Plaintiffs. *See, e.g.*, Grzenczyk Decl., Ex. B, Apr. 25, 2013  
21 Hearing Transcript at 42:22-25 (“Although, again, I do want the nonsettling plaintiffs to  
22 be able to participate in the, I guess, whatever thing that we are referring to as discovery  
23 at this point is.”); Apr. 11, 2013 Hearing Transcript, Dkt. No. 108, at 11:10-17.

24 In April 2013, Defendants began making rolling document productions. Initially,  
25 Liaison Counsel reviewed the documents and distributed reports and document indices  
26 for Non-Settling Plaintiffs to review. *See* Liaison Counsel’s April 23, 2013 Status  
27 Report, Dkt. No. 80, at 1; Liaison Counsel’s May 7, 2013 Status Report, Dkt. No. 92, at  
28

1 1. After initial document productions were complete, Settling Plaintiffs and Non-  
2 Settling Plaintiffs served joint discovery requests. The preparation of the requests  
3 involved multiple conference calls and the exchange of draft requests among Non-  
4 Settling Plaintiffs to coordinate serving a single set of requests. *See* Liaison Counsel’s  
5 May 21, 2013 Status Report, Dkt. No. 99, at 2:13-5:10. This process also entailed  
6 review of certain of those documents outlined in the distributed reports and indices to  
7 fully inform each of the additional non-duplicative requests. Through this process, Non-  
8 Settling Plaintiffs sought to ensure that plaintiffs obtained the information necessary to  
9 evaluate the settlement while also reducing duplicative discovery efforts among  
10 plaintiffs. *See* Hyundai JPML Brief, at 14 (“The appointment of liaison counsel further  
11 streamlined the process by allowing discovery requests to be funneled through one  
12 channel, rather than allowing defendants to be bombarded with multiple duplicative  
13 demands.”).

14 As the productions got larger in volume and more substantive it was imperative  
15 for Liaison Counsel to divide up the review among Non-Settling Plaintiffs. Liaison  
16 Counsel coordinated the document review and ensured that only one Non-Settling  
17 Plaintiff was responsible for reviewing each set of documents. The designated counsel  
18 coded the documents and assisted in the preparation of summaries of the document  
19 productions. They also participated in calls among Non-Settling Plaintiffs where the  
20 scope and contents of the productions were discussed at length. As discovery unfolded,  
21 Non-Settling Plaintiffs raised concerns with Defendants’ productions and ensured that  
22 the process was genuinely at arm’s length. For example, Non-Settling Plaintiffs  
23 challenged the ambiguous parameters pursuant to which Defendants were making their  
24 productions. *See* Liaison Counsel’s June 5, 2013 Status Report, Dkt. No. 111, at 1-2.  
25 Throughout the confirmatory discovery process, the parties met and conferred regarding  
26 Defendants’ responses to Plaintiffs’ discovery requests. *See* Liaison Counsel’s July 23,  
27 2013 Status Report, Dkt. No. 124, at 1. These negotiations included numerous lengthy  
28

1 meet and confer calls and the exchange of meet and confer letters, all of which required  
2 discussion among the Non-Settling Plaintiffs. *Id.* Such efforts ultimately resulted in a  
3 discovery process that mirrored typical Rule 34 discovery. *See* Liaison Counsel’s June  
4 19, 2013 Status Report, Dkt. No. 120, at 1 (obtaining written responses to plaintiffs’  
5 discovery requests).

6 Non-Settling Plaintiffs also participated in the confirmatory discovery interviews.  
7 The Court envisioned a procedure whereby Liaison Counsel plus one or two other Non-  
8 Settling Plaintiffs’ counsel would be present at the interviews asking questions (in  
9 addition to Settling Plaintiffs) and other Non-Settling Plaintiffs’ counsel would be able  
10 to follow and participate in the interviews on the phone. *See* Grzencyk Decl., Ex. C,  
11 May 23, 2013 Hearing Transcript at 17:9-18:23. This is precisely what the parties did.  
12 A Non-Settling Plaintiff firm was designated to conduct each interview on behalf of  
13 Non-Settling Plaintiffs. *See* Liaison Counsel’s June 5, 2013 Status Report, Dkt. No.  
14 111, at 5:4-23; Liaison Counsel’s July 23, 2013 Status Report, Skt. No. 124, at 1-2. To  
15 provide continuity and avoid unnecessary duplication, Liaison Counsel was also present  
16 at each interview and, to ensure that all Non-Settling Plaintiffs could have input into the  
17 questioning, operated a secure chatroom that Non-Settling Plaintiffs used to exchange  
18 information and submit questions.

19 The Non-Settling Plaintiffs that conducted the document review shared their  
20 knowledge with the counsel conducting the interviews. Prior to and during the  
21 interviews, counsel for Settling Plaintiffs and Non-Settling Plaintiffs conferred and  
22 discussed strategy and exhibits for the interviews. *See* Grzencyk Decl., Ex. D, June 6,  
23 2013 Hearing Transcript at 24:16-25:12 (Settling Plaintiff’s counsel discussing  
24 collaboration among Settling Plaintiffs and Non-Settling Plaintiffs, the participation of  
25 20-25 Non-Settling Plaintiffs via chatroom, and noting that the “process really worked  
26 quite well”). Those Non-Settling Plaintiffs who conducted the interviews thoroughly  
27 prepared by reviewing those documents and exhibits provided by the document review  
28

1 team. Each interview was roughly divided in half, with Settling Plaintiffs asking  
2 questions during the first half and Non-Settling Plaintiffs asking questions during the  
3 remaining time.

4 After the confirmatory discovery interviews and substantially all document  
5 productions were complete, Liaison Counsel – with input from Non-Settling Plaintiffs  
6 that had conducted the document review and confirmatory discovery interviews –  
7 prepared summaries of the document productions and Defendants’ responses to  
8 plaintiffs’ document requests. To the extent Non-Settling Plaintiffs identified  
9 deficiencies in Defendants’ productions and responses, they engaged in further meet and  
10 confer efforts. The parties were able to resolve many of their disputes through the meet  
11 and confer process. On several issues, however, agreement could not be reached and  
12 several Non-Settling Plaintiffs sought to compel the production of certain documents in  
13 a 78-page joint discovery stipulation and supplemental memoranda. Dkt. Nos. 154 &  
14 157. Settling Plaintiffs did not press any discovery issues with the Court.

15 During this period, Non-Settling Plaintiffs received regular reports apprising them  
16 of the status of discovery and participated in conference calls in which they provided  
17 input into both the mechanics and substance of discovery. *See* Aug. 15, 2013 Hearing  
18 Transcript, Dkt. No. 138, at 6:23-7:13 (discussing Non-Settling Plaintiffs’ review of  
19 discovery reports). On the conference calls, Non-Settling Plaintiffs discussed, among  
20 other things, the status of discovery, the substantive information that was being obtained  
21 through discovery and the litigation in general. Those discovery efforts culminated in a  
22 report that detailed how the discovery supported or weakened plaintiffs’ claims.

23 As the Court had anticipated, confirmatory discovery was a significant  
24 undertaking. “Scores of plaintiffs’ lawyers have participated in a robust process that has  
25 included the production of over 300,000 pages of documents by defendants along with  
26 deposition-style under oath interviews by employees all the way up to the CEO of HMA,  
27 occurring on two continents.” Hyundai JPML Brief, at 2. The confirmatory discovery  
28



1 was necessary and ensured that the proposed settlement was fair, reasonable, and  
2 adequate. As Hyundai itself explained: “there are many [] plaintiffs’ lawyers  
3 participating [in the MDL proceeding] who have raised all kinds of issues, and the  
4 putative classes have been well-protected as a result.” *Id.*, at 16.

5 **D. Non-Settling Plaintiffs Object to and Materially Improve the Settlement**

6 On December 23, 2013, the Settling Plaintiffs filed a motion for preliminary  
7 approval of the proposed settlement and a motion for certification of a settlement class.  
8 *See* Dkt. Nos. 184 & 185. During December 2013 and early January 2014, Non-Settling  
9 Plaintiffs reviewed the terms of the proposed settlement and engaged in numerous  
10 conference calls and discussions amongst themselves regarding the settlement’s  
11 strengths and weaknesses. These discussions also included ways to improve on the  
12 perceived weaknesses of the proposed settlement. The Court then directed Non-Settling  
13 Plaintiffs to provide the Court with their views on the proposed settlement via a  
14 consolidated report prepared by Liaison Counsel that was filed on January 30, 2014.  
15 Dkt. No. 211.

16 While Non-Settling Plaintiffs were generally satisfied with the compensation  
17 offered to class members, they raised a number of objections to other components of the  
18 proposed settlement. Nearly all Non-Settling Plaintiffs that provided their views on the  
19 proposed settlement pointed to problems with the settlement’s notice and claims process  
20 in particular. Once these issues were resolved, Non-Settling Plaintiffs, with limited  
21 exceptions, supported the proposed settlement. *See* Liaison Counsel’s Repost Listing  
22 Non-Settling Plaintiffs Supporting or Not Objecting to the Proposed Settlement, Dkt.  
23 No. 239. The primary improvements to the settlement that Non-Settling Plaintiffs were  
24 able to achieve are described below.

25 **1. Notice to Class Members**

26 Class members were originally to be provided with notice of the settlement via a  
27 traditional long-form notice document. Non-Settling Plaintiffs strenuously objected to  
28

1 this process. Defendants subsequently overhauled the notice procedure, which now  
2 utilizes an easy-to-understand postcard and email notification. Non-Settling Plaintiffs  
3 also played an important role in perfecting the language used in the postcard and long  
4 form notice documents.

## 5 **2. Claims Process**

6 The original claims process required each class member to fill out and submit a  
7 paper claim form. No individualized class member information – such as vehicle model  
8 or available lump sum payment – was preprinted or otherwise provided on the claim  
9 forms. Non-Settling Plaintiffs objected to this procedure as outdated and likely to  
10 produce a significant reduction in class member participation. The Settling Parties  
11 adopted Non-Settling Plaintiffs’ suggestion to automate the claims process using a  
12 simple, easy-to-complete online claim form that automatically populates class member  
13 information and available compensation options. *See In re Nasdaq Market-Makers*  
14 *Antitrust Litig.*, Case No. 94 Civ. 3996 RWS, 2000 WL 37992, at \*5 (S.D. N.Y. Jan. 18,  
15 2000) (“innovative use of preprinted and electronic claims forms is likely to contribute  
16 to a far larger number of claims.”).

## 17 **3. Class Members Understanding of Settlement Options**

18 Under the original notice and claims process, the only way for class members to  
19 understand the various options available to them – which was not an easy task given the  
20 multifaceted settlement – was to read and analyze the long form notice. There was not a  
21 centralized place where class members could estimate the amounts they might receive  
22 under the voluntary reimbursement program and compare that to the lump-sum amounts  
23 offered in the settlement. *See Manual for Complex Litigation (Fourth)* (“Manual”) §  
24 21.312 (notice must provide information that will enable class members to determine  
25 their individual recoveries). The revised online claims process for which Non-Settling  
26 Plaintiffs advocated gives class members this ability, ensuring that they will be able to  
27 understand the options available to them and select the best one.

1                   **4. Settlement Administration**

2                   The original version of the settlement agreement provided no mechanism for  
3 resolving class member disputes and grievances regarding their claim. The revised  
4 agreement includes a streamlined procedure for resolving disputes that protects class  
5 members’ interests.

6                   **5. Amounts Previously Paid Under Voluntary Reimbursement**  
7                   **Program**

8                   If a class member wishes to convert his or her voluntary reimbursement cash  
9 payments into an alternative form of compensation (dealer services credits or new car  
10 rebates), the original settlement agreement required the class member to write Hyundai  
11 or Kia a check for amounts previously received. Under the revised agreement, Hyundai  
12 or Kia will simply deduct those cash amounts from the dealer service or new car rebate  
13 amounts for which class members are eligible. This change reduced an unnecessary step  
14 in the process for certain class members.

15                   **6. Use of Settlement Benefits in Conjunction with Other Offers**

16                   The original settlement agreement was silent regarding whether settlement  
17 benefits could be used in conjunction with other promotional offers or discounts. Non-  
18 Settling Plaintiffs pointed out this oversight, which was corrected in the revised  
19 settlement agreement.

20 **III. ARGUMENT**

21                   **A. The Settlement Likely Could Not Have Been Approved Without Non-**  
22                   **Settling Plaintiffs’ Efforts**

23                   When evaluating a proposed settlement, a court “must adopt the role of a skeptical  
24 client and critically examine the class certification elements, the proposed settlement  
25 terms, and procedures for implementation.” Manual, § 21.61. Here, the Court stressed  
26 the importance of Non-Settling Plaintiffs fulfilling a similar role. Non-Settling plaintiffs  
27  
28

1 “played a beneficial role by opening [the] proposed settlement to scrutiny and identifying  
2 areas that need[ed] improvement.” *Id.*, § 21.643.

3 The need for thorough, independent review of a proposed settlement is particularly  
4 acute when the parties have reached a settlement early in the litigation. *See Stanton v.*  
5 *Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (discussing need to evaluate settlements  
6 reached before class certification). In such situations, settlement approval “requires a  
7 higher standard of fairness and a more probing inquiry than may normally be required  
8 under Rule 23(e).” *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir.2012) (internal  
9 quotation marks omitted); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th  
10 Cir. 1998) (“[S]ettlement approval that takes place prior to formal class certification  
11 requires a higher standard of fairness.”).

12 Given the circumstances, it was necessary for those who had not negotiated the  
13 settlement to provide an independent, adversarial component to the entire process. *See*  
14 *Manual*, § 21.61 (noting that settlement review is a demanding task because “the  
15 adversariness of litigation is often lost after agreement to settle”); *id.* at § 21.612 (noting  
16 that when settlement is reached without discovery, the court should provide an adequate  
17 opportunity for settlement opponents to be fully heard). There can be little doubt that the  
18 adversarial element that Non-Settling Plaintiffs brought to the confirmatory discovery  
19 process will facilitate the Court’s ultimate decision as to whether to grant final approval  
20 to this settlement. Indeed, the “[Settling] Parties refrained from seeking Court approval  
21 of the settlement described herein until confirmatory discovery was substantially  
22 complete.” Amended Settlement Agreement, Dkt. No. 354-1, at 3. The settlement  
23 expressly references the scope and role of confirmatory discovery. *Id.*

24 **B. Non-Settling Plaintiffs are Entitled to Payment of Their Reasonable**  
25 **Attorneys’ Fees and Expenses**

26 The Court’s jurisdiction in this case arises under the Class Action Fairness Act  
27 (CAFA), 28 U.S.C. § 1332(d), which means the Court is sitting in diversity. *See Exxon*

1 *Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 571 (2005) (“CAFA confers  
2 federal diversity jurisdiction over class actions...”). “In diversity actions, federal courts  
3 look to state law in determining whether a party has a right to attorneys’ fees and how to  
4 calculate those fees.” *Gezalyan v. BMW of North Am., LLC*, 697 F. Supp. 2d 1168, 1169  
5 (C.D. Cal. 2010) (citing *Mangold v. California Pub. Util. Comm’n*, 67 F.3d 1470, 1478  
6 (9th Cir. 1995)).

7 Settling Plaintiffs, and the majority of Non-Settling Plaintiffs, brought and settled  
8 claims under California state law, namely the California Consumers Legal Remedies Act  
9 (CLRA) and the California Unfair Competition Law. As California state law underlies  
10 Plaintiffs’ claims in this action, it also should apply to Plaintiffs’ application for an award  
11 of attorney fees. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002)  
12 (“Because Washington law governed the claim, it also governs the award of fees.”).  
13 Under both the CLRA and the California Private Attorneys General Statute plaintiffs are  
14 entitled to an award their reasonable fees and expenses. *See* Cal. Civ. Code § 1780(e);  
15 Cal. Code Civ. P. § 1021.5.

16 Non-Settling Plaintiffs are also entitled to an award of attorney’s fee under the  
17 common fund doctrine. Even when there is “no contractual or statutory basis to award  
18 attorneys’ fees in a class action case, a court may rely on the ‘common fund doctrine’” to  
19 award attorneys’ fees. *Rodriguez v. Disner*, 688 F.3d 645, 653 (9th Cir. 2012) (quoting  
20 *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 770 (9th Cir. 1977)). The settlement  
21 makes available several hundred million dollars to pay class member claims, in addition  
22 to providing other relief. *See* Amended Settlement Agreement, Dkt. No. 354-1. “If all  
23 class members submit claims under the settlement, the class will recover \$392M in cash  
24 before deductions for compensation already paid through the lifetime reimbursement  
25 program are made.” Settling Parties’ Supplemental Brief In Support of Preliminary  
26 Approval of Class Settlement and Certification of Settlement Class, Dkt. No. 271, at 15.

1 The availability of common fund fees is not limited to class counsel. A court has  
2 authority, for example “to award fees to an objector that assists the court in scrutinizing  
3 the settlements.” Manual, § 14.121; *see also Sprague v. Ticonic Nat’l Bank*, 307 U.S.  
4 161, 166–67 (1939) (noting that “formalities of the litigation” do not override “the power  
5 of equity in doing justice” by awarding fees to those helping to create a fund benefiting  
6 others).

7 **C. California Law Prescribes a Lodestar Method of Calculating a**  
8 **Reasonable Fee**

9 The primary method for establishing the amount of “reasonable” attorney fees  
10 under California’s fee shifting statutes is the lodestar/multiplier method. *See In re*  
11 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-557 (2009); *see also Ketchum v.*  
12 *Moses*, 24 Cal. 4th 1122, 1137 (2001) (“[T]he lodestar adjustment method, including  
13 discretion to award fee enhancements, is well established under California law.”).  
14 California’s lodestar/multiplier method is a two-step process under which a court first  
15 determines a lodestar value for the fees by multiplying the time reasonably spent by  
16 counsel on the case by a reasonable hourly rate. *See In re Consumer Privacy Cases*, 175  
17 Cal. App. 4th at 556-557. The court may then enhance or reduce the lodestar by applying  
18 a multiplier to take into account the contingent nature and risk associated with the action,  
19 as well as other factors such as the degree of skill required and the ultimate success  
20 achieved. *Id.*; *Ketchum v. Moses*, 24 Cal. 4th at 1130, 1137 (holding that Court of  
21 Appeals erred when it concluded that it lacked authority to enhance a prevailing party’s  
22 lodestar). The value of the adjustment lies within the Court’s sound discretion.

23 Given the unique posture of this case, the undersigned Non-Settling Plaintiffs  
24 believe that the lodestar method is also appropriate for evaluating their attorneys’ fees  
25 requests. The Court, however, should consider the fact that Non-Settling Plaintiffs’  
26 efforts were crucial to obtaining approval of a \$392 million settlement, as well as  
27 material changes to the notice and claims procedures that will greatly increase class’s  
28

1 ability realize the full value of the settlement. A percentage-of-the-fund “crosscheck”  
2 and the fact that attorneys’ fees will be paid on top of the amounts distributed to the class  
3 support the payment of significant attorneys’ fees in this matter.

4 Each Non-Settling Plaintiff has submitted a declaration detailing their counsels’  
5 lodestar and the work they performed in this litigation. Under California law, Non-  
6 Settling Plaintiffs should be awarded their requested and reasonably incurred attorneys’  
7 fees and expenses without a downward adjustment.

8 **IV. CONCLUSION**

9 For the foregoing reasons and the reasons explained in the declarations submitted  
10 by each firm (or group of firms), the undersigned Non-Settling Plaintiffs request that the  
11 Court approve their requests for payment of attorneys’ fees and expenses in the amounts  
12 listed on the attached Appendix.

13  
14 DATED: December 23, 2014

Respectfully submitted,

15  
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**APPENDIX**

<b>Firms(s)</b>	<b>Case(s) Represented</b>	<b>Fee Request</b>
Ahdoot & Wolfson, PC	<i>Sutta v. Hyundai Motor America</i> , Case No. 8:13-cv-417-GW-FFM	\$5,000
Berger & Montague, P.C.	<i>Kurash, et al. v. Hyundai Motor America, et al.</i> , Case No. 8:12-cv-2164-GW-FFM	Fees: \$26,397.00 Expenses: \$2,252.09
Berman DeValerio and Bell Davis Pitt	<i>Dunst v. Hyundai Motor America</i> , Case No. 2:13-cv-1352-GW-FFM; <i>Patterson v. Kia Motors America</i> , Case No. 2:14-cv-327-GW-FFM	Fees: \$205,000.00 Expenses: \$5,534.34
Bonsignore, PLLC	<i>Iocovozzi v. Kia Motors America</i> , Case No. 8:13-cv-159-GW-FFM; <i>Brown v. Kia Motors America</i> , Case No. 8:13-cv-441-GW-FFM; <i>Woodward v. Kia Motors America</i> , Case No. 8:13-cv-443-GW-FFM; <i>Cestaro v. Hyundai Motor America</i> , Case No. 8:13-cv-442-GW-FFM; <i>Terhost v. Kia Motors America</i> , Case No. 8:13-cv-476-GW-FFM; <i>Martyn v. Hyundai Motor America</i> , Case No. 8:13-cv-475-GW-FFM	Fees: \$357,485.00 Expenses: \$2,707.35
Cafferty Clobes Meriwether & Sprengel, LLP	<i>Figueroa v. Hyundai Motor America</i> , Case No. 8:13-cv-373-GW-FFM	Fees: \$250,000.00 Expenses: \$4,623.56

Firms(s)	Case(s) Represented	Fee Request
Crowley Norman LLP and Payne Mitchell Law Group, LLP; Doyle Lowther LLP; Mauriello Law Firm, APC; and Whatley Kallas, LLP	<i>Washburn v. Kia Motors Corporation, et al.</i> , Case No. 2:13-cv-1136-GW-FFM; <i>Wilton, et al. v. Kia Motors America</i> , Case No. 8:12-cv-1917-GW-FFM; <i>Carullo v. Kia Motors America</i> , Case No. 8:12-cv-2174-GW-FFM	Combined request for all firms: Fees: \$346,000.00 Expenses: \$3,773.57
Davis & Norris LLP	<i>Maturani v. Hyundai Motor America</i> , Case No. 2:13-cv-813-GW-FFM	Fees: \$138,305.00 Expenses: \$1,768.91
Edelman, Combs, Lattuner & Goodwin, LLC	<i>Rottner v. Hyundai Motor America</i> , Case No. 2:13-cv-815-GW-FFM	Fees: \$7,000 Expenses: \$507.66
Finkelstein, Blankinship, Frei-Pearson & Garber LLP	<i>Graewingholt v. Hyundai Motor America</i> , Case No. 8:12-cv-1963-GW-FFM	Fees: \$44,944.77 Expenses: \$1,005.11
Girard Gibbs LLP	<i>Maharaj, et al. v. Hyundai Motor America, et al.</i> , Case No. 8:13-cv-70-GW-FFM	Fees: \$1,257,000.00 Expenses: \$66,000
Glancy Binkow & Goldberg LLP	<i>Sutta v. Hyundai Motor America</i> , Case No. 8:13-cv-417-GW-FFM	\$5,000
Goldenberg Schneider, LPA and Minnillo & Jenkins, LPA	<i>Sanders, et al. v. Hyundai Motor America</i> , Case No. 2:13-cv-817-GW-FFM	Fees: \$97,209.40 Expenses: \$3,420.36
Gustafson Gluek PLLC	<i>Weber, et al v. Hyundai Motor America</i> , Case No. 8:13-cv-27-GW-FFM	Fees: \$33,884.00 Expenses: \$607.55

<b>Firms(s)</b>	<b>Case(s) Represented</b>	<b>Fee Request</b>
Hyde & Swigart	<i>Bayard v. Hyundai Motor America</i> , Case No. 8:13-cv-257-GW-FFM	Fees: \$8,120.50
John P. Nash, Attorney, Inc.	<i>Graewingholt v. Hyundai Motor America</i> , Case No. 8:12-cv-1963-GW-FFM	Fees: \$7,500 Expenses: \$806
Kaplan Fox & Kilsheimer LLP	<i>Young v. Kia Motors America</i> , Case No. 2:13-cv-167-GW-FFM	Fees: \$134,930.00 Expenses: \$8,318.84
Kazerouni Law Group, APC	<i>Bayard v. Hyundai Motor America</i> , Case No. 8:13-cv-257-GW-FFM	Fees: \$7,612.50
Law Offices of Todd M. Friedman	<i>Bayard v. Hyundai Motor America</i> , Case No. 8:13-cv-257-GW-FFM	Fees: \$14,041.00 Expenses: \$1,000.00
Milstein Adelman, LLP	<i>Figueroa v. Hyundai Motor America</i> , Case No. 8:13-cv-373-GW-FFM	Fees: \$28,600 Expenses: \$739
MLG Automotive Law, APLC	<i>Young v. Kia Motors America</i> , Case No. 2:13-cv-167-GW-FFM	\$2,500
Pomerantz, Grossman, Hufford, Dahlstrom and Gross LLP	<i>Gordon v. Hyundai Motor America</i> , Case No. 2:13-cv-1125-GW-FFM	Fees: \$33,440.00
Shepherd, Finkelman, Miller & Shah, LLP	<i>Gordon v. Hyundai Motor America</i> , Case No. 2:13-cv-1125-GW-FFM	Fees: \$192,670.00 Expenses: \$3,001.92



Firms(s)	Case(s) Represented	Fee Request
<p>Simmons Hanly Conroy and McCallum, Methvin &amp; Terrell, P.C.</p>	<p><i>Gudgalis v. Hyundai Motor America</i>, Case No. 2:13-cv-1128-GW-FFM; <i>Quiroz v. Kia Motors America, Inc.</i>, Case No. 8:12-cv-2091-GW-FFM; <i>Woodruff v. Kia Motors America, Inc.</i>, Case No. 2:13-cv-1124-GW-FFM; <i>Armstrong v. Kia Motors America</i>, Case No. 2:13-cv-1122-GW-FFM; <i>Hoessler v. Kia Motors America</i>, Case No. 2:13-cv-1129-GW-FFM; <i>Leggett v. Kia Motors Corporation</i>, Case No. 2:13-cv-1134-GW-FFM; and <i>Hammond v. Hyundai Motor America</i>, Case No. 2:13-cv-1132-GW-FFM</p>	<p>Fees: \$189,691.00 Expenses: \$13,021.33</p>
<p>Tate Law Group, LLC; Savage &amp; Turner, P.C.; and Law Office of Drew McElroy</p>	<p><i>Iocovozzi v. Kia Motors America</i>, Case No. 8:13-cv-159-GW-FFM; <i>Setser v. Kia Motors America</i>, Case No. 8:13-cv-387-GW-FFM; <i>Fellers v. Kia Motors America</i>, Case No. 8:13-cv-384-GW-FFM; <i>Bonsignore v. Kia Motors America</i>, Case No. 8:13-cv-386-GW-FFM; <i>Brown v. Kia Motors America</i>, Case No. 8:13-cv-441-GW-FFM; <i>Woodward v. Kia Motors America</i>, 8:13-cv-443-GW-FFM; <i>Myers v. Hyundai Motor America</i>, Case No. 8:13-cv-444-GW-FFM; <i>Cestaro v. Hyundai Motor America</i>, Case No. 8:13-cv-442-GW-FFM; <i>Terhost v. Kia Motors America</i>, Case No. 8:13-cv-476-GW-FFM; <i>Martyn v. Hyundai Motor America</i>, Case No. 8:13-cv-475-GW-FFM; <i>Elliott v. Hyundai Motor America</i>, Case No. 8:13-cv-385-GW-FFM</p>	<p>Fees: \$115,282.50 Expenses: \$3,999.21</p>

**CERTIFICATE OF SERVICE**

I, Eric H. Gibbs, hereby certify that on December 23, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will serve notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List. Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the document upon confirmation of e-filing.

/s/Eric H. Gibbs  
Eric H. Gibbs

Certificate of Service

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CERTAIN  
NON-SETTLING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND  
EXPENSES