



a. Declaration of Natalie Finkelman Bennett, filed contemporaneously herewith and which includes as exhibits thereto, the Settlement Agreement and Release and the Firm Resumes of Class Counsel.

b. Plaintiff's Brief In Support of Unopposed Motion for Certification of Settlement Class, Preliminary Approval of Settlement, Appointment of Class Counsel, and Approval of Class Notice, filed contemporaneously herewith.

WHEREFORE, Proposed Class Counsel request that the Court enter the Proposed Order Preliminarily Approving Settlement Agreement, Certifying Settlement Class, Appointing Settlement Class Counsel, Setting Hearing on Fair Approval of Settlement, and Directing Notice to the Class accompanying this Motion.

Dated: February 15, 2019

Respectfully Submitted:

/s/James C. Shah  
James C. Shah  
Natalie Finkelman Bennett  
**SHEPHERD, FINKELMAN,  
MILLER & SHAH, LLP**  
475 White Horse Pike  
Collingswood, NJ 08107  
Tel: (856) 858-1770  
Fax: (866) 300-7367  
E-mail: [jshah@sfmslaw.com](mailto:jshah@sfmslaw.com)  
[nfinkelman@sfmslaw.com](mailto:nfinkelman@sfmslaw.com)

Noah Axler  
Marc A. Goldich  
**AXLER GOLDICH LLC**  
1520 Locust Street, Suite 301  
Philadelphia, PA 19102  
Tel: (267) 534-7400  
Fax: (267) 534-7407  
E-mail: [naxler@axgolaw.com](mailto:naxler@axgolaw.com)  
[mgoldich@axgolaw.com](mailto:mgoldich@axgolaw.com)

Robert P. Cocco  
**ROBERT P. COCCO, P.C.**  
1500 Walnut St., Ste. 900  
Philadelphia, PA 19102  
Tel: (215) 351-0200  
Fax: (215) 261-6055  
E-mail: [rcocco@rcn.com](mailto:rcocco@rcn.com)

*Proposed Counsel for Plaintiff and the Class*

**CERTIFICATE OF UNCONTESTED MOTION**

Pursuant to Local Rule 7.1(b), the undersigned hereby certifies that the foregoing Unopposed Motion for Certification of Settlement Class, Preliminary Approval of Settlement, Appointment of Class Counsel, and Approval of Class Notice is uncontested by Defendant Hyundai Motor America, Inc.

*/s/ James C. Shah*

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

JOSHUA RIAUBIA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

HYUNDAI MOTOR AMERICA,

Defendant.

---

CASE NO.: 2:16-cv-05150-CDJ

---

**PLAINTIFF’S BRIEF IN SUPPORT OF UNOPPOSED MOTION  
FOR CERTIFICATION OF SETTLEMENT CLASS, PRELIMINARY APPROVAL OF  
SETTLEMENT, APPOINTMENT OF CLASS COUNSEL, AND APPROVAL OF CLASS  
NOTICE**

---

James C. Shah  
Natalie Finkelman Bennett  
**SHEPHERD, FINKELMAN,  
MILLER & SHAH, LLP**  
475 White Horse Pike  
Collingswood, NJ 08107  
Tel: (856) 858-1770  
Fax: (866) 300-7367  
E-mail: [jshah@sfmslaw.com](mailto:jshah@sfmslaw.com)  
[nfinkelman@sfmslaw.com](mailto:nfinkelman@sfmslaw.com)

*Additional Counsel Listed on Signature Page*

*Counsel for Plaintiff and the Class*

**TABLE OF CONTENTS**

Table of Authorities ..... ii

PRELIMINARY STATEMENT ..... 1

FACTUAL AND PROCEDURAL BACKGROUND..... 2

I. PLAINTIFF’S CLAIMS..... 2

II. PROCEDURAL HISTORY AND NEGOTIATIONS..... 4

III. THE PROPOSED SETTLEMENT..... 5

    A. Monetary And Other Relief ..... 6

        1. Cash Payment or HMA Dealer Credit for Documented Complaint ..... 7

        2. Torsion Bar Inspection, Replacement, and Credit ..... 7

        3. Warranty Extension ..... 8

        4. Reimbursement for Out-of-Pocket Expenses..... 8

        5. HMA Advertising ..... 8

        6. Attorneys’ Fees and Costs ..... 9

    B. Dismissal With Prejudice And Release Of Claims..... 9

    C. Notice..... 9

LEGAL ARGUMENT ..... 10

I. THE PROPOSED SETTLEMENT CLASS SATISFIES THE REQUIREMENTS OF  
RULE 23 ..... 10

    A. The Settlement Class Is Sufficiently Numerous ..... 11

    B. There Are Common Questions Of Law And Fact ..... 12

    C. The Representative Plaintiff’s Claims Are Typical ..... 13

    D. The Representative Plaintiff Has Fairly And Adequately Protected The Interests  
Of The Settlement Class ..... 14

E.	The Proposed Class Satisfies The Predominance And Superiority Requirements .....	15
II.	THE SETTLEMENT SATISFIES THE CRITERIA FOR PRELIMINARY APPROVAL .....	16
A.	Governing Standards.....	16
III.	THIS COURT SHOULD APPOINT PLAINTIFF’S COUNSEL AS LEAD CLASS COUNSEL .....	23
IV.	THE COURT SHOULD APPROVE THE PROPOSED NOTICE.....	23
A.	The Proposed Methods For Providing Notice Meet The Requirements For Approval .....	24
B.	The Proposed Content Of The Notice Meets The Requirements For Approval...	24
	CONCLUSION.....	26

**TABLE OF AUTHORITIES**

Cases

*Amchem Prods., Inc. v. Windsor*,  
521 U.S. 591 (1997)..... 11

*Baby Neal for and by Kanter v. Casey*,  
43 F.3d 48 (3d Cir. 1994)..... 14

*Beck v. Maximus, Inc.*,  
457 F.3d 291 (3d Cir. 2006)..... 14

*Daffin v. Ford Motor Co.*,  
458 F.3d 549 (6th Cir. 2006) ..... 13

*E.E.O.C. v. Com. of Pa.*,  
772 F. Supp. 217 (M.D. Pa. 1991)..... 20

*Gates v. Rohm & Haas Co.*,  
248 F.R.D. 434 (E.D. Pa. 2008)..... 17, 20

*Girsh v. Jepson*,  
521 F.2d 153 (3d Cir. 1975)..... 18, 19, 22

*Greenfield v. U.S. Healthcare, Inc.*,  
146 F.R.D. 118 (E.D. Pa. 1993)..... 11

*Grunewald v. Kasperbauer*,  
235 F.R.D. 599 (E.D. Pa. 2006)..... 24

*Henderson v. Volvo Cars of N. Am., LLC*,  
2013 WL 1192479 (D.N.J. Mar. 22, 2013)..... 21

*Hernandez v. Earth Care, Inc.*,  
2016 WL 1461171 (E.D. Pa. Apr. 13, 2016) ..... 18

*In re Aetna, Inc.*,  
2001 WL 20928 (E.D. Pa. Jan. 4, 2001)..... 22

*In re Amtrak Train Derailment in Philadelphia, Pa.*,  
2016 WL 1359725 (E.D. Pa. Apr. 6, 2016) ..... 17

*In re Chambers Dev. Sec. Litig.*,  
912 F. Supp. 822 (W.D. Pa. 1995)..... 17

*In re Community Bank of Northern Virginia*,  
418 F.3d 277 (3d Cir. 2005)..... 11

*In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*,  
55 F.3d 768 (3d Cir. 1995)..... 16, 18, 22

*In re Ins. Brokerage Antitrust Litig.*,  
579 F.3d 241 (3d Cir. 2009)..... 17

*In re Johnson & Johnson Derivative Litig.*,  
900 F. Supp. 2d 467 (D.N.J. 2012) ..... 21

*In re Linerboard Antitrust Litig.*,  
292 F. Supp. 2d 631 (E.D. Pa. 2003) ..... 18

*In re Mercedes-Benz Tele Aid Contract Litigation*,  
257 F.R.D. 46 (D.N.J. 2009)..... 13

*In re National Football League Players’ Concussion Injury Litig.*,  
301 F.R.D. 191 (E.D. Pa. 2014)..... 20

*In re Prudential Ins. Co. of Am. Sales Practices Litig.*,  
962 F. Supp. 450, (D.N.J. 1997) ..... 17

*In re Prudential Insurance Co. of America Sales Practices Litigation*,  
148 F.3d 283 (3d Cir. 1998)..... 15, 17, 24, 25

*In re Sch. Asbestos Litig.*,  
921 F.2d 1330 (3d Cir. 1990)..... 17

*In re Warfarin Sodium Antitrust Litigation*,  
391 F.3d 516 (3d Cir. 2004)..... 12, 13, 16, 22

*In re Zurn Pex Plumbing Products Liability Litigation*,  
644 F.3d 604 (8th Cir. 2011) ..... 13

*Mack Trucks, Inc. v. UAW*,  
2011 WL 4402136 (E.D. Pa. Sept. 22, 2011) ..... 21

*Marsden v. Select Medical Corp.*,  
246 F.R.D. 480 (E.D. Pa. 2007)..... 16

*Martin v. Ford Motor Co.*,  
292 F.R.D. 252 (E.D. Pa. 2013)..... 12

*Meijer, Inc. v. 3M*,  
2006 WL 2382718 (E.D. Pa. Aug. 14, 2006) ..... 24, 25

*Mylan Pharms., Inc. v. Warner Chilcott Pub. Ltd. Co.*,  
 2014 WL 12778313 (E.D. Pa. Feb. 20, 2008) ..... 17

*Neale v. Volvo Cars of N. Am., LLC*,  
 2013 WL 1223354 (D.N.J. Mar. 26, 2013)..... 12

*Officers for Justice v. Civil Serv. Comm’n*,  
 688 F.2d 615 (9th Cir. 1982) ..... 20

*Riaubia v. Hyundai Motor Am.*,  
 2017 WL 3602520 (E.D. Pa. Aug. 22, 2017) ..... 4

*Sanneman v. Chrysler Corp.*,  
 191 F.R.D. 441 (E.D. Pa. 2000)..... 12

*Smith v. Prof’l Billing & Mgmt. Servs., Inc.*,  
 2007 WL 4191749 (D.N.J. Nov. 21, 2007) ..... 17

*Stewart v. Abraham*,  
 275 F.3d 220 (3d Cir. 2001)..... 11, 12

*Sullivan v. DB Investments, Inc.*,  
 667 F.3d 273 (3d Cir. 2011)..... 15

*Walsh v. Great Atl. & Pac. Tea Co.*,  
 726 F.2d 956 (3d Cir. 1983)..... 17

*Williams v. City of Phila.*,  
 270 F.R.D. 208 (E.D. Pa 2010)..... 11-2

*Williams v. First Nat’l Bank*,  
 216 U.S. 582 (1910)..... 16

*Wolin v. Jaguar Land Rover N. Am.*,  
 617 F.3d 1168 (9th Cir. 2010) ..... 13

*Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*,  
 758 F.2d 86 (3d Cir. 1985)..... 24

**PRELIMINARY STATEMENT**

Plaintiff, Joshua Riaubia (“Plaintiff”), seeks preliminary approval of a class-wide settlement of claims of purchasers of model-year 2015, 2016, and 2017 Hyundai Sonata U.S. specification vehicles equipped with the Smart Trunk feature (“Class Vehicles or Vehicles”). Plaintiff, on behalf of himself and others similarly situated, alleges that Defendant, Hyundai Motor America (“HMA” or “Defendant”), was unable to deliver a non-defective, hands-free, proximity-activated trunk which fully opens when the owner stands directly behind the Vehicle (“Smart Trunk”) in contravention of the uniform marketing and advertisements of HMA. Plaintiff alleges that, despite efforts, Hyundai-brand dealers could not repair the defective Smart Trunks to enable them to open as represented by HMA, and some dealers even told Class members that the feature was working correctly and refused to initiate a repair. HMA denies that the Class Vehicles are defective or that it violated any laws, and disputes all of Plaintiff’s material allegations.

Notwithstanding the challenges that plaintiffs often face in obtaining certification of a class, by front-loading their efforts, working with an automotive expert, and engaging HMA in early negotiations, Plaintiff’s counsel was able to negotiate significant benefits for all 2015-2017 Sonata owners whose Vehicles have the Smart Trunk feature. The proposed Settlement is set forth in the Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) and provides for the following: (1) all Class members who have (a) a documented complaint, repair, or warranty claim relating to the failure of the Smart Trunk on the Class Vehicles to open as advertised that was made to a Hyundai dealer or to HMA directly, or (b) made a complaint on a publicly available forum prior to the time the Class is notified, may submit a claim for payment of \$50 cash in the form of a debit card or a \$100 HMA dealer credit, regardless of whether the Class member suffered any out-of-pocket loss; (2) all Class members may receive a free inspection and replacement of

affected Smart Trunk “torsion bars”); (3) all Class members will receive an extension of the Vehicle warranty for the affected parts; and (4) all Class members who incurred out-of-pocket expenses at an authorized Hyundai dealer or third-party repair shop for repair or replacement of the Smart Trunk torsion bars due to the trunk not opening to expectation can receive reimbursement for one repair.

The proposed Settlement Class satisfies the requirements of Rule 23, and Plaintiff’s counsel are well-qualified to serve as Lead Class Counsel as to the Settlement. Further, the Consumer Affairs Division of HMA will serve as the Class Settlement Administrator (“Claims Administrator” or “Settlement Administrator”), to disseminate the Class Notice and payments to Class members. This proposed Settlement is fair, reasonable, and adequate and should be preliminarily approved and Notice should be disseminated to the Settlement Class as set forth in the Settlement Agreement.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. PLAINTIFF’S CLAIMS**

On September 28, 2016, Plaintiff filed this action against Defendant in the United States District Court for the Eastern District of Pennsylvania. Before filing suit, Plaintiff’s counsel reviewed dozens of complaints from Vehicle owners and spoke with owners about the Smart Trunk problems. The Complaint states claims for violations of California consumer protection statutes, violations of the federal Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, and breach of express and implied warranties on behalf of a nationwide class, as well as alternative claims for violations of express and implied warranty and unjust enrichment under Pennsylvania law on behalf of a Pennsylvania sub-class. (Declaration of Natalie Finkelman Bennett (“Decl.”), ¶ 3.)

Specifically, Plaintiff alleges that the Class Vehicles share a common defect, which prevents the Smart Trunk from operating properly and cannot be fixed by HMA. Plaintiff alleges that the Smart Trunk, first made available on model year 2015 vehicles, is a proximity-activated trunk lid that, due to a common and inherent defect, fails to operate as advertised. HMA designed the Smart Trunk to automatically open by standing directly behind the Vehicle with a proximity key in one's hand, pocket, or purse. For the trunk to open automatically, the user must stand 20-40 inches behind the Vehicle for at least three seconds. After the three-second countdown, the trunk latch is automatically released, which is supposed to allow tensioned metal bars ("torsion bars") in the trunk to automatically open the trunk lid wide enough for consumers to place items in without using their hands. (Decl., ¶ 4.)

HMA's nationwide marketing campaign uniformly advertised the Smart Trunk as a "hands-free" feature that automatically opens the trunk lid wide enough to easily fit bulky items such as shopping bags, duffel bags, and sports apparel. This campaign included advertisements, images, and videos on the internet, on social media, in magazines, and on television. Plaintiff alleges that these representations were inaccurate and misleading because the Class Vehicles share a common defect in that the Smart Trunk merely unlatches, failing to open more than a crack, which requires consumers to manually push open the trunk lid, thereby failing to provide the "hands-free" convenience the Smart Trunk is advertised to deliver. (*Id.*)

HMA advertises that the Class Vehicles carry "America's Best Warranty," which gives consumers "more than peace of mind, it's a commitment from HMA to maintain a high degree of quality, dependability, and reliability." The five-year, 60,000-mile New Vehicle Limited Warranty, covers the Smart Trunk defect at issue here, but Plaintiff alleges that Defendant has

failed to provide him and Class members with conforming, non-defective Smart Trunks, notwithstanding multiple attempts at repair. (*Id.* ¶ 5.)

HMA vigorously denies the Class Vehicles are defective or that it violated any laws, and disputes all of Plaintiff's material allegations.

## **II. PROCEDURAL HISTORY AND NEGOTIATIONS**

Plaintiff's Complaint was filed in September 2016. On December 23, 2016, Defendant filed a Motion to Dismiss. In January 2017, the parties met and discussed a Proposed Joint Discovery Plan. On February 20, 2017, Plaintiff served HMA with his Initial Disclosures and, on March 20, 2017, HMA served its Initial Disclosures on Plaintiff. The parties negotiated the terms of a protocol for the inspection of Plaintiff's Vehicle, a Protective Order and an ESI Protocol. On May 16, 2017, Plaintiff filed a Report of the Parties' Rule 26(f) Conference and on April 21, 2017, Plaintiff propounded discovery requests on HMA, which were responded to on June 20, 2017. On August 22, 2017, this Court entered its Opinion and Order denying in full Defendant's Motion to Dismiss. *Riaubia v. Hyundai Motor Am.*, No. CV 16-5150, 2017 WL 3602520 (E.D. Pa. Aug. 22, 2017) (ECF 22). HMA then propounded discovery requests on Plaintiff and filed its Answer to the Complaint on October 6, 2017. On October 12, 2017, this Court entered an Order scheduling a Rule 16 Conference for November 13, 2017. (Decl., ¶¶ 18-25.)

Thereafter, the parties decided it was an appropriate time to engage in mediation. Plaintiff's Counsel reviewed more than 20,000 pages of documents produced by HMA, including: engineering testing, engineering data and Vehicle and component specifications; warranty complaints and repairs; information as to the difference between the Sonata Smart Trunk components and the components in Hyundai's other models; and Quality Information Reports regarding the Smart Trunk. In addition, Plaintiff's Vehicle was inspected by Defendant and

Plaintiff's expert reviewed HMA's materials and the Vehicle. (Decl., ¶¶ 14, 27.) The parties then engaged in negotiations during an initial mediation session before David Geronemus of JAMS in New York, NY, on January 9, 2018 and achieved some progress toward resolution. Following the initial session, the parties met and conferred several times to discuss the issues and to exchange further information.

On May 15, 2018, the parties met for a second mediation session before Mr. Geronemus, which resulted in the execution of a term sheet regarding a majority of the terms of an eventual settlement. During the months that followed, the parties continued to negotiate the final details of the benefits to the proposed Class, as well as mutual releases and the reimbursement of attorneys' fees and costs and a modest service award, and then finalized the supporting documents, including the Class Notice and Claim Form. During that time, the parties engaged in confirmatory discovery, including receiving information from engineers at HMA's parent, Hyundai Motor Company, and information about countermeasures and failure rates, which is reflected in the resulting Hyundai Technical Service Bulletin Number 19-BD-222, Trunk Lid Torsion Bar Inspection and Repair ("TSB"). Both during and after that time frame, the parties also participated in numerous telephonic negotiations with Mr. Geronemus. The details of the Settlement are set forth below.

### **III. THE PROPOSED SETTLEMENT**

As set forth above, the Agreement follows the exchange of substantial information, and is the product of extensive arm's-length negotiations involving experienced counsel over the course of many months (Decl., ¶¶ 15-17, 27.) The proposed Settlement Agreement resolves all claims against HMA on behalf of a nationwide class of all purchasers and lessees of the Class Vehicles. Specifically, the Settlement Class is defined as:

All persons or entities in the fifty United States and the District of Columbia who currently own or lease, or previously owned or

leased, a model year 2015 to 2017 U.S. specification Hyundai Sonata vehicle equipped with the Smart Trunk feature purchased in the fifty United States and the District of Columbia.<sup>1</sup>

Excluded from the Settlement Class are:

Defendant, as well as Defendant's affiliates, employees, officers, and directors, attorneys, agents, insurers, and dealers; third-party providers of extended warranty/service contracts; independent repair/service facilities; the attorneys representing Defendant in this case; the judges and mediator to whom this case is assigned and their immediate family members; all persons and entities who request exclusion from (opt-out of) the Settlement, who previously released any claims encompassed in this Settlement, or whose vehicle was permanently transported outside the United States after sale; and all persons or entities claiming personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.

The Agreement provides for a release of Settlement Class members' claims in exchange for a cash payment in the form of a debit card or dealer credit, warranty extension, replacement of current torsion bars on the Class Vehicles (as well as a second replacement if necessary), and reimbursement of previous repair costs incurred by Class members in an attempt to repair the Vehicle to allow the Smart Trunk to open to expectation.

**A. Monetary And Other Relief**

The Agreement outlines separate areas of relief to the Class members:

---

<sup>1</sup> The Complaint originally sought to certify a nationwide class and Pennsylvania sub-class of all individuals or entities "who leased or purchased, not for resale, a Hyundai vehicle equipped with a Smart Trunk"; however, confirmatory discovery revealed that the Smart Trunk on the Class Vehicles is distinguishable from other Hyundai models with the Smart Trunk feature, in that it was designed differently and had different components and materials which, among other things, made the trunk heavier than trunks in other models. As a result of these differences, Plaintiff seeks to certify a Settlement Class consisting of purchasers of model-year 2015-2017 Hyundai Sonata vehicles equipped with the Smart Trunk feature. (Decl., ¶¶ 4, 28.)

**1. Cash Payment or HMA Dealer Credit for Documented Complaint**

All Class members who have a documented complaint<sup>2</sup>, repair, or warranty claim pertaining to the Smart Trunk not opening to expectation, prior to the Class Notice, may submit one claim for payment of \$50 cash in the form of a debit card or a \$100 HMA dealer credit, regardless of whether the Class member has any out-of-pocket loss. (Decl. ¶ 1, Exhibit 1, § III.A.)

**2. Torsion Bar Inspection, Replacement, and Credit**

Class members who believe that the Smart Trunk is not opening 7.5 inches or more may make an appointment with an authorized HMA dealer for an inspection of eligible Class Vehicle(s). Following the TSB that was created as a result of this Settlement and will be provided to all HMA dealers, if an authorized dealer determines that any Smart Trunk on a Class Vehicle opens less than 7.5 inches, replacement of the torsion bars will then be performed by the authorized dealer. All costs associated with the repair will be covered; the inspection and any necessary repair or replacement will be provided to the Class member free of charge by the authorized dealer pursuant to TSB Number 19-BD-222. After the installation of the replacement torsion bars, the Class member is also entitled to submit one claim for payment of a \$70 HMA dealer credit. The Agreement also provides additional relief to Class members whose torsion bars still fail to open 7.5 inches or more after replacement torsion bars were installed. After the second installation of replacement torsion bars, the Class member may submit one additional claim for a \$100 debit card or a \$200 HMA dealer credit. The inspection and any necessary repair or replacement of the

---

<sup>2</sup> In order to receive either the \$50 debit card or \$100 HMA dealer credit, Class members must submit a Claim form to the Claims Administrator that is post-marked during the Claims Submission Period and include: (a) documentation that identifies the Class Vehicle VIN; and (b) a repair order, invoice, or other documentation that identifies a documented complaint made to a Hyundai dealer, to HMA directly, or made on a publicly available complaint forum regarding the Smart Trunk not opening to expectation that includes a description of the complaint along with information regarding repair or lack thereof, and payment for repair, if applicable.

Smart Trunk torsion bars is only available for Class Vehicles within 6½ years of service or less than 78,000 miles, whichever comes first. (Decl., Exhibit 1, § III.C.)

**3. Warranty Extension**

Class Vehicle(s) under warranty will receive a warranty extension for the Smart Trunk torsion bars from five (5) years or 60,000 miles to six and one-half (6½) years or 78,000 miles. Class Vehicles that are outside the warranty as of the date of the Final Approval Order will receive a warranty extension specific to the Smart Trunk Torsion Bars for a period of eighteen (18) months or 18,000 miles. The warranty extension is subject to the terms and conditions of the original warranty, as are the replacement parts, but is transferrable in connection with any transfer of ownership of the Class Vehicle. (Decl., Exhibit 1, § III.D.)

**4. Reimbursement for Out-of-Pocket Expenses**

In addition to the warranty extension and service campaign, any Class member who has incurred an out-of-pocket expense for repair will be entitled to submit one claim for reimbursement of those repair expenses if the Class member submits proof of payment of repairs involving the Smart Truck. Further, the Settlement contains a dispute resolution process if any Class member wishes to contest the reimbursement decision, and Class members will have the right to participate in a Better Business Bureau alternative dispute resolution process, for which all fees and expenses (other than attorneys' fees) will be borne by HMA. (Decl., Exhibit 1, § III.E.)

**5. HMA Advertising**

HMA will also act in good faith and ensure that its advertising conforms to the design expectations for the Smart Trunk feature and does not show the trunks fully opening. (Decl., Exhibit 1, §III.F.)

**6. Attorneys' Fees and Costs**

Subject to Court approval, Class Counsel will seek an award of attorneys' fees, costs and expenses of up to \$828,870, and Plaintiff will seek a service award of \$5,000. (Decl., Exhibit 1, § VIII.)

**B. Dismissal With Prejudice And Release Of Claims**

In exchange for these significant benefits to Settlement Class members, the Agreement provides that all participating members in the Settlement Class will fully release Defendant from all federal and state law claims that could have been asserted in this Action relating, in any way, to the Class Vehicles' Smart Trunk. (Decl., Exhibit 1, §VII.) The releases do not, however, include claims against Defendant unrelated to the Released Claims, unrelated to the Class Vehicles' Smart Trunk, or include persons or entities that have previously executed settlement releases concerning the Class Vehicles' Smart Trunk. Such persons or entities that have previously executed settlement releases are specifically excluded from the Class.<sup>3</sup> (*Id.*)

**C. Notice**

The Settlement contains a variety of measures to make sure Class members receive adequate notice, which is consistent with the requirements of Rule 23. Under the Settlement, HMA will be responsible for bearing the full costs of Notice. The Notice will be disseminated by the Consumer Affairs Division of HMA, which also will serve as the Settlement Administrator ("Administrator") and assume all costs in order to facilitate issuance of Notice and administration of the Settlement.<sup>4</sup> (Decl., Exhibit 1, §§ IV.A; IV.D; VIII.A.)

---

<sup>3</sup> The complete and controlling terms of the releases are set forth in the Agreement. (Decl., Exhibit 1, § VII.)

<sup>4</sup> The Settlement also requires that Defendant provide notice to the appropriate state and federal officials as required by the Class Action Fairness Act, 28 U.S.C. §1715. (Decl., Exhibit 1, § II.)

The Administrator will send a Long Form Notice and Claim Form to Class members by direct United States Postal Service (“USPS”) first class mail. A list of Vehicle Identification Numbers (“VINs”) of the Class Vehicles, as well as warranty claims for the Class Vehicles, will be obtained by the Consumer Affairs Division of HMA, and IHS Markit or a separate entity will be retained to search the applicable registration databases to identify the addresses of all Class members. (Decl., Exhibit 1, § I.C, IV.A.) The Claim Form and the Long Form Notice are attached to the Agreement as Exhibits “A” and “B” respectively. The Settlement Administrator will re-send returned notices if an address correction or forwarding address appears on the returned envelope. (Decl., Exhibit 1, § IV.A.2.)

Further, the Settlement requires that a neutral, informational Settlement Website be maintained where Class members can obtain additional information and documents, including the Agreement, Preliminary Approval Order, Complaint, answers to frequently asked questions, and any other information that the parties agree to provide or that the Court may require. (Decl., ¶ 33.) Settlement Class members will also be able to submit claims online or via an email account maintained by the Settlement Administrator. The Settlement Administrator will also provide, or make available through the Settlement website, a copy of the Notice and Claim Form to any Settlement Class Member who requests the documents. Finally, the Settlement requires the establishment of a dedicated toll-free number and a postal mailing address and email address, allowing Class members to request additional information and call with questions. (*Id.*)

## **LEGAL ARGUMENT**

### **I. THE PROPOSED SETTLEMENT CLASS SATISFIES THE REQUIREMENTS OF RULE 23**

---

This Court should preliminarily certify the proposed Settlement Class because it meets all applicable requirements of Federal Rule of Civil Procedure 23. Certification of a settlement class

is appropriate where the four prerequisites of Rule 23(a) – numerosity, commonality, typicality, and adequacy of representation – are satisfied. *See* Fed. R. Civ. P. 23(e). In addition, a settlement class must satisfy one of the three subsections of Rule 23(b). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614, 620 (1997) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial. But other specifications of the rule . . . demand undiluted . . . attention in the settlement context.”). In other words, the Court must be satisfied that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). In analyzing Rule 23’s elements in the settlement context, this Court “may take the terms of the proposed settlement into consideration. The central inquiry . . . is the adequacy of representation.” *In re Community Bank of Northern Virginia*, 418 F.3d 277, 300 (3d Cir. 2005). Further, in analyzing Rule 23’s elements, this Court must analyze whether the representative parties “fairly and adequately protect the interests of the class.” *Greenfield v. U.S. Healthcare, Inc.*, 146 F.R.D. 118, 125 (E.D. Pa. 1993).

**A. The Settlement Class Is Sufficiently Numerous**

The proposed Settlement Class satisfies Rule 23(a)’s numerosity requirement. “No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.” *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001). Here, HMA provided information that it sold more than thirty thousand of the Class Vehicles during the pertinent time period. (Decl. ¶ 10.) Thus, the numerosity requirement is easily satisfied. *Williams*

*v. City of Phila.*, 270 F.R.D. 208, 215 (E.D. Pa 2010) (finding that numerosity is established when “class could number in the hundreds or thousands”).

**B. There Are Common Questions Of Law And Fact**

This is a settlement class, not a litigation class, so the proposed Settlement Class also satisfies Rule 23(a)’s commonality requirement for settlement purposes only. “[A] finding of commonality does not require that all class members share identical claims.” *In re Warfarin Sodium Antitrust Litigation*, 391 F.3d 516, 530 (3d Cir. 2004) (quotations omitted). “The commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.” *Stewart*, 275 F.3d at 227 (quotations omitted) (emphasis omitted).

Here, several common questions of fact and law exist that pertain to the central issue in this matter – whether the Class Vehicles are defective and breach Defendant’s express warranty, whether HMA’s conduct violated consumer fraud statutes, and whether HMA’s conduct caused Plaintiff and Class members to be damaged. Courts in this Circuit routinely hold that the commonality element is satisfied when a plaintiff asserts that a defendant’s vehicle contains a defective component. *See Martin v. Ford Motor Co.*, 292 F.R.D. 252, 267 (E.D. Pa. 2013) (“Proving the Benteler Axle was defective is a factual question central to each of Plaintiff’s claims—breach of express and implied warranty, consumer protection violations, and unjust enrichment.”); *Sanneman v. Chrysler Corp.*, 191 F.R.D. 441, 447 (E.D. Pa. 2000) (commonality requirement met when “Plaintiff challenges the Defendant’s use of the Ecoat paint system, and the alleged failure to disclose that the vehicles purchased by each proposed class member ‘contained a latently defective paint job.’”); *Neale v. Volvo Cars of N. Am., LLC*, 2013 WL 1223354, at \*9 (D.N.J. Mar. 26, 2013) (common questions “include whether the sunroof drainage systems in the

Class Vehicles are defective, whether Defendants knew of the defect but failed to disclose it to the Class, and whether the maintenance instructions were inadequate and/or uniformly deficient.”); *In re Mercedes-Benz Tele Aid Contract Litigation*, 257 F.R.D. 46, 69 (D.N.J. 2009) (defendant’s alleged failure to disclose material facts regarding the Tele Aid service to vehicle owners render the claims amenable to common proof).<sup>5</sup>

Plaintiff asserts that the Smart Trunks of the Class Vehicles are defective in that they do not open fully when the “hands-free” feature is utilized. Specifically, Plaintiff alleges that the Class Vehicles have the same defective torsion bars causing the trunk lids to fail to open fully and that HMA performed the same “repairs” on the Class Vehicles, which have consistently failed to remedy the defect notwithstanding that HMA advertised that the Smart Trunks could open wide enough to put in bulky items without having to set items down or manually open the trunk lid. (Decl. ¶¶ 4-11.) Moreover, the Class Vehicles are subject to the same express warranty provided by HMA. Thus, the proposed Settlement Class satisfies the commonality requirement.

**C. The Representative Plaintiff’s Claims Are Typical**

Rule 23(a)(3)’s “typicality requirement is designed to align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their own goals.” *In re Warfarin Sodium*, 391 F.3d at 531 (quotation marks omitted). “[C]ases challenging the same unlawful conduct which affects both the named plaintiffs and the putative

---

<sup>5</sup> See also e.g. *In re Zurn Pex Plumbing Products Liability Litigation*, 644 F.3d 604 (8th Cir. 2011) (determining “interpretation of *Zurn*’s warranty and its application to . . . plaintiffs is a common question that lends itself to efficient class wide resolution under Rule 23”); *Wolin v. Jaguar Land Rover N. Am.*, 617 F.3d 1168, 1172 (9th Cir. 2010) (claims of all prospective class members involve the same alleged defect, are covered by the same warranty, and found in vehicles of the same make and model); *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006) (determining “question of whether the throttle body is defective is common to all 1999 or 2000 Villager owners because they all have the same throttle body and warranty”).

class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims.” *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994).

Here, Plaintiff’s claims are typical of all other Class members in that he experienced common defects in the Class Vehicles and was subject to the same warranties as all other Class members. Plaintiff asserts the same legal claims on behalf of himself and the proposed Class; namely, that he sustained damages as a result of Defendant’s common course of conduct and is not subject to any unique defenses. These similarities satisfy Rule 23(a) typicality requirements.

**D. The Representative Plaintiff Has Fairly And Adequately Protected The Interests Of The Settlement Class**

The representative plaintiff must “fairly and adequately protect the interests of the class.” Fed.R.Civ.P. 23(a)(4). The adequacy inquiry “assures that the named plaintiffs’ claims are not antagonistic to the class and that the attorneys for the class representatives are experienced and qualified to prosecute the claims on behalf of the entire class.” *Beck v. Maximus, Inc.*, 457 F.3d 291, 296 (3d Cir. 2006) (citation and quotation marks omitted).

Here, Plaintiff and the Class he seeks to represent share common interests with respect to seeking compensation for the alleged defects with the Class Vehicles. By proving his own claims, Plaintiff would necessarily help to prove the claims of his fellow Class members. In addition, Plaintiff has no interests that are antagonistic to the Class. (Decl. ¶ 11.) Further, Class Counsel are highly qualified and experienced class action litigators familiar with the legal and factual issues involved. (Decl. ¶ 13, Exhibits 2-4 (resumes of each of the Class Counsel).) Thus, the adequacy requirement is satisfied.

**E. The Proposed Class Satisfies The Predominance And Superiority Requirements**

The proposed Settlement Class also satisfies Rule 23(b)'s two requirements. First, the common questions discussed above predominate over individual questions, and second, a class action is superior to other methods of adjudicating the controversy. *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 296 (3d Cir. 2011) (*en banc*). The focus on predominance in a settlement class is whether the defendant's conduct was common to all class members and whether all of the class members were harmed by the defendant's conduct. *Sullivan*, 667 F.3d at 298. That is precisely the case here. The predominating questions include whether the Class Vehicles have similarly defective Smart Trunks, whether HMA issued the same warranties on the Class Vehicles to all Class members and violated consumer fraud statutes, and whether Class members were harmed by HMA's conduct.

The existence of minor variations in state law relating to express warranty claims or consumer fraud claims does not defeat predominance, particularly since this is a settlement class. *Sullivan*, 667 F.3d at 298-99 (certifying a settlement class despite the fact that variances in state law would likely have defeated predominance if the class was being certified for trial). Indeed, "variations [in state laws] are irrelevant to certification of a settlement class' since a settlement would eliminate the principal burden of establishing the elements of liability under disparate laws." *Id.* at 303 (quoting *In re Prudential Insurance Co. of America Sales Practices Litigation*, 148 F.3d 283, 315 (3d Cir. 1998)).

Rule 23(b)(3) also requires a showing that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Class adjudication of Plaintiff's claims here would be superior to individual trials, and joinder of all Class members is impracticable. The class action mechanism is superior to its alternatives, particularly with respect

to settlements, because it ensures that the claims of the absent class members will be resolved efficiently. *Marsden v. Select Medical Corp.*, 246 F.R.D. 480, 489 (E.D. Pa. 2007) (finding superiority requirement satisfied because, *inter alia*, “concentrating the litigation here would serve important goals of judicial economy and avoiding redundant litigation”).

Absent class certification, many members of the proposed Settlement Class here would go uncompensated because they would lack adequate monetary incentives to pursue their claims individually. *See id.* (superiority requirement met because, *inter alia*, “[m]ost class members are likely to have a small loss, and are thus unlikely to pursue claims on an individual basis”). The prosecution of separate actions by individual members of the proposed Class would impose heavy burdens on the courts and the parties, and would create a risk of inconsistent rulings, which further favors class treatment. Moreover, the interests of Class members in individually controlling the prosecution of separate claims are outweighed by the efficiency of the class mechanism. For all these reasons, the Settlement Class meets all applicable requirements of Rule 23(a) and (b)(3) and the Court should enter the Order certifying the Settlement Class.

## **II. THE SETTLEMENT SATISFIES THE CRITERIA FOR PRELIMINARY APPROVAL**

### **A. Governing Standards**

Settlement spares litigants the uncertainty, delay and expense of a trial, and reduces the burden on judicial resources. As a result, “[c]ompromises of disputed claims are favored by the courts.” *Williams v. First Nat’l Bank*, 216 U.S. 582, 595 (1910). This is “particularly [true] in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 535 (“[T]here is an overriding public interest in settling class action litigation, and it should therefore be

encouraged.”); *In re Sch. Asbestos Litig.*, 921 F.2d 1330, 1333 (3d Cir. 1990) (the court “encourage[s] settlement of complex litigation that otherwise could linger for years”).

Court approval of a class settlement is a two-step process. First, the Court must make an initial assessment of the fairness of the Settlement and, if the Settlement passes that test, grant preliminary approval. Second, the Court will order counsel to provide notice to the class and schedule a fairness hearing to determine whether to grant final approval of the proposed settlement. *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 562, (D.N.J. 1997); *In re: Amtrak Train Derailment in Philadelphia, Pa.*, No. 2:15-cv-04354-LDD, 2016 WL 1359725, at \*2 (E.D. Pa. Apr. 6, 2016) (“Review of a proposed class action settlement is a two-step process: preliminary approval and a subsequent fairness hearing.”). Authorization to disseminate notice is a recognition by a court that the settlement is in the range of possible approval. *See, e.g., In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 827 (W.D. Pa. 1995).

A settlement falls within the range of possible approval under Rule 23 if there is a conceivable basis for presuming that the standard applied for final approval will be satisfied. Fed. R. Civ. P. 23; *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 258 (3d Cir. 2009); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 316 (3d Cir. 1998), *cert. denied*, 525 U.S. 1114 (1999); *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 965 (3d Cir. 1983). “The preliminary approval decision is not a commitment [to] approve the final settlement; rather, it is a determination that ‘there are no obvious deficiencies and the settlement falls within the range of reason.’” *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 438 (E.D. Pa. 2008) (quoting *Smith v. Prof'l Billing & Mgmt. Servs., Inc.*, No. 07-4453, 2007 WL 4191749, at \*1 (D.N.J. Nov. 21, 2007)); *see also Mylan Pharms., Inc. v. Warner Chilcott Pub. Ltd. Co.*, Civ. No. 12-3824, 2014 WL 12778313, at \*2 (E.D. Pa. Feb. 20, 2008) (“Preliminary approval is not binding,

and it is granted unless a proposed settlement is obviously deficient.”); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995) (holding that the “preliminary determination establishes an initial presumption of fairness”). The final determination of whether to approve a settlement is made after a hearing and a finding that the settlement is fair, reasonable, and adequate. *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003).

While consideration of the requirements for final approval is unnecessary at this stage, it is important to consider “the guidelines governing final approval to assess the reasonableness of the agreement at this stage in an effort to ‘identify any potential issues that would preclude final approval.’” *Hernandez v. Earth Care, Inc.*, NO. 15-5091, 2016 WL 1461171, at \*2 (E.D. Pa. Apr. 13, 2016). In evaluating whether a settlement is reasonable on final approval, courts in this circuit consider:

(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

*Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). All of the relevant factors weigh in favor of the Settlement proposed here. The proposed Agreement is fair, reasonable, and adequate, and, therefore, this Court should preliminarily approve the Settlement.

The first *Girsh* factor weighs in favor of approval of the Settlement. Plaintiff brought this case on behalf of a national class which includes individuals and entities who leased or purchased, not for resale, a Class Vehicle equipped with Smart Trunk technology. The case, like other class actions, involves high levels of complexity and expense, which is one reason that judicial policy

so strongly favors resolution through settlement. Simply put, absent the Settlement, the case would be vigorously litigated for at least several additional years, given the complex factual and engineering issues that would require extensive discovery and expert opinion. Plaintiff's Counsel have frequently litigated automotive defect class actions that have taken years to resolve. Before ever approaching a trial here, the parties would most likely brief discovery motions, class certification, and summary judgment, in addition to expending resources on electronic discovery, depositions and experts. Moreover, there is a substantial likelihood of appeal from any decision on class certification, as well as an appeal of any final judgment. A certain result for Class members now, rather than a potentially larger, but contingent one at some indefinite time years in the future, when many Class members may no longer have the Vehicles, weighs in favor of approval of the Settlement.<sup>6</sup>

The third *Girsh* factor weighs in favor of approval of the Settlement. Here, before Plaintiff filed the Complaint in this matter, Plaintiff's Counsel devoted substantial time to investigating the underlying facts and developing the allegations, as well as the scope of HMA's representations. This included a review of publicly available sources of technical information and interviews of drivers, and enabled Plaintiff to plead a detailed Complaint which reflected a solid understanding of the issues. (Decl. ¶¶ 12, 14, 18.) Since the Order denying HMA's Motion to Dismiss, there has been a significant exchange of information from both sides, and Plaintiff retained an automotive expert. Then, in the course of negotiating the Settlement, the parties engaged in confirmatory discovery that provided greater insight into the data and conclusions reached by HMA regarding the Class Vehicles, including discovery of consumer complaints, warranty claims, root cause

---

<sup>6</sup> It is premature, at this point, to weigh the second *Girsh* factor, the reaction of the Class to the Settlement, since it has not yet been presented to them.

analysis and Quality Improvement Reports. Plaintiff's Counsel also received information from a senior research engineer familiar with the Smart Trunk on the Vehicles. Based on Counsel's experience, the information received was sufficient to allow Plaintiff's Counsel to assess the fairness of the proposed settlement for the Class. (Decl. ¶ 14.)

Further, the Settlement negotiations were conducted with the assistance of a well-respected mediator, David Geronemus. (Decl. ¶ 27.) The involvement of a mediator can assist counsel with assessing the relative strengths of their positions in reaching a fair settlement. *In re National Football League Players' Concussion Injury Litig.*, 301 F.R.D. 191, 198 (E.D. Pa. 2014); *see also Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 444 (E.D. Pa. 2008) (finding that the standards for preliminary approval were met where "settlement negotiations included two full days of mediation before an experienced mediator."). The Agreement represents the culmination of extensive and intensive arm's-length negotiations over the course of many months. Plaintiff was represented in the Settlement negotiations by a team of attorneys who have considerable experience in complex automotive and engine defect class actions, and who are therefore well-versed in the legal and factual issues. Defendant was similarly represented by experienced automotive class action counsel. The Settlement negotiations were highly contested and conducted with the utmost good faith. Through those extensive discussions, counsel for the parties were able to craft the Agreement given the allegations at issue in this case.<sup>7</sup> (Decl. ¶¶ 12, 14-17, 27-28)

---

<sup>7</sup> Counsel's judgment that the Settlement is fair and reasonable is also entitled to weight. *See E.E.O.C. v. Com. of Pa.*, 772 F. Supp. 217, 219-20 (M.D. Pa. 1991), *aff'd sub nom. Binker v. Com. of Pa.*, 977 F.2d 738 (3d Cir. 1992) ("[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, *taken as a whole*, is fair, reasonable and adequate to all concerned." (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982))).

The fourth, fifth and sixth *Girsh* factors (risks of establishing liability, damages and maintaining the class action through trial) are appropriately considered together for purposes of preliminary approval. *Mack Trucks, Inc. v. UAW*, No. 07–3737, 2011 WL 4402136, at \*4 (E.D. Pa. Sept. 22, 2011). The Court denied HMA’s Motion to Dismiss in all respects, and the decision outlines the risks involved and resources necessary to establish liability and damages. While each of the Plaintiff’s claims survived, the Court indicated that determining whether the alleged defect amounts to a breach or violation will be for the fact-finder. As such, proceeding through this litigation could prove to be a complex and expensive proposition, as described above. While Plaintiff believes that he would ultimately prevail, he recognizes the risks associated with complex class action litigation.

The seventh *Girsh* factor is neutral. HMA certainly has assets to pay more than the amount it will likely end up paying as a result of this Settlement. However, because the Settlement amount is uncapped, there is less cause for concern that Defendant is paying less than it should. Moreover, the fact that a defendant *can* pay more does not make an otherwise reasonable settlement unreasonable. *See Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at \*11 (D.N.J. Mar. 22, 2013) (“Plaintiffs acknowledge that ‘there is currently no indication that Volvo here would be unable to withstand a more significant judgment,’ but ‘to withhold approval of a settlement of this size because it could withstand a greater judgment would make little sense where the [settlement agreement] is within the range of reasonableness and provides substantial benefits to the Class.”) (citing cases in the Third Circuit where settlement was approved despite defendants’ ability to withstand a greater judgment); *In re Johnson & Johnson Derivative Litig.*, 900 F. Supp. 2d 467, 484 (D.N.J. 2012) (“But even assuming there are sufficient funds to pay a greater judgment, ‘the [Third Circuit] has found that a defendant’s ability to pay a larger settlement

sum is not particularly damaging to the settlement agreement's fairness as long as the other factors favor settlement") (quotations omitted) (citations omitted).

The final two *Girsh* factors "evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case." *Warfarin*, 391 F.3d at 538. As courts in the Third Circuit have often explained, "[a]ccording to *Girsh*, courts approving settlements should determine a range of reasonable settlements in light of the best possible recovery (the eighth *Girsh* factor) and a range in light of all the attendant risks of litigation (the ninth factor)." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d at 806. Additionally, in conducting this evaluation, the Court should keep in mind "that settlement represents a compromise in which the highest hopes for recovery are yielded in exchange for certainty and resolution and [courts should] guard against demanding too large a settlement based on the court's view of the merits of the litigation." *In re Aetna, Inc.*, 2001 WL 20928, at \*11 (E.D. Pa. Jan. 4, 2001). In this case, while continued litigation offers the uncertainty of class certification and the diminishing returns associated with the passage of time, the proposed Settlement would provide Class members with most of what they could have received at trial. HMA is offering all Class members a free extended warranty and a free inspection and installation of up to two sets of torsion bars at no cost. Class members with documented complaints can receive a \$50 debit card or \$100 in dealer credit even if they had no expenses, and HMA is also reimbursing Class members for past repair expenses, with minimal documents required. Based on their experience in similar cases and familiarity with the strengths and weaknesses of this case, Plaintiff's Counsel believe the proposed Settlement to be in the best interests of the Class and respectfully request that the Court approve it.

**III. THIS COURT SHOULD APPOINT PLAINTIFF'S COUNSEL AS LEAD CLASS COUNSEL**

---

Rule 23(c)(1)(B) states that an order certifying a class action “must appoint class counsel under Rule 23(g).” The court must consider “(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources counsel will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A).

James C. Shah and Natalie J. Finkelman Bennett of Shepherd, Finkelman, Miller & Shah, LLP; Noah Axler and Marc Goldich of Axler Goldich, LLC; and Robert P. Cocco of Robert P. Cocco, P.C. have been cooperatively working together on this case as counsel for Plaintiff. The work done by these firms provides a substantial basis for a finding that they satisfy each applicable criterion under Rule 23(g), and are well qualified to serve as Class Counsel. (Decl. ¶¶ 12-13.) These firms have performed a great deal of work investigating the facts underlying this case, analyzed the documents and information produced, and have otherwise prepared the litigation for a putative class action, and they have negotiated and executed the Agreement. (Decl. ¶¶ 15-19, 27.) Accordingly, Counsel should be appointed as Class Counsel.

**IV. THE COURT SHOULD APPROVE THE PROPOSED NOTICE**

The parties also seek this Court’s approval of the Notice procedures set out in the Settlement. (Decl. ¶¶ 29-33.) Under the proposed Notice, the Consumer Affairs Division of HMA will send direct mail Notice to members of the Settlement Class. (*Id.*)

Rule 23(c)(2) provides that class members must receive the “best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable efforts.” Fed. R. Civ. P. 23(c)(2). Similarly, Rule 23(e)(1) states that “[t]he court must

direct notice in a reasonable manner to all class members who would be bound by the propos[ed] [settlement].” Fed. R. Civ. P. 23(e)(1). “The combination of reasonable notice, the opportunity to be heard and the opportunity to withdraw from the class satisfy the due process requirements of the Fifth Amendment.” *In re Prudential*, 148 F.3d at 306. *See also Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90-91 (3d Cir. 1985); *Grunewald v. Kasperbauer*, 235 F.R.D. 599, 609 (E.D. Pa. 2006).

**A. The Proposed Methods For Providing Notice Meet The Requirements For Approval**

The parties propose that the Consumer Affairs Division of HMA, as Settlement Administrator, mail individual direct Notice to each Class member. (Decl. ¶¶ 30-32.) Further, the parties propose that the Settlement Administrator publish Notice on a dedicated website. (Decl. ¶ 33.) These proposed methods of providing notice fully satisfy Rule 23(c), Rule 23(e), and due process.

**B. The Proposed Content Of The Notice Meets The Requirements For Approval**

The proposed content of the Notice also satisfies Rule 23(c)(2), Rule 23(e) and due process, which requires that notice of a proposed settlement must inform class members about the Settlement’s general terms, that the Class members can seek complete information from the court files, and that any Class member may appear and be heard at a final approval hearing. *See Meijer, Inc. v. 3M*, 2006 WL 2382718, at \*10 (E.D. Pa. Aug. 14, 2006). “Although the notice need not be unduly specific the notice document must describe, in detail, the nature of the proposed settlement, the circumstances justifying it, and the consequences of accepting and opting out of it.” *Id.* (internal quotation marks omitted).

Class Counsel propose a notice that will maximize the opportunity for members of the Class to understand the nature of the Class, the Settlement, and to respond appropriately if they so

choose. The proposed Long Form Notice is written in plain English and describes: (1) the nature of the claims in the case; (2) a description of the Settlement Class; (3) a description of the Settlement and the relief to be provided; (4) the consequences of opting out or remaining in the Class; and (5) how to get more information from this Court about the Settlement, the parties involved and the procedures to follow to object or opt out. (Decl. ¶¶ 32-33.) The Notice also includes the deadline to object to or opt out of the Settlement, and the date of the Final Approval Hearing. (*Id.*) The Notice also states that Class members can enter an appearance through counsel if desired. Finally, the Notice states how to get information about making a claim and the applicable deadlines for submitting a claim. Accordingly, the contents of the Notice meet all requirements and fully apprises Class members of their options. *See In re Prudential*, 148 F.3d at 328 (finding that notice provided the class members all of the required information about their rights and obligations under the settlement agreement).

All of the costs of Notice and administration will be fully borne by Defendant. Plaintiff has secured the most efficient Notice program possible, which can be done using the addresses of the owners and lessees of the Class Vehicles acquired by the Settlement Administrator. The Agreement provides that, no later than 60 days after the entry of the Preliminary Approval Order, the Consumer Affairs Division of HMA, which has successfully acted as the administrator in numerous class action cases, must disseminate Notice directly to the Class. (Decl. ¶ 30.) The parties therefore respectfully move this Court to approve the proposed form and manner of Notice to the Settlement Class.

**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully asks this Court to: (1) certify the proposed Settlement Class; (2) preliminarily approve the Agreement submitted herein; (3) appoint Plaintiff's Counsel as Lead Class Counsel; and (4) approve the Notice to be issued to the Settlement Class.

DATED: February 15, 2019

Respectfully submitted,

/s/James C. Shah

James C. Shah  
Natalie Finkelman Bennett  
**SHEPHERD, FINKELMAN,  
MILLER & SHAH, LLP**  
475 White Horse Pike  
Collingswood, NJ 08107  
Tel: (856) 858-1770  
Fax: (866) 300-7367  
E-mail: [jshah@sfmslaw.com](mailto:jshah@sfmslaw.com)  
[nfinkelman@sfmslaw.com](mailto:nfinkelman@sfmslaw.com)

Noah Axler  
Marc A. Goldich  
**AXLER GOLDICH LLC**  
1520 Locust Street, Suite 301  
Philadelphia, PA 19102  
Tel: (267) 534-7400  
Fax: (267) 534-7407  
E-mail: [naxler@axgolaw.com](mailto:naxler@axgolaw.com)  
[mgoldich@axgolaw.com](mailto:mgoldich@axgolaw.com)

Robert P. Cocco  
**ROBERT P. COCCO, P.C.**  
1500 Walnut St., Ste. 900  
Philadelphia, PA 19102  
Tel: (215) 351-0200  
Fax: (215) 261-6055  
E-mail: [rcocco@rcn.com](mailto:rcocco@rcn.com)

*Counsel for Plaintiff and the Class*

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSHUA RIAUBIA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

HYUNDAI MOTOR AMERICA

Defendant.

CASE NO.: 2:16-cv-05150-CDJ

---

**DECLARATION OF NATALIE FINKELMAN BENNETT IN SUPPORT OF  
UNOPPOSED MOTION FOR CERTIFICATION OF SETTLEMENT CLASS,  
PRELIMINARY APPROVAL OF SETTLEMENT, APPOINTMENT OF CLASS  
COUNSEL AND APPROVAL OF CLASS NOTICE**

---

I, Natalie Finkelman Bennett, hereby state as follows:

1. I am a partner at the law firm of Shepherd, Finkelman, Miller & Shah, LLP. I am admitted to practice in Pennsylvania and New Jersey, as well as multiple circuit and federal courts. I have personal knowledge of the matters discussed herein, and, if called as a witness, could testify competently thereto. I am submitting this declaration in support of the Plaintiffs' Unopposed Motion for Certification of Settlement Class, Preliminary Approval of Settlement, Appointment of Class Counsel and Approval of Class Notice.

2. Attached as **Exhibit 1** is the proposed Settlement Agreement and Release ("Settlement Agreement" or "Agreement").

3. On September 28, 2016, Plaintiff filed this action against Defendant, Hyundai Motor America ("HMA" or "Defendant"). (ECF 1.) The Complaint states claims for violations of California consumer protection statutes, violations of the federal Magnuson-Moss Warranty

Act, 15 U.S.C. § 2301, *et seq.*, and breach of express and implied warranties on behalf of a nationwide class, as well as alternative claims for violations of express and implied warranty and unjust enrichment under Pennsylvania law on behalf of a Pennsylvania class.

4. The Complaint alleges that the Smart Trunk, first made available on model-year 2015 vehicles, is a proximity-activated trunk lid that, due to a common and inherent defect, fails to operate as advertised. HMA designed the Smart Trunk to automatically open by standing directly behind the vehicle with a proximity key in one's hand, pocket, or purse. For the trunk to open automatically, the user must stand 20-40 inches behind the Vehicle for at least three seconds. After the three-second countdown, the trunk latch is automatically released, which is supposed to allow tensioned metal bars ("torsion bars") in the trunk to automatically open the trunk lid wide enough for consumers to place items in without using their hands. HMA's nationwide marketing campaign uniformly advertised the Smart Trunk as a "hands-free" feature that automatically opens the trunk lid wide enough to easily fit bulky items such as shopping bags, duffel bags, and sports apparel. This campaign included advertisements, images, and videos on the internet, in social media, in magazines, and on television. Plaintiff alleges that these representations were inaccurate because the Class Vehicles<sup>1</sup> share a common defect in that the Smart Trunk merely unlatches, failing to open more than a crack, which requires consumers to manually push open the trunk lid, and thus fails to provide the "hands-free" convenience advertised. (ECF 1, ¶¶ 14-18, 20-33, 41, 71, 73-80.)

---

<sup>1</sup> "Class Vehicles" means model year 2015 through 2017 U.S. specification Hyundai Sonata vehicles equipped with the Smart Trunk feature, imported and distributed for sale or lease in the fifty United States and the District of Columbia. The Settlement does not include all of the vehicles originally identified in the Complaint, based on the information learned in discovery, and accordingly, the release only applies to the Class Vehicles.

5. According to the Complaint, HMA advertises that the Class Vehicles carry “America’s Best Warranty,” which gives consumers “more than peace of mind, it’s a commitment from HMA to maintain a high degree of quality, dependability, and reliability.” The New Vehicle Limited Warranty covers the Smart Trunk defect at issue here, but Plaintiff alleges that Defendant has failed to provide him and Class members with conforming, non-defective Smart Trunks, notwithstanding multiple attempts at repair. (ECF 1, ¶¶ 82-127.)

6. Plaintiffs’ alleged damages included, *inter alia*, the need for an adequate repair of the Smart Trunk and out-of-pocket costs, as well as statutory damages.

7. HMA has always denied and continues to deny that the Class Vehicles are defective or that it violated any laws, and disputes all of Plaintiff’s material allegations.

8. Plaintiffs believe that the proposed settlement with Defendant is fair, reasonable, adequate, and is in the best interests of the members of the Settlement Class.<sup>2</sup>

9. The proposed Settlement Class should be preliminarily certified because it satisfies the requirements of Rule 23(a) and 23(b)(3).

---

<sup>2</sup> The proposed Settlement resolves all claims against HMA on behalf of a nationwide class of all purchasers and lessees of the Class Vehicles. Specifically, the Settlement Class is defined as: “All persons or entities in the fifty United States and the District of Columbia who currently own or lease, or previously owned or leased, a model year 2015 to 2017 U.S. specification Hyundai Sonata vehicle equipped with the Smart Trunk feature purchased in the fifty United States and the District of Columbia.” Excluded from the Settlement Class are: “Defendant, as well as Defendant’s affiliates, employees, officers, and directors, attorneys, agents, insurers, and dealers; third-party providers of extended warranty/service contracts; independent repair/service facilities; the attorneys representing Defendant in this case; the judges and mediator to whom this case is assigned and their immediate family members; all persons and entities who request exclusion from (opt-out of) the Settlement, who previously released any claims encompassed in this Settlement, or whose vehicle was permanently transported outside the United States after sale; and all persons or entities claiming personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.”

10. The proposed Settlement satisfies the numerosity requirement because, based on documents and warranty data produced, HMA sold approximately 30,000 Class Vehicles.

11. The Representative Plaintiff and the Class he seeks to represent share common interests with respect to seeking compensation for defective Class Vehicles that they all purchased. By proving his own claims, Plaintiff would necessarily help to prove the claims of his fellow Class members. In addition, Plaintiff has no interests that are antagonistic to the Class.

12. Plaintiff's Counsel have performed a great deal of work investigating the facts underlying the litigation, engaging in motion practice, discovery, mediation, negotiation, and preparation of settlement documents and are experienced class action litigators familiar with the legal and factual issues involved.

13. Attached hereto as **Exhibits 2-4** are the firm resumes of Shepherd, Finkelman, Miller, & Shah, LLP (**Exhibit 2**), Axler Goldich, LLC (**Exhibit 3**), and Robert P. Cocco, P.C. (**Exhibit 4**) ("Plaintiff's Counsel"). The work done by Plaintiff's counsel provides a substantial basis for a finding that they satisfy each applicable criterion under Rule 23(g), and are well qualified to serve as Class Counsel.

14. There has been extensive information exchange and informal discovery on both sides, more than a sufficient amount for the parties to appreciate the merits of the case. Plaintiff reviewed of over twenty thousand pages of documents produced by HMA, including: engineering testing; engineering data; Vehicle and component specifications; warranty complaints and repairs; information as to the difference between the Sonata Smart Trunk components and the components in Hyundai's other models; root cause and countermeasure data; and Quality Information Reports regarding the Smart Trunk. Further, pursuant to an agreed

protocol, Plaintiff's Vehicle was inspected by Defendant and Plaintiff's expert also reviewed HMA's materials and the Vehicle.

15. The Agreement represents the culmination of extensive and intensive arm's-length negotiations over the course of many months. The settlement negotiations were contested and conducted in the utmost good faith.

16. Plaintiffs were represented in the settlement negotiations by a team of attorneys who have had considerable experience in complex, auto-defect class actions, and who are therefore well-versed in the issues.

17. Defendant was similarly represented by counsel with extensive experience defending auto-defect class actions and complex litigation matters.

18. This action was commenced by Plaintiff on September 28, 2016. (ECF 1.) Prior to initiating the action, Class Counsel spent considerable time investigating the issues with Plaintiff and a number of other potential Settlement Class Members, reviewed dozens of complaints from Class Vehicle owners and investigated the scope of the problems with the Class Vehicles.

19. In addition, Class Counsel researched the various laws potentially applicable to the claims, including applicable state law.

20. Defendant filed a Motion to Dismiss the Complaint on December 23, 2016 (ECF 10) to which Plaintiff responded. (ECF 16.)

21. In January 2017, the parties met and discussed a Proposed Joint Discovery Plan. On February 20, 2017, Plaintiff served HMA with his Initial Disclosures and, on March 20, 2017, HMA served its Initial Disclosures on Plaintiff.

22. On May 16, 2017, Plaintiff filed the Report of the Parties' Rule 26(f) Conference. (ECF 21.)

23. Following extensive briefing, the Court entered an Opinion on August 22, 2017 (ECF 22), denying the Motion to Dismiss in all respects.

24. A protective order was entered on August 28, 2017. (ECF 24.)

25. HMA then propounded discovery requests on Plaintiff, and filed its Answer to the Complaint on October 6, 2017. (ECF 29.)

26. Thereafter, the parties commenced a dialogue to determine whether a framework could be developed to resolve the matter.

27. Ultimately, the parties agreed to utilize the services of David Geronemus, a well-respected neutral with JAMS. The parties participated in two in-person mediation sessions between December 2017 and May 2018. Both during and after that time frame, the parties also exchanged additional information and engaged in extensive telephonic negotiations. Specifically, the parties engaged in confirmatory discovery, including receiving information from engineers at HMA's parent, Hyundai Motor Company, and Plaintiff also received additional information about countermeasures and failure rates, which is reflected in the resulting Hyundai Technical Service Bulletin Number 19-BD-222, Trunk Lid Torsion Bar Inspection and Repair. Both during and after that time frame, the parties also participated in numerous telephonic negotiations with Mr. Geronemus.

28. During this confirmatory discovery process, Plaintiff received information from engineers working at Hyundai Motor Company showing that, although various Hyundai vehicle

models sold in the United States are equipped with a Smart Trunk feature,<sup>3</sup> the Smart Trunk on the 2015-2017 Sonata is distinguishable from the other Smart Trunk models for several reasons, including: (a) the weight of the trunk lid and LED tail lamps on the Sonata are heavier than the trunk lid on the Azera and Elantra which contributed to the torsion bar defect in the Sonata; (b) the Genesis has a power trunk and does not use torsion bars; (c) the 2015-2017 Sonatas use different parts and components than the other vehicle models equipped with the Smart Trunk, and (d) the trunk lid garnish, rear view camera, license plate, and license plate lamps on the Hyundai 2018 Sonata are designed differently from the 2015-2017 Sonata models. As a result, Plaintiff seeks to certify a Settlement Class consisting only of purchasers of model-year 2015, 2016, and 2017 Hyundai Sonata U.S. specification vehicles equipped with the Smart Trunk feature, and the release only applies to these Sonatas, and not to any other models.

29. The Agreement provides for a robust direct Notice program in accordance with Rule 23, which includes undertaking all reasonable efforts to obtain the names and mailing addresses of Settlement Class Members in order to facilitate issuance of Notice by direct mail.

30. The Consumer Affairs Division of HMA will serve as the Class Settlement Administrator (“Administrator”) to facilitate issuance of notice (and ultimately administer the claims). (Exhibit 1, § I.C.) The Consumer Affairs Division of HMA has successfully administered numerous settlements and has experience and procedures for the administration. HMA will pay all costs of Notice and Administration. (Exhibit 1, § IV.A.; IV.D.)

---

<sup>3</sup> Vehicles that include a Smart Trunk feature include: the 2015 Sonata (Sport, Limited, and Sport 2.0T); 2015-2016 Azera (all trims); 2015-2016 Genesis (all trims); 2016 Sonata (Limited, Sport 2.0T, and Limited 2.0T); 2017 Elantra (Eco and Limited); the 2017 Sonata (Limited, Sport 2.0T, and Limited 2.0T), and 2018 (LF) Sonata.

31. Plaintiff proposes that a detailed Notice and Claim Form will be sent by direct, United States Postal Service (“USPS”) first class mail. Prior to mailing, the postal mailing addresses will be checked by the Administrator. Notices returned as undeliverable will be re-mailed to any new address available through postal service information and upon successfully locating better addresses, Notices will be promptly re-mailed. Additionally, the Long Form Notice and Claim Form will be mailed to all persons who request one via the toll-free telephone number maintained by the Settlement Administrator. (Exhibit 1, § IV.)

32. The Long Form Notice will describe the nature of the claims and describe the Settlement and the Settlement Class. It will also include the deadline to object to or opt out of the Settlement, the consequences of and procedures for objecting and opting out, as well as the date of the final Fairness Hearing, date for submitting the Claim Form and all other important dates. The Notice also states that Class members can enter an appearance through counsel, if desired. (Exhibit 1, §§ IV, V, VI.)

33. Further, there will be a neutral, informational, Settlement website where potential Settlement Class members can obtain additional information and documents, including the Complaint, Agreement, Preliminary Approval Order, detailed descriptions of the types of Class Vehicles involved, answers to frequently asked questions and any other information that the parties agree to provide or that the Court may require. Additionally, Settlement Class Members will be able to file claims online. Finally, a toll-free number will be established, and postal mailing address and email address will be provided, allowing Settlement Class Members to request additional information via these channels. (Exhibit 1, §§ I.GG; IV.)

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 15, 2019

*/s/ Natalie Finkelman Bennett*  
Natalie Finkelman Bennett

# **Exhibit 1**

**SETTLEMENT AGREEMENT AND RELEASE**

Plaintiff, Joshua Riaubia (“Plaintiff” or “Class Representative”), by and through his counsel, and Defendant, Hyundai Motor America (“HMA” or “Defendant”), by and through its counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for the settlement of the claims herein described against Defendant (the “Settlement”).

**WHEREAS**, Plaintiff Joshua Riaubia filed a putative class action against Defendant HMA in the United States District Court for the Eastern District of Pennsylvania (*Riaubia v. Hyundai Motor America*, Civil Action No. 2:16-cv-5150-CDJ on September 28, 2016 (the “Action”)); and

**WHEREAS**, the parties in the Action engaged in motion practice, including a motion to dismiss, exchanged discovery demands and responses, and produced thousands of pages of documents; and

**WHEREAS**, the Court entered an order denying Defendant’s motion to dismiss Plaintiff’s Complaint on August 22, 2017; and

**WHEREAS**, Plaintiff and Defendant have conducted a thorough examination and investigation of the facts and law relating to the matters in Action; and

**WHEREAS**, the parties conducted two full days of in-person settlement negotiations with mediator David Geronemus, Esq. on January 9, 2018 and May 15, 2018, as well as further telephonic negotiations with the mediator; and

**WHEREAS**, the parties were able to reach an agreement to resolve the Action and the disputes between them; and

**WHEREAS**, Plaintiff and Defendant have vigorously contested all of the factual and legal issues in the Action; and

**WHEREAS**, for purposes of this settlement only, Plaintiff and Defendant (the “Parties”)

agree to the certification of a settlement class (“Class” or “Settlement Class”), subject to the Court’s approval, defined as follows:

All persons or entities in the fifty United States and the District of Columbia who currently own or lease, or previously owned or leased, a model year 2015 to 2017 U.S. specification Hyundai Sonata vehicle equipped with the Smart Trunk feature purchased in the fifty United States and the District of Columbia.

**WHEREAS**, the Parties agree that the following persons and entities should be excluded from the Class: Defendant, as well as Defendant’s affiliates, employees, officers, and directors, attorneys, agents, insurers, and dealers; third-party providers of extended warranty/service contracts; independent repair/service facilities; the attorneys representing Defendant in this case; the judges and mediator to whom this case is assigned and their immediate family members; all persons and entities who request exclusion from (opt-out of) the Settlement, who previously released any claims encompassed in this Settlement, or whose vehicle was permanently transported outside the United States after sale; and all persons or entities claiming personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims; and

**WHEREAS**, Defendant expressly denies any wrongdoing alleged in the Action and does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against it in the Action. Even though Defendant expressly denies any wrongdoing, Defendant has concluded that settlement is desirable in order to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve, finally and completely, all pending and potential claims of the Plaintiff and all members of the Class which were or could have been asserted by Plaintiff and the Class in the Action; and

**WHEREAS**, Plaintiff recognizes the substantial benefits to Plaintiff and the Class under the terms of this Settlement Agreement and the costs, risks, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation, and believe that it is in his interest, and the interest of all Class Members, to resolve the Action, and any and all claims against Defendant, in order to provide effective relief promptly to Plaintiff and the Class in this Settlement Agreement; and

**WHEREAS**, the undersigned Parties believe that this Settlement Agreement offers significant benefits to Class Members and is fair, reasonable, adequate, and in the best interest of Class Members; and

**WHEREAS**, this Settlement Agreement is made and entered into by and among Plaintiff, individually and on behalf of the Class, and Defendant;

**NOW, THEREFORE**, it is hereby stipulated and agreed, by and between the undersigned Parties, as follows:

**I. DEFINITIONS**

As used in this Settlement Agreement and the attached exhibits (which are an integral part of this Settlement Agreement and are incorporated in their entirety by reference), the following terms will have the meaning set forth below, unless this Settlement Agreement specifically provides otherwise. Where appropriate, terms used in the singular will be deemed to include the plural and vice versa.

- A. **Claimant.** “Claimant” means any Settlement Class Member who submits a claim for reimbursement as provided under this Settlement.
- B. **Claim Form.** “Claim Form” means a form in substantially the same form as that attached hereto as “**Exhibit A.**”

- C. **Claims Administrator.** “Claims Administrator” or “Settlement Administrator” mean Hyundai Motor America’s Consumer Affairs Division, using vehicle registration data and owner information obtained by IHS Markit or similar company to be approved by the Court in the Preliminary Approval Order
- D. **Claims Confirmation Process.** “Claims Confirmation Process” means the process by which properly submitted and timely claims are reviewed and validated by Defendant to ensure: (1) that the Class Vehicle’s warranty has not been invalidated or voided (as described herein), (2) that the VIN number associated with the claim matches the Settlement Class Member’s Vehicle’s VIN number, (3) that the claim has not previously been paid by HMA or an authorized HMA Dealer, as described more fully below in Section III(G)(1), (4) that the claim is for an item covered under this Settlement Agreement, (5) the claim is not fraudulently submitted.
- E. **Claims Submission Period.** “Claims Submission Period” means the ninety (90) day time period during which Settlement Class Members may submit claims for reimbursement of expenses.
- F. **Class Counsel.** “Class Counsel” means: Shepherd, Finkelman, Miller & Shah, LLP; Axler Goldich LLC; and Robert P. Cocco P.C.
- G. **Class Counsel Fees and Expenses.** “Class Counsel Fees and Expenses” means the reasonable attorneys’ fees and expenses approved by the Court, to be paid by Defendant.
- H. **Class Members or Class.** “Class Members” or “Class” means all current and former owners and lessees of a Class Vehicle in the fifty United States and the

District of Columbia.

- I. **Class Notice.** “Class Notice” means the Court-approved form of notice to current and former owners and lessees of Class Vehicles, in substantially the same form as that attached hereto as “**Exhibit B**,” sent pursuant to the Notice Program.
- J. **Class Representatives.** “Class Representative” means Joshua Riaubia.
- K. **Class Vehicles.** “Class Vehicles” means model year 2015 through 2017 U.S. specification Hyundai Sonata vehicles equipped with the Smart Trunk feature, imported and distributed for sale or lease in the fifty United States and the District of Columbia.
- L. **Court.** “Court” means the United States District Court for the Eastern District of Pennsylvania, the Honorable C. Darnell Jones presiding, or his duly-appointed successor.
- M. **Defect.** “Defect” means the Smart Trunk on Class Vehicles opens less than 7.5 inches.
- N. **Defendant.** “Defendant” means HMA, as well as its predecessors, successors, assigns, parents, affiliates, directors, officers, agents, attorneys, representatives, employees, insurers, and dealers.
- O. **Defendant’s Counsel.** “Defendant’s Counsel” means Buchanan Ingersoll & Rooney PC.
- P. **Effective Date.** “Effective Date” means the earliest of the following: (1) the date on which the Final Approval Order is entered by the Court and no Class Member submitted valid objections to the Settlement pursuant to the Settlement Agreement; (2) the date on which the time for appeal from the Final Judgment

approving the settlement has elapsed without any timely appeals being filed; or  
(3) the date on which all appeals from the Final Judgment approving this  
Settlement or from any appellate court decisions affirming the Final Judgment  
have been exhausted, and no further appeal may be taken.

- Q. **Final Approval Hearing.** “Final Approval Hearing” means the hearing at which the Court will consider and finally decide whether to enter the Final Approval Order, and to determine the Attorneys’ Fees and Expenses and Service Award. The Parties shall request the Court set the Final Approval Hearing no earlier than ninety (90) Days after the Notice Date.
- R. **Final Approval Order.** “Final Approval Order” means the Court order (which will be agreed upon by the Parties and submitted prior to the Final Approval Hearing), that approves this Settlement Agreement and makes such other final rulings as are contemplated by this Settlement Agreement.
- S. **HMA.** “HMA” means Defendant Hyundai Motor America.
- T. **Notice Program.** “Notice Program” means the process set forth in Section IV below to transmit Class Notices to Class Members.
- U. **Objection Deadline.** “Objection Deadline” means the date agreed upon by the Parties or otherwise ordered by the Court in the Preliminary Approval Order by which any Class Members who wish to do so must send to the Court and serve on the Parties any objections to the Settlement Agreement’s terms or provisions and submit any required statements, proof, or other materials or argument. The Objection Deadline shall be no later than 30 days before the date first set for the Final Approval Hearing.

- V. **Opt-Out Deadline.** “Opt-Out Deadline” means the postmark date agreed upon by the Parties or otherwise ordered by the Court in the Preliminary Approval Order, by which any Class Members who do not wish to be included in the Settlement Class and participate in the Settlement must complete the acts necessary to properly effect such election. The Opt-Out Deadline shall be no later than 30 days before the date first set for the Final Approval Hearing.
- W. **Opt-Out List.** “Opt-Out List” means a written list prepared by HMA of all Class Members who submit timely Requests for Exclusion.
- X. **Parties.** “Parties” means the Plaintiff and Defendant.
- Y. **Plaintiff.** “Plaintiff” means the Class Representative Joshua Riaubia.
- Z. **Preliminary Approval Order.** “Preliminary Approval Order” means the order of the Court preliminarily approving this Settlement Agreement, in substantially the same form as that attached hereto as “Exhibit C.”
- AA. **Release.** “Release” means the release and waiver set forth in Section VII of this Settlement Agreement and in the Final Approval Order.
- BB. **Request for Exclusion.** “Request for Exclusion” means the written communication that must be submitted to HMA and postmarked on or before the Opt-Out Deadline by any Settlement Class Member who wishes to be excluded from the Settlement Class.
- CC. **Service Award.** “Service Award” means the sum of money awarded to the Class Representative for his participation in the Action. Defendant agrees to pay the Class Representative a service award of up to \$5,000, subject to the Court’s approval. The service award will be paid separate and apart from, and will not

reduce, the benefits to the Class.

- DD. **Settlement.** “Settlement” means the agreement by the Parties to resolve the Action, the terms of which have been memorialized and provided for in this Settlement Agreement.
- EE. **Settlement Agreement.** “Settlement Agreement” means this Settlement Agreement and all the exhibits attached hereto.
- FF. **Settlement Class.** “Settlement Class” and “Settlement Class Member(s)” mean all persons or entities in the fifty United States and the District of Columbia who currently own or lease, or previously owned or leased, a model year 2015 to 2017 U.S. specification Hyundai Sonata vehicle equipped with the Smart Trunk feature. Excluded from the Settlement Class are Defendant, as well as Defendant’s affiliates, employees, suppliers, officers, and directors, attorneys, agents, insurers, and dealers; third-party providers of extended warranty/service contracts; independent repair/service facilities; the attorneys representing Defendant in this case; the judges and mediator to whom this case is assigned and their immediate family members; all persons and entities who request exclusion from (opt-out of) the Settlement; all persons and entities who previously released any claims encompassed in this Settlement or whose vehicle was permanently transported outside the United States; and all persons or entities claiming personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.
- GG. **Settlement Website.** “Settlement Website” means the Internet website to be established for this Settlement by the Settlement Administrator, whose domain

name and content shall be mutually agreed upon by the Parties, to provide information to the public and the Settlement Class about this Agreement and to permit Settlement Class Members to submit Claims online. The Settlement Website shall be activated no later than ten (10) days after the entry of the Preliminary Approval Order and shall remain active until the Effective Date or such later date as may be agreed to by Class Counsel and Defendant's Counsel.

- HH. **Smart Trunk.** "Smart Trunk" means the feature on Hyundai Sonata vehicles wherein the trunk can be opened with no-touch activation when the key fob is within the proximity range.
- II. **Torsion Bar.** "Torsion Bar" means the Hyundai Sonata vehicle trunk lid part (component) that promotes opening and keeping open the trunk lid using torsional force.
- JJ. **VIN.** "VIN" means Vehicle Identification Number.

## II. REQUIRED EVENTS

- A. Promptly after execution of this Settlement Agreement by all Parties:
1. Class Counsel and Defendant's Counsel will take all reasonable and necessary steps, subject to the Court's availability, to obtain entry of the Preliminary Approval Order and the Final Approval Order as expeditiously as possible.
  2. The Parties will seek entry of a Preliminary Approval Order in substantially the same form as that attached hereto as "**Exhibit C.**" The Preliminary Approval Order will, among other things:
    - a. Certify the Settlement Class; approve Joshua Riaubia as the Class Representative; and appoint Class Counsel, pursuant to Fed. R. Civ. P. 23;

- b. Preliminarily approve the Settlement;
- c. Require the dissemination of Class Notice by HMA within sixty (60) days of the date of the Preliminary Approval Order and the taking of all necessary and appropriate steps to accomplish this task;
- d. Determine that the Class Notice complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;
- e. Require Defendant to provide notice to the appropriate state and federal officials as required by the Class Action Fairness Act, 28 U.S.C. §1715 (“CAFA Notice”).
- f. Schedule a date and time for a Final Approval Hearing, not less than 120 days after the date of the Preliminary Approval Order, to determine whether the Preliminary Approval Order should be finally approved by the Court;
- g. Require Class Members who wish to exclude themselves to submit an appropriate and timely written request for exclusion as required by the Class Notice, and advise that a failure to do so will bind those Class Members who remain in the Class, no later than 30 days before the date first set for the Final Approval Hearing;
- h. Require Class Members who wish to object to the Settlement Agreement to submit an appropriate and timely written statement as required by the Class Notice no later than 30 days before the date first set for the Final Approval Hearing;
- i. Require Class Members who wish to appear to object to the Settlement Agreement to submit an appropriate and timely written statement no later than 30 days before the date first set for the Final Approval Hearing;

j. Require attorneys representing objecting Class Members, at the Class Members' expense, to file a notice of appearance as required by the Class Notice;

k. Appoint the HMA as the Claims Administrator; and

l. Issue other related orders to effectuate the preliminary approval of the Settlement Agreement.

3. After the Preliminary Approval Hearing, the Parties will seek to obtain from the Court a Final Approval Order in a form to be agreed upon by the Parties. The Final Approval Order will, among other things:

a. Find that the Court has personal jurisdiction over all Class Members and Parties, subject-matter jurisdiction over the claims asserted in the Action, and that venue is proper;

b. Finally approve the Settlement Agreement, pursuant to Fed. R. Civ. P. 23;

c. Finally certify the Settlement Class for settlement purposes only;

d. Find that the CAFA Notice and Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;

e. Dismiss the Action with prejudice;

f. Incorporate the Release set forth in the Settlement Agreement and make the Release effective as of the date of the Effective Date;

g. Authorize the Parties to implement the terms of the Settlement Agreement;

h. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Approval Order, and for

any other necessary purpose; and

i. Issue any related orders necessary to effectuate the final approval of the Settlement Agreement and its implementation.

4. The Parties will use their best efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Approval Order.

5. If the Court fails to issue the Preliminary Approval Order, or fails to issue the Final Approval Order, this Settlement Agreement is voidable by either Party. However, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court.

6. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement is essential. The Parties will cooperate with each other in good faith to carry out the purposes of and to effectuate this Settlement Agreement, will promptly perform their respective obligations hereunder, and will promptly take any and all actions and execute and deliver any and all additional documents and all other materials or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby. As part of this effort, Defendant has provided Plaintiff with additional information regarding Class Vehicle distribution, Quality Information Reports, and a Technical Service Bulletin in support of the Settlement.

7. Upon entry of the Final Approval Order, the Action will be dismissed, on its merits and with prejudice, subject to the continuing jurisdiction of this Court, and Settlement Class Members who have not submitted timely Requests for Exclusion will be forever barred and enjoined from pursuing any claims which have been resolved by this Settlement.

### **III. SETTLEMENT TERMS**

#### **A. Documented Complaints.**

1. All Class Members who have a documented complaint, repair, or warranty claim pertaining to the Smart Trunk not opening to expectation that was made to a Hyundai dealer, to HMA directly, or made on a publicly available complaint forum, prior to the Class Notice may submit one claim for payment of \$50 cash or a \$100 HMA dealer credit, regardless of whether the Class Member has any out-of-pocket loss.

2. Payment Form. The cash payments set forth in this Section III of this Agreement may be made in the form of a fully transferrable debit card which shall be valid for 180 days from the date of its issuance. The debit cards shall indicate their “use by” dates on their face, with a 180-day term.

3. Required Proof. In order to be compensated for claims submitted pursuant to Section III(A)(1), Class Members must submit a Claim Form to the Claims Administrator that is post-marked during the Claims Submission Period and include: (a) documentation that identifies the Class Vehicle VIN; (b) a repair order, invoice, or other documentation that identifies a documented complaint made to a Hyundai dealer, to HMA directly, or made on a publicly available complaint forum regarding the Smart Trunk not opening to expectation that includes a description of the complaint along with information regarding repair or lack thereof, parts used, labor time and costs, mileage at the time of repair, and payment for repair, if applicable.

#### **B. Exclusions and Limitations.**

Defendant does not warrant or guarantee any repairs performed at third-party repair shops and, should any repairs performed by a third-party fail after a Class Member has made a Claim

under the Settlement, the Class Member will not be entitled to submit an additional claim. Defendant will not reimburse any work performed at third-party repair shops after the Effective Date.

**C. Service Campaign.**

1. Torsion Bar Replacement & Credit. Class Members who believe that the Smart Trunk is not opening 7.5 inches or more may make an appointment with an authorized Hyundai Dealer for an inspection of eligible Class Vehicle(s). Class Members are not required to present the Notice, Claim Form or other settlement-related document in order to receive the service described herein. Following a protocol agreed to by the Parties and provided to all Hyundai Dealers by HMA (Hyundai Technical Service Bulletin Number 19-BD-222, Trunk Lid Torsion Bar Inspection and Repair), if an authorized Hyundai Dealer determines that any Smart Trunk on a Class Vehicle opens less than 7.5 inches, subject to any exclusions set forth herein, replacement of the torsion bars will then be performed by the authorized Hyundai Dealer pursuant to TSB Number 19-BD-222. If a Class Members' vehicle is outside Hyundai's 6½ year / 78,000 mile extended warranty, the replacement parts installed during the appointment will be covered by Hyundai's standard 2 year/unlimited mileage replacement parts warranty. This inspection and any necessary repair or replacement will be provided to the Class Member free of charge. After the installation of the replacement torsion bars, the Class Member is also entitled to submit one claim for payment of a \$70 HMA Dealer credit.

2. Second Torsion Bar Replacement & Credit or Payment. If after the new torsion bars are installed pursuant to the procedures set forth in Section III.C.1 above, a Class Member believes that the Smart Trunk still fails to open 7.5 inches or more, the Class Member may make a second appointment with an authorized Hyundai Dealer for a second inspection of

eligible Class Vehicle(s). Following the protocol set forth in the TSB, if, an authorized Hyundai Dealer determines that the Smart Trunk on a Class Vehicle opens less than 7.5 inches, subject to any exclusions set forth herein, the torsion bars will again be replaced by the authorized Hyundai Dealer, pursuant to TSB Number 19-BD-222. If a Class Members' vehicle is outside Hyundai's 6½ year / 78,000 mile extended warranty, any replacement parts installed during the appointment will be covered by Hyundai's standard 2 year/unlimited mileage replacement parts warranty. This inspection and any necessary repair or replacement will be provided to the Class Member free of charge. Subsequent to the second installation of replacement torsion bars, the Class Member may submit one additional claim for payment of a \$100 debit card payment or a \$200 HMA dealer credit.

3. Exclusions and Limitations. The inspection and any necessary repair or replacement is only available for Class Vehicles within 6½ years of service or less than 78,000 miles, whichever comes first.

**D. Warranty Extension.**

1. Class Vehicle(s) under warranty as of the Effective Date will receive a warranty extension for the Smart Trunk Torsion Bars from five (5) years or 60,000 miles to six and one-half (6½) years or 78,000 miles. Class Vehicles that are outside the warranty as of the date of the Final Approval Order will receive a warranty extension specific to the Smart Trunk Torsion Bars for a period of eighteen (18) months or 18,000 miles. The warranty extension is subject to the terms and conditions of the original warranty, as are the replacement parts, but will persist in its duration regardless of any transfer of ownership of the Class Vehicle.

**E. Reimbursement for Out-of-Pocket Expenses Prior to the End of the Claims Submission Period.**

In addition to the payment provisions in Section III(A), any Class Member who has

incurred any out-of-pocket expense for repair of the Defect prior to the end of the Claims Submission Period will be entitled to submit a claim for reimbursement of those repair expenses with the following conditions:

1. Reimbursement. Each Class Member is entitled to submit one claim per Class Vehicle for reimbursement of out-of-pocket expenses, incurred for repair or replacement associated with the Defect.
2. Required Proof. In order to be reimbursed for claims submitted pursuant to Section III(D)(1), Class Members must submit a Claim Form to the Claims Administrator that is post-marked during the Claims Submission Period and include: (a) documentation that identifies the Class Vehicle VIN; (b) a repair order/invoice that includes a description of the repair, associated costs, and a general description of parts used, labor time and costs, and mileage at the time of repair; and (c) proof of payment for the repair set forth in the repair order/invoice.
3. Exclusions and Limitations. Defendant does not warrant or guarantee any repairs performed at third-party repair shops and, should any such repairs fail after a Class Member has made a claim under the Settlement, the Class Member will not be entitled to submit an additional claim under the Settlement. Defendant will not reimburse any work performed at third-party repair shops after entry of the Effective Date. Reimbursement is only available when the repair to the Class Vehicle occurred during the warranty period, within six and one-half (6½) years or 78,000 miles, whichever comes first.

**E. Method of Reimbursement.**

1. For each Claim qualifying for a reimbursement payment under this agreement, HMA shall mail to the Class Member, at the address on the Claim Form, a reimbursement debit card, at the Class Member's request. The debit cards provided under this settlement shall be redeemable for at least 180 days, without any fees charged by Defendants or

the debit card issuer, at ATMs and merchants that accept Visa cards. The debit cards shall indicate their “use by” dates on their face.

2. The value of any debit card shall remain the property of HMA unless and until it is expended by the Class Member. Upon expiration of any debit card any unexpended funds shall become the permanent property of HMA.

**F. HMA Advertising.**

HMA will act in good faith to ensure that advertising conforms to the design expectations for the Hyundai Sonata Smart Trunk feature.

**G. Claim Review, Claim Processing, Claim Confirmation, Appeal from Denial, Reporting.**

1. Claim Review: All claims submitted for reimbursement pursuant to Section III.E. (Reimbursement for Out of Pocket Expenses) will be reviewed and accepted within thirty (30) days of receipt by the Claims Administrator, which will be responsible for ensuring that all information required under this Settlement Agreement has been submitted by the Settlement Class Member, including: (1) the VIN number associated with the claim matches the Settlement Class Member’s Vehicle’s VIN number (as provided by HMA to the Claims Administrator); (2) that the Settlement Class Member has not received any payments or refunds from HMA or an authorized Hyundai Dealer in connection with any complaints about the Smart Truck, that are equal to the amount of the claim for reimbursement submitted, and can be documented as such by HMA; and (3) that the claim for reimbursement is for an item or service that is covered under this Settlement Agreement.

2. Within 30 days of receipt of a Claim, HMA shall review the Claim to determine whether the Claim meets all qualifications for payment and/or service set forth in this Agreement, and if so, the amount due to the Settlement Class Member.

3. Within 40 days of receiving a Claim, HMA shall provide written notice to the Settlement Class member who submitted it, notifying the Settlement Class member of:

- a. The amount, if any, that HMA proposes to reimburse the Settlement Class Member under Section III.E. of the Settlement;
- b. The reasons for a rejection or denial (if applicable);
- c. The Settlement Class member's right to attempt to cure any deficiency.

4. The Settlement Class Member will only receive one such written notice and have one opportunity to cure any deficiencies. In response to receiving a written notice as set forth above, Settlement Class members can:

- a. Submit written materials, or copies thereof, to cure the deficiencies in any written material submitted, such as VIN number or failure to submit required documentation identified by HMA as lacking in the Claim, within 30 days of the date that the written notice was postmarked (even if it exceeds the Claims Submission Period). Within fifteen (15) days of receipt of a response to the deficiency or rejection notice described above from the Settlement Class member, the Claims Administrator will confirm in writing whether or not the Settlement Class member has cured the deficiency, and if not, of the right of appeal. Upon request, the Claims Administrator will provide copies of all denials Class Counsel and Defendant's Counsel via email.
- b. Accept any partial reimbursement offered by HMA, which acceptance will be presumed if no cure attempt is received by HMA within 45 days of the date that the written notice was postmarked.

5. Appeal: Within 15 days of transmittal of HMA's final determination to the Settlement

Class Member the Settlement Class Member may appeal the denial by notifying Class Counsel of his or her intent to appeal. Upon receipt of such notice, Class Counsel will notify Defense Counsel within ten (10) days of Class Counsel's receipt of that notice to appeal. In such cases, the Parties will meet and confer within five (5) days in an effort to resolve the dispute. If the Parties are unable to resolve any dispute by meeting and conferring, the claim will go to arbitration through a BBB administered alternative dispute resolution process, which will take place by written submission with a telephonic hearing to occur should the arbitrator determine it is necessary. The expense for each such arbitration will be borne by HMA, except for any attorneys' fees by Class Counsel or other counsel selected by the Settlement Class Member (if any).

6. Payment on Confirmed Claims: After the completion of the Claims Process, payment of confirmed claims will commence within thirty (30) days of the Effective Date and proceed thereafter on a rolling basis. Approved reimbursements, dealer credits, or payments in connection with Documented Complaints will be sent by the Claims Administrator to the Settlement Class Member by first class mail within forth-five (45) days of a final decision on the Claim. The approved reimbursements will be paid in the form of a debit card.

7. Reporting: The Claims Administrator will provide to Class Counsel and Defendant's Counsel monthly reports, as applicable, concerning the number of Class Notices disseminated, completion percentages, claims made, claims approved/rejected/denied /appealed (along with, upon request, the Claim Form and other documentation associated with the Claim), Requests for Exclusion, and Objections.

#### **IV. NOTIFICATION TO CLASS MEMBERS**

A. Unless otherwise specified, Defendant will pay all costs for the following Notice

Program, subject to the Court approving the same, which will be effectuated within sixty (60) days of the entry of the Preliminary Approval Order by:

1. A list of the VIN numbers of the Class Vehicles, as well as warranty claims for Class Vehicles will be provided to HMA Consumer Affairs Division. A third-party will be retained to search the applicable registration databases to identify the last known addresses of all Class Members.

2. Notice will be provided to those Class Members by one (1) direct first-class mailing and by publication on the Settlement Website established and maintained by the Claims Administrator. The Claims Administrator will re-send returned notices if an address correction or forwarding address appears on the returned envelope.

3. Class Members will be able to submit their claims for reimbursement by U.S. Mail or online, through the Settlement Website.

B. Within sixty (60) days after entry of the Preliminary Approval Order, or such reasonable additional time as the Parties may agree due to unforeseen circumstances, the Claims Administrator will disseminate Class Notice to the Class as specified in the Preliminary Approval Order and herein. The Claims Administrator will also provide, or make available for download through the Settlement Website, a copy of the Notice and Claim Form to any Settlement Class Member who requests the Notice and Claim Form. The Claims Administrator will be responsible for, without limitation:

1. transmitting notice of the Settlement and claims forms to Class Members;

2. establishing and maintaining the Settlement Website dedicated to the Settlement which will provide information about the Settlement including all relevant documents (including the Complaint and Preliminary Approval filings, Settlement Agreement, Notice,

Claim Form, Frequently Asked Questions, important dates) and a means by which Class Members will be able to contact the Claims Administrator and submit their claims for reimbursement;

3. evaluating, accepting, and processing claims for reimbursement;
4. disbursing qualifying reimbursement payments;
5. responding, through the HMA Customer Service Department, to questions

regarding the status of a Claim, submission of a Claim and other aspects of the Settlement. HMA shall maintain a dedicated toll-free telephone number for Class Members to call, which shall be listed in the Notice, Claim Form and dedicated Settlement Website; and

6. preparing a final report of all claims submitted, claims accepted, and claims rejected (with the basis for rejection).

C. Defendant will make payments for valid claim reimbursements required under the Settlement.

D. All costs associated with Settlement Administration will be paid by Defendant. In no event shall Class Counsel or the Class be responsible for any costs associated with Class Notice or settlement administration. Class Counsel retains the right to audit and review the administration of claims, subject to the establishment of a good faith basis warranting such audit and review.

E. Contents of the Class Notice: The Class Notice, in a form substantially similar to the one attached to this Settlement Agreement as “Exhibit B”, will advise Class Members of the following:

1. General Terms: The Class Notice will contain, at a minimum, a plain and concise description of the nature of the Action, the history of the Action, the preliminary

certification of the Class, and the proposed Settlement, including information on the identity of Class Members, how the proposed Settlement would provide relief to the Class Members, what claims are released under the proposed Settlement and the binding effect of the release, explain applicable deadlines for participation in the Settlement, and other relevant terms and conditions.

2. Exclusion/Opt-Out Rights: The Class Notice will inform Class Members that they have the right to request exclusion from (opt out of) the Settlement. The Class Notice will provide the deadlines and procedures for exercising this right.

3. Objection to Settlement: The Class Notice will inform Class Members of their right to object to the proposed Settlement and appear at the Final Approval Hearing. The Class Notice will provide the deadlines and procedures for exercising these rights.

4. Attorneys' Fees, Expenses, and Incentive Awards: The Class Notice will inform Class Members of the identity of Class Counsel and the amounts being sought by Class Counsel as Attorneys' Fees and Expenses and by Plaintiff as a Service Award, will explain that Defendant will pay the attorneys' fees and expenses awarded to Class Counsel, and Service Award granted to Plaintiff, in addition to and without reducing the relief being made available to Class Members.

5. Claim Form: The Class Notice will include the Claim Form for reimbursement, which will inform the Class Member that he/she/it must fully complete and timely return the Claim Form and required documentation to the Claims Administrator within the Claim Period to be eligible to obtain a reimbursement.

F. No less than ten (10) days prior to the Final Approval Hearing, the Claims Administrator will provide to the Parties a declaration attesting that Class Notice was disseminated in a manner consistent with the terms of this Settlement Agreement, or those

otherwise required by the Court.

**V. REQUESTS FOR EXCLUSION BY CLASS MEMBERS**

A. Any Class Member may make a Request for Exclusion by mailing or delivering such request in writing to the Claims Administrator. Any Request for Exclusion must be postmarked or delivered not later than the Opt-Out Deadline specified in the Court's Preliminary Approval Order. Any Request for Exclusion must: (1) state the Class Member's full name and current email and mailing address; (2) identify the model year and Vehicle Identification Number ("VIN") of his/her/its Class Vehicle(s) and the date(s) of purchase or lease; (3) specifically and clearly state his/her/its desire to be excluded from the Settlement and from the Settlement Class and election to be excluded from any judgment entered pursuant to this Settlement; and (4) be signed by the Class Member. No Settlement Class Member shall be deemed to have opted-out of the Settlement Class through any purported "mass" or "class" opt-outs, or via any class actions, mass actions or collective or representative actions.

B. Any Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement and will be deemed to have waived any rights or benefits under this Settlement Agreement. Settlement Class Members who exclude themselves from the Settlement will not release their claims under Section VII.

C. Not less than ten (10) days prior to the Final Approval Hearing, the Claims Administrator shall provide the Parties with a declaration for filing with the Court reporting the names of all individuals who have submitted a valid Request for Exclusion.

**VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS**

A. Any Class Member who has not filed a timely written Request for Exclusion and who wishes to object to the fairness, adequacy, or reasonableness of this Settlement Agreement

or the Settlement, or to the requested award of Attorneys' Fees and Expenses or Service Award, must send to the Court a written notice of objection by the Objection Deadline, as well as a Notice of Intention to Appear at the Final Approval Hearing ("Notice of Intention to Appear") if he/she/it wishes to appear and be heard at the Final Approval Hearing. The objection and Notice of Intention to Appear must also be served upon the Claims Administrator, Class Counsel, and Defendant's Counsel at the respective addresses included in Class Notice. To state a valid objection to the Settlement, an objecting Settlement Class Member must provide the following information in the Settlement Class Member's written objection: (1) his/her/its full name, current address, and current telephone number, and, if represented by counsel, any of his/her/its counsel's name and contact information; (2) the model year of his/her/its Class Vehicle(s), as well as the VIN of his/her/its Class Vehicle(s) and the date(s) of purchase or lease; (3) whether the objection applies only to the objecting Class Member, to a specific subset of the Class, or to the entire Class; (4) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position; (5) state that the objector has reviewed the Settlement Class definition and understands that he/she/it is a Settlement Class Member, and has not opted out of the Settlement Class; and (6) provide copies of any other documents that the objector wishes to submit in support of his/her/its position. To be valid, an objection must be signed and include a detailed statement of each objection asserted, including the grounds for objection. The objection must also state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection. In addition, any Settlement Class Member objecting to the Settlement must provide a detailed list of any other objections to any class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member

has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she/it must affirmatively so state in the written materials provided in connection with the objection to this Settlement. The objecting Settlement Class Member must also state whether he/she/it intends to appear at the Final Approval Hearing either with or without separate counsel. Subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court. The objecting Settlement Class Member must file with the Clerk of the Court and serve upon the Claims Administrator and all counsel designated in the Class Notice the objection and Notice of Intention to Appear by the Objection Deadline or on such other date that may be set forth in the Class Notice. The objection must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not submit a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Settlement and the Class Notice, and who has not filed an objection in complete accordance with the deadlines and other specifications set forth in this Settlement and the Class Notice, will be deemed to have waived any objections to the Settlement, will be barred from speaking or otherwise presenting any views at the Final Approval Hearing, and shall be bound by all the terms of this Agreement and all proceedings, orders and judgments.

B. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement, in accordance with such Class Member's due-process rights. The Preliminary Approval Order and Class Notice will require all Class Members who have any objections to file such notice of objection or request to

be heard with the Court, and serve by first class mail such notice of objection or request to be heard upon Class Counsel and Defendant's Counsel at the addresses set forth in the Class Notice, by no later than the Objection Deadline. The Preliminary Approval Order will further provide that objectors who fail properly or timely to file their objections with the Court, along with the required information and documentation set forth above, or to serve them as provided above, will not be heard during the Final Approval Hearing, and their objections will be waived and will not be considered by the Court.

C. Any Settlement Class Member who objects to the Settlement will be entitled to all of the benefits of the Settlement if this Settlement Agreement and the terms contained herein are approved, as long as the objecting Settlement Class Member complies with all the requirements of this Settlement Agreement applicable to Class Members.

## **VII. RELEASE, DISMISSAL OF ACTION, AND JURISDICTION OF COURT**

The Parties agree to the following release and waiver, which will take effect upon entry of the Final Approval Order and Judgment:

A. By this Settlement Agreement and the following Release, Plaintiff and each Settlement Class Member, on behalf of themselves and their current, former, and predecessor agents, heirs, executors and administrators, successors, assigns, insurers, attorneys, representatives, shareholders, and any and all persons who seek to claim through or in the name or right of any of them (the "Releasing Parties"), release and forever discharge (as by an instrument under seal without further act by any person, and upon good and sufficient consideration), Defendant and each of its current or former administrators, insurers, reinsurers, agents, firms, parent companies and corporations, sister companies and corporations, subsidiaries and affiliates, and all other entities, including without limitation manufacturers, suppliers, and

distributors, and affiliated dealerships, and all of the foregoing persons' or entities' respective predecessors, successors, assigns and present and former officers, directors, shareholders, employees, agents, attorneys, representatives, as well as their insurers (collectively, the "Released Parties") from each and every claim of liability, on any legal or equitable ground, including relief under federal law or the laws of any state, regarding or related to the Class Vehicles' Defect, including without limitation all claims, damages, punitive or exemplary damages, attorneys' fees, costs, expenses, or liability on any legal or equitable ground, and regardless of whether such claims might have been or might be brought directly or indirectly, or through subrogation or assignment or otherwise, on account of or related to Class Vehicle Defect claims that were alleged or could have been alleged in the Action, but do not include claims for personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.

Plaintiff and Settlement Class Members recognize that, even if they later discover facts in addition to or different from those which they now know or believe to be true, they nevertheless agree that, upon entry of the Final Approval Order, Plaintiff and Settlement Class Members, on behalf of themselves and their heirs, successors, or assigns, fully, finally, and forever settle and release any and all claims and causes of action relating to Class Vehicles' Defect, including claims for consequential damages resulting from the Defect, which were, could have been, or ever could be asserted against the Released Parties, but do not include claims for personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.

B. The releases provided for herein are as a result of membership as a Settlement Class Member or status as a person with a legal right to assert claims of a Settlement Class Member, the Court's approval process herein, and occurrence of the Effective Date, and are not

conditional on receipt of payment by any particular Settlement Class Member. Persons who, after the date of the Preliminary Approval Order, acquire legal rights to assert claims within the scope of this Agreement that belong initially to a Settlement Class Member shall take such rights subject to all of the terms, time periods, releases, caps, prohibitions against overlapping or double recoveries, and other provisions contained herein.

C. The Parties acknowledge that the foregoing waiver and release was bargained for and is a material element of the Settlement Agreement. In the event that any Releasing Party seeks to invoke California Civil Code § 1542, which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR

(or any other like provision or principle of law of any jurisdiction) in connection with the Class Vehicles' Defect, the Releasing Parties and each of them expressly waive the provision of California Civil Code § 1542 (or any other like provision or principle of law of any jurisdiction) to the full extent that these provisions may be applicable to this release. Each of the Releasing Parties hereby has, and shall be deemed to have, considered the possibility that the number or magnitude of all claims may not currently be known; nevertheless, each of the Releasing Parties assumes the risk that claims and facts additional, different, or contrary to the claims and facts that each believes or understands to exist, may now exist, or may be discovered after the settlement becomes effective. Each of the Releasing Parties agrees that any such additional, different, or contrary claims and facts shall in no way limit, waive, or reduce the foregoing release, which shall remain in full force and effect. Nothing in this paragraph shall be construed as modifying or limiting the other provisions of the Settlement concerning the potential

availability of claims.

D. Plaintiff and Class Representative represent and warrant that he is the sole and exclusive owner of all claims that he is releasing under this Settlement Agreement. Plaintiff and Class Representative further acknowledges that he has not assigned, pledged, or in any manner whatsoever sold, transferred, assigned, or encumbered any right, title, interest, or claim arising out of or in any way whatsoever pertaining to the Action, including, without limitation, any claim for benefits, proceeds, or value under the Action, and that Plaintiff and Class Representative is not aware of anyone other than himself claiming any interest, in whole or in part, in the Action or in any benefits, proceeds, or values under the Action.

F. Without in any way limiting its scope, this Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, consultant fees, interest, litigation fees, costs, or any other fees, costs, or disbursements incurred by Class Counsel or by Plaintiff, except to the extent otherwise specified in the Settlement Agreement.

G. Plaintiff and Class Representative expressly agrees that this Release will be and may be raised as a complete defense to and will preclude any action or proceeding encompassed by this Release, or arising out of or relating to the Class Vehicle Defect allegations in the Action, except claims for personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.

H. This Settlement Agreement and Release does not affect the rights of Class Members who timely and properly request exclusion from (opt-out of) the Settlement.

I. The administration and consummation of the Settlement as embodied in this Settlement Agreement will be under the authority of the Court. The Court will retain jurisdiction to protect, preserve, and implement the Settlement Agreement including, but not limited to, the

Release. The Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

J. Upon issuance of the Final Approval Order: (1) the Settlement Agreement will be the exclusive remedy for any and all Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof; (2) the Defendant will not be subject to liability or expense of any kind to any Settlement Class Member(s) for reasons related to the Action except as set forth herein; and (3) Settlement Class Members will be permanently barred from initiating, asserting, or prosecuting any and all released claims against Defendant in any federal or state court in the United States or any other tribunal pursuant to the terms of this Release.

K. Nothing in this Release will preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein.

**VIII. ATTORNEYS' FEES AND EXPENSES, SERVICE AWARDS**

A. All expenses incurred in administering this Settlement Agreement, including, without limitation, all attorneys' fees and costs, the cost of the Class Notice, and the cost of distributing and administering the benefits of the Settlement Agreement, will be paid by Defendant, subject to the limitations contained herein. The Class Counsel Fees and Expenses, and Service Awards to Class Representatives, will be paid separate and apart from any relief provided to the Settlement Class.

B. As part of the resolution of the Action, the Parties have agreed that Class Counsel may apply for an award of attorneys' fees, costs, and expenses not to exceed \$828,876.00. The Parties have further agreed that Class Counsel will not seek payment of any amount in excess of

\$828,876.00 if awarded by the Court. The Class Counsel Fees and Expenses will be paid separate and apart from any relief provided to the Class. Defendant does not oppose, and will not encourage or assist any third party in opposing, Class Counsel's request for attorneys' fees, costs, and expenses nor will Defendant contest the reasonableness of the amounts requested under this Agreement.

C. The Parties agree that Class Counsel will apply for Service Award of \$5,000 to the Class Representative in recognition of his work in furtherance of the Litigation. If Plaintiff, Settlement Class Members, Class Counsel, or other counsel seek any amount in excess of this amount, Defendant reserves the right to oppose any greater award.

D. The total amount of the Class Representative Service Award and Class Counsel Fees and Expenses awarded by the Court, subject to Class Counsel's and Defendant's agreed-upon amounts in Sections VIII (B) and (C), will be paid by wire transfer, within twenty (20) days of the Effective Date to an account to be designated and agreed upon by the Parties.

E. Defendant will not be liable for or obligated to pay any fees, expenses, costs, incentive awards, or disbursements to, or incur any expense on behalf of, any person or entity, either directly or indirectly, in connection with this Action, this Settlement Agreement, or the proposed Settlement, other than the amount or amounts expressly provided for in this Settlement Agreement.

F. The Parties agree the amounts in Sections VIII (B) and (C) represent Defendant's all-inclusive, full payment for all attorneys' fees, costs, and all other expenses, including but not limited to attorneys' fees, costs, and any other expenses incurred by any counsel in any related class action or any other related cases, whether known or unknown to Defendant, as well as any objectors, intervenors, or later-appearing counsel. The amounts described in Sections VIII (B) and

(C) constitutes full satisfaction of Defendant's obligation to pay any person, attorney, or law firm for attorneys' fees, costs, and all other expenses, and relieves Defendant and the Released Parties from any other claims or liability to any other person, attorney, or law firm for any attorneys' fees, costs, or other expenses to which any Plaintiff, Settlement Class Member, objector, intervenor, or any other person may claim that are in any way related to the claims released under this Settlement.

G. In furtherance of the agreement in this Section VIII, in the event of any objections to the Settlement or appeal from any order of the Court granting final approval, Class Counsel agree that they will be solely responsible for responding to objectors and intervenors, and defending the Court's Final Order and Judgment on appeal at no additional cost or expense to Defendant. Defendant will join in the defense of the Final Order and Judgment at Defendant's expense. Defendant agrees not to appeal, or otherwise support any appeal of, an order or judgment entered by the Court that is consistent with this provision and the terms of this Settlement. Any attorneys' fees or costs incurred by Class Counsel in such appeals, including costs incurred to settle any claims by objectors or intervenors, are the sole responsibility of Class Counsel. No one may seek to recover such attorneys' fees or costs from Defendant.

#### **IX. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

A. Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiff and Class Counsel, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiff and constitutes their legal, valid, and binding obligation.

B. Defendant, through its undersigned attorneys, represent and warrant that it has the authority to execute, deliver, and perform this Settlement Agreement and to consummate the

transactions contemplated hereby. The execution, delivery, and performance by Defendant of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Defendant. This Settlement Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid, and binding obligation.

**X. MISCELLANEOUS PROVISIONS**

A. The Parties expressly acknowledge and agree that this Settlement Agreement and the exhibits and related documents thereto along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event will this Settlement Agreement, any of its provisions or any negotiations, statements, or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory, or other proceedings, except in a proceeding to enforce this Settlement Agreement or the rights of the Parties or their counsel.

Without limiting the foregoing, this Settlement Agreement, the exhibits thereto, any related documents, any related negotiations, statements, or court proceedings will not be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession of any liability, wrongdoing, fault, or omission of any kind whatsoever by Defendant with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. Defendant specifically denies all of the allegations made in connection with the Action. Neither this Settlement Agreement nor any class certification pursuant to it will

constitute, in this or in any other proceeding, an admission by the Defendant, or evidence or a finding of any kind, that any requirement for class certification is satisfied with respect to the Action, or any other litigation, except for the limited purpose of settlement pursuant to this Settlement Agreement. This Settlement Agreement also is made with the Parties' understanding and agreement that: (1) under applicable laws, it is appropriate that a class be certified for settlement purposes only (*i.e.*, without needing to satisfy fully the standard required for certification of the matter for litigation purposes); (2) Defendant contests and denies that any class, including the proposed Settlement Class, is suitable for certification as a class under the law of any jurisdiction, other than for the purposes of this Settlement Agreement; and (3) notwithstanding any other provisions of this Settlement Agreement, all actions and proceedings pursuant to it will be consistent with the foregoing. This provision will survive the expiration or voiding of the Settlement Agreement.

B. This Settlement Agreement is entered into only for purposes of settlement. If the Final Approval Order is not entered, then this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions, will have any effect, nor will any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Action, and all Parties will be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

C. If more than five percent (5%) of Class Members have submitted valid and timely Requests for Exclusion, Defendant may withdraw from and terminate this Settlement Agreement upon written notice to Class Counsel. For purposes of determining whether Defendant may

withdraw from and terminate this Settlement Agreement, copies of all Requests for Exclusion timely received, together with copies of all written revocations of Requests for Exclusion, must be delivered to the Defendant's Counsel within three (3) days of receipt by the Claims Administrator, but, in all events, not less than ten (10) court days before the Final Approval Hearing. If Defendant withdraws from this Settlement Agreement in accordance with this Paragraph, this Settlement Agreement will become null and void and of no further force and effect.

In addition, this Settlement Agreement will terminate by decision of either the Defendant or the Plaintiff, through Class Counsel, if: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Settlement Agreement or the proposed Settlement that the terminating Party reasonably determines(s) is material, including without limitation, the terms of relief, the findings, or conclusions of the Court, the provisions relating to notice, the definition of the Class, and/or the terms of the Release; or (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party reasonably determine(s) is material. The terminating Party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this paragraph, no later than twenty (20) days after receiving notice of the event prompting the termination. In such event, the Parties will be returned to the positions that they occupied as of October 27, 2017.

Further, Defendant may unilaterally withdraw from and terminate this Settlement Agreement within thirty (30) days after receiving notice of either of the following events:

1. any state attorney general, federal agency, or regulatory or administrative

authority, institutes a proceeding against the Defendant arising out of or otherwise related to the Release and any of the terms or conditions of this Settlement Agreement; or

2. any federal or state regulator or agency: (a) objects either to any aspect or term of the Settlement Agreement; or (b) requires any modification to the Settlement Agreement, including, without limitation, a constriction or expansion of the scope of the contemplated relief that Defendant in its sole discretion deems reasonably material.

D. If this Settlement Agreement is terminated pursuant to Section X then:

1. This Settlement Agreement will be null and void and will have no force or effect and no Party to this Settlement Agreement will be bound by any of its terms, except for the terms set forth in this paragraph D;

2. The Parties will petition to have lifted any stay orders entered pursuant to this Agreement;

3. All of the provisions, and all negotiations, statements, and proceedings relating to it, will be without prejudice to the rights of Defendant, Plaintiff, or any Class Member, all of whom will be restored to their respective positions occupied as of October 27, 2017, except that the Parties will cooperate in requesting that the Court set a new scheduling order such that no Parties' substantive or procedural rights are prejudiced by the attempted settlement;

4. Defendant expressly and affirmatively reserves all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Action, including, without limitation, the argument that this Action may not be litigated as a Class Action;

5. Neither this Settlement Agreement, nor the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Class Member

pursuant to this Settlement Agreement, will be admissible or entered into evidence for any purpose whatsoever;

6. Any Settlement-related order(s) or judgment(s) entered in the Action after the date of execution of this Agreement will be deemed vacated and will be without any force or effect; and

7. Except as set forth above, Defendant is not responsible for any of Class Counsel's attorneys' fees or internal costs for the settlement, including, but not limited to, any investigative, expert, or actuarial costs, or any other claims for fees or expenses.

E. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and will not be deemed to constitute part of this Settlement Agreement or to affect its construction.

F. This Settlement Agreement, including all exhibits attached hereto, may not be materially modified or amended except in writing and signed by all of the Parties and with approval of the Court.

G. This Settlement Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

H. This Settlement Agreement and any amendments thereto will be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania. The Settlement Agreement will be interpreted and enforced pursuant to Pennsylvania law. Federal law (including Fed. R. Pro. 23 and federal case law) will govern approval of the settlement, preliminary and final certification of the Settlement Class, and all related issues such as Class Counsel's attorneys' fee and cost petition.

I. Any disagreement or action to enforce this Settlement Agreement will be commenced and maintained only in the Court in which the Action is pending.

J. Except as otherwise provided in this Settlement Agreement, each Party to this Settlement Agreement will bear his, her, or its own costs of the Action.

K. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes or typographical errors contained in any of the Settlement papers.

L. Proper notice will be given to Plaintiff and Defendant of all applications for Court approval or Court orders required under this Settlement Agreement.

M. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities will be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement. No parol or other evidence may be offered to explain, modify, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed.

N. All of the exhibits of this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference. This Settlement Agreement and the

exhibits hereto constitute the entire, fully integrated agreement among the Parties and cancel and supersede all prior written and unwritten agreements and understandings pertaining to the Settlement of the Action.

O. The Parties agree that any disputes regarding the meaning of the terms and conditions of this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, or the manner in which any issue or dispute arising under this Settlement Agreement should be resolved, will be submitted to the Court for resolution.

P. The Parties agree and acknowledge that this Settlement Agreement includes a covenant of good faith and fair dealing.

Q. The waiver by one Party of any breach of this Settlement Agreement by another Party will not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

R. If one Party to this Settlement Agreement considers another Party to be in breach of its obligations under this Settlement Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Settlement Agreement.

S. All time periods set forth herein will be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or legal holiday, or, when the action to be done is the filing of a paper in court, a day on which conditions or events have made the office of the clerk of the court inaccessible, in which event the period will run until the end of the

next day that is not one of the aforementioned days. As used in this section “legal holiday” includes New Year’s Day, Martin Luther King, Jr. Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

T. **Notices.** All notices to the Parties or counsel required by this Settlement Agreement will be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

If to Class Counsel:

James C. Shah  
Natalie Finkelman Bennett  
**SHEPHERD, FINKELMAN, MILLER & SHAH, LLP**  
35 E. State Street  
Media, PA 19063  
Tel: (610) 891-9880  
Fax: (866) 300-7367  
E-mail: [jshah@sfmslaw.com](mailto:jshah@sfmslaw.com)  
[nfinkelman@sfmslaw.com](mailto:nfinkelman@sfmslaw.com)

Noah Axler  
Marc A. Goldich  
**AXLER GOLDICH LLC**  
1520 Locust Street, Suite 301  
Philadelphia, PA 19102  
Tel: (267) 534-7400  
Fax: (267) 534-7407  
E-mail: [naxler@axgolaw.com](mailto:naxler@axgolaw.com)  
[mgoldich@axgolaw.com](mailto:mgoldich@axgolaw.com)

Robert P. Cocco  
**ROBERT P. COCCO, P.C.**  
1500 Walnut St., Ste. 900  
Philadelphia, PA 19102  
Tel: (215) 351-020  
Fax: (215) 261-6055

E-mail: [rcocco@rcn.com](mailto:rcocco@rcn.com)

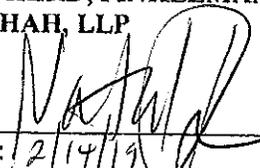
If to Defendant's Counsel:

Kenneth L. Racowski  
**BUCHANAN INGERSOLL & ROONEY PC**  
Two Liberty Place  
50 South 16<sup>th</sup> Street, Suite 3200  
Philadelphia, PA 19102  
Tel: (215) 665-8700  
E-mail: [kenneth.racowski@bipc.com](mailto:kenneth.racowski@bipc.com)

Christopher J. Dalton  
Jacqueline M. Weyand  
**BUCHANAN INGERSOLL & ROONEY PC**  
550 Broad Street, Suite 810  
Newark, NJ 07102  
Tel: (973) 273-9800  
Email: [christopher.dalton@bipc.com](mailto:christopher.dalton@bipc.com)  
[jacqueline.weyand@bipc.com](mailto:jacqueline.weyand@bipc.com)

IN WITNESS WHEREOF, Plaintiff and Defendant, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

**SHEPHERD, FINKELMAN, MILLER & SHAH, LLP**

By:   
Dated: 2/14/19

James C. Shah  
Natalie Finkelman Bennett  
35 E. State Street  
Media, PA 19063  
Tel: (610) 891-9880  
Fax: (866) 300-7367  
E-mail: [jshah@sfmslaw.com](mailto:jshah@sfmslaw.com)  
[nfinkelman@sfmslaw.com](mailto:nfinkelman@sfmslaw.com)

By:   
Dated: 2/14/19

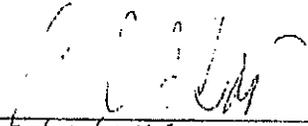
Noah Axler  
Marc A. Goldich  
**AXLER GOLDICH LLC**  
1520 Locust Street, Suite 301  
Philadelphia, PA 19102  
Tel: (267) 534-7400  
Fax: (267) 534-7407  
E-mail: [naxler@axgolaw.com](mailto:naxler@axgolaw.com)  
[mgoldich@axgolaw.com](mailto:mgoldich@axgolaw.com)

By:   
Dated: 2/15/19

Robert P. Cocco  
**ROBERT P. COCCO, P.C.**  
1500 Walnut St., Ste. 900  
Philadelphia, PA 19102  
Tel: (215) 351-020  
Fax: (215) 261-6055  
E-mail: [rcocco@rcn.com](mailto:rcocco@rcn.com)

*Counsel for Plaintiff and the Class*

**BUCHANAN INGERSOLL & ROONEY PC**

By:   
Dated: 2/14/2019

Kenneth L. Racowski  
Two Liberty Place  
50 South 16<sup>th</sup> Street, Suite 3200  
Philadelphia, PA 19102  
Tel: (215) 665-8700  
E-mail: [kenneth.racowski@bipc.com](mailto:kenneth.racowski@bipc.com)

Christopher J. Dalton (*Admitted Pro Hac Vice*)  
Jacqueline M. Weyand (*Admitted Pro Hac Vice*)  
550 Broad Street, Suite 810  
Newark, NJ 07102  
Tel: (973) 273-9800  
Email: [christopher.dalton@bipc.com](mailto:christopher.dalton@bipc.com)  
[jacqueline.weyand@bipc.com](mailto:jacqueline.weyand@bipc.com)

*Counsel for Defendant*

# **Exhibit A**

## **CLAIM FORM – Six Steps to Make a Claim**

In re: Riaubia v. Hyundai Motor America, Civil Action No. 2:16-cv-5150-CDJ

Complete this form only if you are seeking payment for a documented complaint or for repairs of the Smart Trunk due to the trunk not opening to expectation

**[1] Verify the below information is correct. If it is incorrect or missing, please provide the updated information in the spaces below. THIS IS WHERE ANY ELIGIBLE BENEFITS WILL BE MAILED TO:**

[Auto Fill Name]  
 [Auto Fill Address 1]  
 [Auto Fill Address 2]  
 [Auto Fill City], [Auto Fill State] [Auto Fill Zip Code]

First Name:	
Last Name:	
Address 1:	
Address 2:	
City:	State:
Zip Code:	

**[2] Please provide your email address and phone number.**

Hyundai recommends that you provide your email and/or phone so that we may contact you if there are questions regarding your claim. Otherwise, Hyundai may contact you about the settlement at the postal address above however this may delay the processing of your claim.

Email:	
Phone:	- -

**[3] Verify your Vehicle Identification Number (“VIN”) and Model/Year. If it is incorrect, please provide the updated information in the spaces below.**

The VIN is located on a small placard on the top of the dashboard and is visible through the driver’s side corner of the windshield. It also appears on your vehicle registration card and probably appears on your vehicle insurance card. Your VIN should have 17 characters, a combination of both letters and numbers.

[Auto Fill VIN]  
 [Auto Fill Model/Year]

VIN:	
Model:	Year:

**[4] Indicate by checking one of the boxes below, the type of reimbursement(s) you are claiming, the amount of the reimbursement you are requesting, and enclose the required documents**

I AM REQUESTING PAYMENT FOR A DOCUMENTED COMPLAINT OF THE SMART TRUNK NOT OPENING TO EXPECTATION, THAT WAS MADE TO A HYUNDAI DEALER OR ON A PUBLICLY AVAILABLE COMPLAINT FORUM PRIOR TO THE CLASS NOTICE.

Please select payment option:     \$50 Debit Card    <or>     \$100 Hyundai Dealer Credit

**Required Documentation:** The following documentation must be provided to be eligible for payment:

- A repair order, invoice or other documentation that identifies a documented complaint that was made to a Hyundai dealer (including the Class Vehicle VIN) or made on a publicly available complaint forum regarding the Smart Trunk not opening to expectation.
- Documentation must identify the date of the documented complaint to be prior to the effective date of the Class Notice

I AM REQUESTING CASH REIMBURSEMENT FOR OUT OF POCKET EXPENSES RELATED TO THE REPAIR OF THE SMART TRUNK DUE TO THE TRUNK NOT OPENING TO EXPECTATION.

Please provide the amount of the repairs for which you are requesting cash reimbursement:

\$ 

--	--	--	--	--	--	--	--	--	--

--	--

**Required Documentation:** Enclose a repair invoice or document that shows: (i) the repair type, (ii) the repair date, and (iii) the amount paid (e.g., credit card receipt, credit card statement, or bank statement).

- A repair order, invoice or other repair documentation that identifies a repair to the Smart Trunk due to the trunk not opening to expectation
  - Documentation must identify the Class Vehicle VIN
  - Documentation must identify the date of the replacement or repair to be prior to the Class Notice
- A receipt (credit card, statement or other) showing proof of payment of the replacement or repair

**[5] Sign & Date**

The information on this form is true and correct to the best of my knowledge. I agree to participate in the settlement. I authorize any dealership that serviced my vehicle to release records to Hyundai to help pay my claim. To the extent I am seeking reimbursement for a dealership repair and do not have a receipt or other documentation for the corresponding cash payment, I attest under penalty of perjury that I (or a friend or family member) paid for the repair in cash and I do not have a receipt or documentation for the payment.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**[6] Submit:** Email the completed form and the documentation to [xxxsettlement@hmausa.com](mailto:xxxsettlement@hmausa.com) or mail it to P.O. Box 20840 Fountain Valley CA, 92728.

*For more information please view the Class Notice or visit [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com)*

# **Exhibit B**

**United States District Court for the Eastern District of Pennsylvania**

**If you are a current or former owner or lessee of a U.S. specification model-year 2015 to 2017 Hyundai Sonata vehicle equipped with the Smart Trunk feature, you may be eligible for benefits of a class-action settlement.**

*A court has authorized this notice. You have received this notice because Hyundai’s records indicate that you are a current or former owner or lessee of a U.S. specification model-year 2015 to 2017 Hyundai Sonata vehicle. This is not a solicitation from a lawyer.*

- A nationwide settlement (“Settlement”) has been reached in a class action lawsuit against Hyundai Motor America (“HMA”). The lawsuit concerns model year 2015 to 2017 U.S. specification Hyundai Sonata vehicles equipped with the Smart Trunk feature purchased or leased in the fifty United States or the District of Columbia (“Class Vehicles”). The lawsuit alleges that the Smart Trunk on the Class Vehicles is defective because it does not open a sufficient amount. Defendant has denied these allegations.
- The Settlement provides an opportunity to be reimbursed for certain past expenses, to obtain a free inspection and repair of the affected trunk components, and to receive a cash payment or a HMA dealer credit.
- Your legal rights are affected whether you act or don’t act, so please read this notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>		
<b>SUBMIT A CLAIM AND/OR TAKE YOUR CLASS VEHICLE TO AN AUTHORIZED HMA DEALER</b>	Make a claim for relief so that you may be able to receive the valuable benefits available to you under the Settlement and/or take your vehicle to an authorized HMA Dealer after the Settlement is approved.	Claims must be submitted by _____. See <i>Question 10, below.</i>  You must bring your Class Vehicle to an authorized Hyundai Dealer after the Settlement is approved. See <i>Question 8, below.</i>
<b>EXCLUDE YOURSELF</b>	Get no reimbursement for out-of-pocket expenses. This is the only option that allows you to be part of any other lawsuit, or your own lawsuit, against the Defendant about the legal claims released in this Settlement.	Must be postmarked by _____. See <i>Questions 13 and 16, below.</i>
<b>OBJECT</b>	Write to the Court about why you do not like the Settlement.	Must be filed and postmarked by _____. See <i>Question 20, below.</i>

<b>GO TO A HEARING</b>	Ask to speak in Court about the Settlement.	The Final Approval Hearing is scheduled for _____ . <i>See Question 24, below.</i>
<b>DO NOTHING</b>	Give up rights to any reimbursement benefits for out-of-pocket expenses under the Settlement and to be part of this or any other lawsuit against the Defendants about the legal claims released by the Settlement. You can still take advantage of the Service Campaign and your vehicle will receive the warranty extension provided under the Settlement.	<i>See Question 12, below.</i>

- These rights and options -- ***and the deadlines to exercise them*** -- are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement, so that the benefits may be provided. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

## WHAT THIS NOTICE CONTAINS

**BASIC INFORMATION .....PAGE**

1. Why have I received this notice?
2. What is the lawsuit about?
3. What Vehicles are included in the Settlement?
4. Why is there a class action?
5. Why is there a Settlement?

**WHO IS IN THE SETTLEMENT .....PAGE**

6. How do I know if I am part of the Settlement?
7. If my Smart Trunk has not had problems, am I still a Class Member?

**THE BENEFITS: WHAT YOU GET .....PAGE**

8. What are the benefits of the Settlement?
9. What am I giving up in exchange for the Settlement benefits?

**HOW TO GET BENEFITS ..... PAGE**

10. How do I get the benefits of the Settlement?
11. What if my claim is denied?
12. What if I do nothing?

**EXCLUDING YOURSELF FROM THE SETTLEMENT .....PAGE**

13. Can I exclude myself from this Settlement?

**QUESTIONS? VISIT [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com)**

- 14. If I exclude myself, can I get anything from this Settlement?
- 15. If I don't exclude myself, can I sue later?
- 16. How do I exclude myself from the Settlement?

**THE LAWYERS REPRESENTING YOU .....PAGE**

- 17. Do I have a lawyer in the case?
- 18. Proposed Service Awards to Class Representative.
- 19. How will the lawyers be paid?

**OBJECTING TO THE SETTLEMENT .....PAGE**

- 20. How do I tell the Court if I don't like the Settlement?
- 21. What's the difference between excluding myself and objecting?

**THE COURT'S FINAL APPROVAL HEARING .....PAGE**

- 22. When and where will the Court decide whether to approve the Settlement?
- 23. Do I have to come to the hearing?
- 24. May I speak at the hearing?

**GETTING MORE INFORMATION .....PAGE**

- 25. How do I get more information?

**1. Why have I received this notice?**

A Court has authorized this notice because you have a right to know about the proposed settlement of this class action lawsuit, and your options, before the Court decides whether to give "final approval" to the Settlement. You should read the entire notice. This notice explains the lawsuit, the proposed Settlement, and your legal rights. You have received this notice because HMA's records indicate that you are a current or former owner or lessee of a model-year 2015 to 2017 U.S. specification Hyundai Sonata vehicle equipped with the Smart Trunk and purchased or leased in the fifty United States or the District of Columbia.

Judge C. Darnell Jones of the United States District Court for the Eastern District of Pennsylvania is overseeing this class action lawsuit. The case is known as *Riaubia v. Hyundai Motor America*, Civil Action No. 2:16-cv-5150 ("Action"). Joshua Riaubia, the person who sued, is called the "Plaintiff," and the company that was sued, HMA, is called the "Defendant."

**2. What is the lawsuit about?**

This lawsuit is about model-year 2015 to 2017 U.S. specification Hyundai Sonata vehicles equipped with the Smart Trunk feature ("Class Vehicles"). The lawsuit alleges that certain torsion bars installed in the Smart Trunk on the Class Vehicles opens the trunk less than 7.5 inches, either because of the quality of the torsion bars or by some other means of wear-and-tear (the alleged "Defect"). HMA, which distributes and warrants Hyundai vehicles in the United States, denies these allegations and stands behind and supports its products.

**3. What Vehicles are included in the Settlement?**

The Settlement includes all model-year 2015 to 2017 U.S. specification Hyundai Sonata vehicles equipped with the Smart Trunk feature and purchased or leased in the fifty United States or the District of Columbia.

**QUESTIONS? VISIT [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com)**

**4. Why is there a class action?**

In a class action, one or more persons called the “Class Representatives” (in this case, Joshua Riaubia) asserts claims on behalf of people who have similar claims. All of these people are a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who timely exclude themselves from the Class.

**5. Why is there a Settlement?**

All parties have agreed to a Settlement to avoid the cost and risk of a trial, and so that the people affected can get benefits, in exchange for releasing the Defendant from liability for the claims that were raised or could have been raised involving the Class Vehicle Defect. The Settlement does not mean that the Defendant broke any laws, or otherwise did anything wrong, because Judge Jones did not decide which side was right. The Class Representative and the lawyers representing him think the Settlement is best for all Class Members.

**6. How do I know if I am a Class Member?**

The Settlement Class includes all persons or entities in the fifty United States and the District of Columbia who currently own or lease, or previously owned or leased, a model-year 2015 to 2017 U.S. specification Hyundai Sonata vehicle equipped with the Smart Trunk feature and purchased or leased the vehicle in the United States and the District of Columbia.

HMA’s records indicate that you have or had a Class Vehicle. If you’re not sure whether you are included in the Settlement Class, you may call (toll-free) **866-944-7268** with questions.

**7. If my trunk has not had problems, am I a Class Member?**

Yes. You don’t have to have experienced any problems with the Smart Trunk to be included in the Settlement. If you still own or lease a Class Vehicle you will be eligible to take advantage of the Settlement’s extension of the warranty, for example.

**8. What are the benefits of the Settlement?**

The Settlement provides the following benefits:

Cash Payment or HMA Dealer Credit for Documented Complaints:

After Judge Jones grants final approval of the Settlement and the Settlement becomes effective (the “Effective Date”), if you have a documented complaint, repair, or warranty claim pertaining to the Smart Trunk not opening to expectation that was made to a Hyundai dealer, to HMA directly, or made on a publicly available complaint forum, prior to the Class Notice you may submit one claim for payment of \$50 cash (in the form of a pre-paid debit card) or a \$100 HMA dealer credit, regardless of whether you have any out-of-pocket loss.

In order to obtain the cash payment or Hyundai Dealer credit, you must submit a Claim Form either through the settlement website, [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com) or by mail and include all of the following: (a) documentation that identifies the Class Vehicle’s Vehicle Identification Number (“VIN”), (b) a repair order, invoice, or other documentation that identifies a documented complaint made to a Hyundai dealer, to HMA directly, or made on a publicly available complaint forum regarding the Smart Trunk not opening to

**QUESTIONS? VISIT [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com)**

expectation that includes a description of the complaint along with information regarding repair or lack thereof, and payment for repair, if applicable.

Free Inspection, and Repair or Replacement of Affected Smart Trunk Torsion Bars:

After the Effective Date, Class Members who believe that the Smart Trunk is not opening 7.5 inches or more will be able to make an appointment with an authorized Hyundai Dealer (“Dealer”) for an inspection of your Class Vehicle. If an authorized Hyundai Dealer determines that the Smart Trunk on a Class Vehicle opens less than 7.5 inches, subject to any exclusions set forth herein, replacement of the torsion bars will be performed. Any replacement torsion bars installed during the appointment are covered by Hyundai’s 78 month/78,000 mile extended warranty or Hyundai’s standard 2 year/unlimited mileage replacement parts warranty if the vehicle is outside the extended warranty period. This inspection and any necessary repair or replacement will be provided to the Class Member free of charge. Subsequent to the installation of the replacement torsion bars, the Class Member may also submit one claim for payment of a \$70 Hyundai Dealer credit.

If after the new torsion bars are installed, a Class Member believes that the Smart Trunk still fails to open 7.5 inches or more, the Class Member will be permitted to make a second appointment with an authorized Hyundai Dealer for a further inspection of eligible Class Vehicle(s). If an authorized Hyundai Dealer determines that the Smart Trunk on a Class Vehicle opens less than 7.5 inches, subject to any exclusions set forth herein, the torsion bars will again be replaced with a second set of torsion bars. Any replacement torsion bars installed during the appointment are covered by HMA’s extended 78 month/78,000 mile warranty or standard 2 year/unlimited mileage replacement parts warranty if the subject vehicle is outside the extended warranty. This inspection and any necessary repair or replacement will be provided to the Class Member free of charge. Subsequent to the installation of the replacement torsion bars, the Class Member may also submit one claim for an additional \$100 cash payment (in the form of a pre-paid debit card) or a \$200 HMA Dealer credit.

Warranty Extension:

After the Effective Date, all Class Vehicles under warranty will receive a warranty extension for the Smart Trunk torsion bars from five (5) years or 60,000 miles to seventy-eight (78) months or 78,000 miles, whichever is sooner. If your Class Vehicle is outside the warranty after the effective date, you will receive a warranty extension specific to the Smart Trunk torsion bars for a period of eighteen (18) months or 18,000 miles, whichever is sooner. The warranty extension is subject to the terms and conditions of the original warranty, as are the replacement parts, but will transfer with the Class Vehicle if it is later sold.

Reimbursement for Past Expenses:

In addition to the free inspection and warranty extension, if you previously incurred eligible out-of-pocket expenses at an authorized Hyundai Dealer or third-party repair shop for relocation, repair, or replacement of the Smart Trunk torsion bars due to the trunk not opening to expectation, you may be entitled to reimbursement of one claim per Class Vehicle.

Defendant does not warrant or guarantee any repairs performed at third-party repair shops and, should any such repairs fail, you will not be entitled to submit an additional claim. Defendant will not reimburse any work performed at third-party repair shops after the Effective Date of the Settlement.

In order to obtain reimbursement for eligible past expenses, you must submit a Claim Form and include all of the following: (a) documentation that identifies the Class Vehicle’s Vehicle Identification Number (“VIN”), (b) a dated repair order/invoice that includes a description of the repair, cause of the failure, parts used, labor time

**QUESTIONS? VISIT [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com)**

and costs, and mileage at the time of repair, and (c) proof of payment for the repair.

*To seek reimbursement for these reimbursement benefits, please complete and submit a Claim Form, as set forth in Answer 10, below.*

\* \* \*

As part of the claims confirmation process, a claim for reimbursement will be rejected if: (1) the VIN number associated with the claim does not match the Settlement Class Member's Vehicle's VIN number; (2) the Settlement Class Member has received any payments or refunds from HMA or an authorized Hyundai Dealer in connection with any complaints about the Smart Truck, that are equal to the amount of the claim for reimbursement submitted, and can be documented as such by HMA (3) the claim for reimbursement is for an item or service that is not covered under this Settlement Agreement; or (4) the claim is fraudulently submitted.

**This is just a summary of the Settlement terms. More details and specific information are available in a document called the Settlement Agreement, which is available at [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com).**

**9. What am I giving up in exchange for the Settlement benefits?**

If you do not exclude yourself and the Settlement becomes final, that means you are staying in the Class. Class Members will be releasing Defendant and related people and entities from all of the claims described and identified in Section VII.A of the Settlement Agreement. In essence, the claims released by Class Members are all claims (except for personal injury or damage to property other than the Class Vehicle) that could arise based on the Smart Trunk torsion bars not opening at least 7.5 inches in Class Vehicles, so you cannot sue, continue to sue, or be part of any other lawsuit against HMA about the legal issues in this case. The Settlement Agreement is available at [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com). The Settlement Agreement describes the released claims with specific descriptions, in necessarily accurate legal terminology, so read it carefully.

Judge Jones has appointed specific attorneys to represent you in this lawsuit and Settlement. You can talk to one of the lawyers listed below free of charge if you have questions about the released claims or what they mean. You can also speak with your own attorney, should you have one, about this Settlement.

**10. How do I get the benefits of the Settlement?**

All Class Members will receive the warranty extension. If you are a Class Member and would like to obtain Settlement benefits in the form of free inspection, and repair or replacement of the Smart Trunk torsion bars in your Class Vehicle, you can do so after the Effective Date of the Settlement by making an appointment for this service with an authorized Hyundai Dealer in your area. Judge Jones will hold a hearing on \_\_\_\_\_, 2019 at \_\_\_\_\_ a.m. to decide whether to give final approval to the Settlement. Check the settlement website, [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com), after that date to find out if the Settlement was given final approval and the deadline to take advantage of this benefit.

If you are a Class Member and would like to obtain reimbursement benefits, you need to complete the Claim Form that accompanies this Notice and either submit the claim through the settlement website, [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com) or by mail, with all the required proofs, to the address provided on the Claim Form. Additional copies of Claim Forms are available at [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com). The current deadline for submitting Claim Forms is \_\_\_\_\_, 2019. If you fail to submit a Claim Form and required documentation by the specified deadline, you will not get paid. Sending in a Claim Form late or without required documentation will be the same as

**QUESTIONS? VISIT [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com)**

doing nothing.

Please keep a copy of your completed Claim Form and all documentation you submit for your own records.

These benefits are also subject to limitations, including based on the model year and make of your Vehicle, which are discussed in Question 8.

If you have any questions on how to complete the Claim Form or what information is needed, you can call the following toll-free number: **866-944-7268**.

***Inspections cannot be scheduled, and claim forms will not be processed nor will payments be issued, until after the Effective Date, which is thirty (30) days after Judge Jones gives final approval of the Settlement, unless an appeal is filed, in which case it may be longer. Please be patient, and feel free to check the website for current status.***

**11. What if my claim is denied?**

There is a process in the Settlement to resolve disagreements between you and Defendant over your claim. During this process, the court-appointed attorneys listed below will represent you in any dispute regarding relief under the terms of the Settlement, and the dispute will be handled in accordance with the procedures set forth in the Settlement Agreement. You may have the right to appeal any denied claim to a third party at no cost to you. If you have questions regarding this process, visit [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com) to see a copy of the Settlement Agreement, or contact Class Counsel below.

**12. What if I do nothing?**

If you do nothing, you will give up the right to be part of any other lawsuit against Defendant about the legal claims released by the Settlement. You will be entitled to take your Class Vehicle to a HMA Dealer for an inspection, and repair or replacement of the torsion bars and receive any warranty extension for which you are eligible. However, you will not receive any of the payment or reimbursement benefits offered by this Settlement unless you timely submit a Claim Form.

**13. Can I exclude myself from this Settlement?**

Yes. If you want to keep the right to sue or continue to sue Defendant over the legal issues in this case, then you must take steps to get out of this Settlement. This is called asking to be excluded from – sometimes called “opting out” of – the Class.

**14. If I exclude myself, can I get anything from this Settlement?**

Yes. If you exclude yourself, you will give up rights to any reimbursement benefits for out-of-pocket expenses under the Settlement and to be part of this or any other lawsuit against the Defendants about the legal claims released by the Settlement. However, you can still take advantage of the Service Campaign and your vehicle will receive the warranty extension provided under the Settlement.

**15. If I don't exclude myself, can I sue later?**

No. Unless you exclude yourself, you give up the right to sue Defendant for the claims that this Settlement resolves.

**QUESTIONS? VISIT [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com)**

**16. How do I exclude myself from the Settlement?**

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from *Riaubia v. Hyundai Motor America*, Civil Action No. 2:16-cv-5150-CDJ. Be sure to include: (1) your full name and current address; (2) the model year and VIN of your Class Vehicle(s) and the date(s) of purchase/lease; (3) specifically and clearly state your desire to be excluded from the Settlement and from the Settlement Class; and (4) your signature. You cannot ask to be excluded over the phone or via the internet. You must mail your request to be excluded, postmarked no later than \_\_\_\_\_, **2019** to the Settlement Administrator at the address below:

*Riaubia Settlement*  
HMA Consumer Affairs Division  
PO Box 20840  
Fountain Valley, CA 92728

Failure to comply with any of these requirements for excluding yourself may result in you being bound by this Settlement.

**17. Do I have a lawyer in the case?**

The Plaintiff and you have been represented by a number of lawyers and several law firms that have prosecuted this case together. Judge Jones has appointed the following lawyers to represent you and other Class Members as “Class Counsel”:

<p>James C. Shah Natalie Finkelman Bennett SHEPHERD, FINKELMAN, MILLER &amp; SHAH, LLP 35 E. State Street Media, PA 19063 Tel: (610) 891-9880</p> <p>Noah Axler Marc A. Goldich AXLER GOLDICH LLC 1520 Locust Street, Suite 301 Philadelphia, PA 19102 Tel: (267) 534-7400</p>	<p>Robert P. Cocco ROBERT P. COCCO, P.C. 1500 Walnut St., Ste. 900 Philadelphia, PA 19102 Tel: (215) 351-020</p>
--	--

You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

**18. Proposed Service Awards to Class Representative.**

Class Counsel has requested a payment to the Class Representative Joshua Riaubia, not to exceed \$5,000.00. Defendant has agreed not to oppose this request. This payment will not reduce any benefits recoverable by members of the Settlement Class.

**QUESTIONS? VISIT [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com)**

**19. How will the lawyers be paid?**

As part of the resolution of the Actions, Class Counsel and Defendant have agreed Class Counsel may apply for an award of attorneys’ fees, costs, and expenses not to exceed \$828,876.00. The Parties have further agreed that Class Counsel will not seek payment of any amount in excess of \$828,876.00 if awarded by Judge Jones. The Class Counsel Fees and Expenses will be paid separate and apart from any relief provided to the Class. Judge Jones will determine the amount of attorneys’ fees, costs, and expenses. Defendant has agreed not to oppose this request. These payments will not reduce the value of the benefits distributed to Class Members. Defendant will also separately pay the costs to administer the Settlement.

**20. How do I tell the Court if I don’t like the Settlement?**

You can object to the Settlement if you don’t like some part of it. You can give reasons why you think Judge Jones should not approve it. To object, send a letter saying that you object to the Settlement in *Riaubia v. Hyundai Motor America*, Civil Action No. 2:16-cv-5150-CDJ. You must include: (1) your full name and current address and the name of your attorney and your attorney’s address if you are represented by an attorney; (2) the model year and VIN of your Vehicle(s) and the date(s) of purchase or lease; (3) whether your objection applies only to yourself, to specific subset of the Class, or to the entire Class; (4) the reasons why you object and the factual and legal reasons for your objection (including all relevant documents that pertain to your objection); (5) state that you have reviewed the Settlement Class definition and understand that you are a Settlement Class Member, and you have not opted out of the Settlement Class; (6) a detailed list of any other objections to any class action settlements you submitted to any court, whether State, Federal, or otherwise, in the United States in the previous five (5) years; (7) a Notice of Intention to Appear at the Final Approval Hearing if you intend to appear in person at the hearing; and (8) your signature. The objection must be filed with the Court on or before \_\_\_\_\_, **2019** and mailed to the Claims Administrator, Class Counsel, and Defendants’ Counsel. The mailed copies must be postmarked on or before \_\_\_\_\_, **2019**:

COURT	Clerk of Court United States District Court Eastern District of Pennsylvania James A. Byrne U.S. Courthouse 601 Market Street Philadelphia, PA 19106		
CLAIMS ADMINISTRATOR	HMA Consumer Affairs Division P.O. Box 20840 Fountain Valley, CA 92728		
CLASS COUNSEL	James C. Shah Natalie Finkelman Bennett SHEPHERD, FINKELMAN, MILLER & SHAH, LLP 35 E. State Street Media, PA 19063	Noah Axler Marc A. Goldich AXLER GOLDICH LLC 1520 Locust Street, Suite 301 Philadelphia, PA 19102	Robert P. Cocco ROBERT P. COCCO, P.C. 1500 Walnut St., Ste. 900 Philadelphia, PA 19102

**QUESTIONS? VISIT [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com)**

COURT	Clerk of Court United States District Court Eastern District of Pennsylvania James A. Byrne U.S. Courthouse 601 Market Street Philadelphia, PA 19106
DEFENDANT'S COUNSEL	Christopher J. Dalton Buchanan Ingersoll & Rooney PC 550 Broad Street, Suite 810 Newark, NJ 07102-4582

**21. What's the difference between objecting and excluding myself?**

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

**22. When and where will Judge Jones decide whether to approve the Settlement?**

Judge Jones will hold a hearing to decide whether to approve the Settlement. If you have filed an objection on time, you may attend and ask to speak, but you don't have to. Judge Jones will hold a Final Approval Hearing on \_\_\_\_\_, 2019 at \_\_\_ a.m./p.m., at the United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. At this hearing, Judge Jones will consider whether the Settlement is fair, adequate, and reasonable. If there are objections, Judge Jones will consider them. Judge Jones will only listen to people who have asked to speak at the hearing (See Question 23 below). Judge Jones will also decide how much to pay the lawyers representing Class Members and the Class Representative. After the hearing, Judge Jones will decide whether to approve the Settlement. If Judge Jones approves the Settlement, there may be appeals. We do not know how long these decisions will take. You should monitor [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com) to find out if any dates have changed, to learn if Judge Jones has approved the Settlement, and to get information about the progress of any appeals and the timing of payments – please be patient.

**23. Do I have to come to the hearing?**

No. Class Counsel will answer any questions Judge Jones may have, but you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you file and mail your valid written objection on time, Judge Jones will consider it. You may also pay another lawyer to attend, but it's not required.

**24. May I speak at the hearing?**

You may ask Judge Jones for permission to speak at the Final Approval Hearing. To do so, you must file a "Notice of Intent to Appear" in *Riaubia v. Hyundai Motor America*, Civil Action No. 1:15-cv-04889. Be sure to include your name, address, telephone number, signature, and other requirements outlined in Question 19. You must file your Notice of Intent to Appear no later than \_\_\_\_\_, 2019 and simultaneously mail it to the addresses listed in Question 20. You cannot speak at the hearing if you exclude or have excluded yourself from the Class.

**QUESTIONS? VISIT [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com)**

**25. How do I get more information?**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get copies of the Settlement Agreement and related documents at [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com). You may also write with questions to HMA Consumer Affairs Division, P.O. Box 20840, Fountain Valley, CA 92728, or call toll free at 866-944-7628.

**QUESTIONS? VISIT [www.SonataSmartTrunkSettlement.hyundaiusa.com](http://www.SonataSmartTrunkSettlement.hyundaiusa.com)**

# **Exhibit C**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>JOSHUA RIAUBIA, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>HYUNDAI MOTOR AMERICA,</p> <p style="text-align: center;">Defendant.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>CASE NO. 16-cv-05150-CDJ</p> <p><b>[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AGREEMENT, CERTIFYING SETTLEMENT CLASS, APPOINTING SETTLEMENT CLASS COUNSEL, SETTING HEARING ON FINAL APPROVAL OF SETTLEMENT, AND DIRECTING NOTICE TO THE CLASS</b></p>
---	--	---

Plaintiff moved this Court for an Order preliminarily approving the parties' settlement, certifying a settlement class, appointing settlement class counsel, setting a hearing on the final approval of the settlement, and directing notice to the class (the "Motion"). Hyundai Motor America ("HMA" or "Defendant") joined in Plaintiff's request for an order preliminarily approving the parties' settlement. Upon considering the Motion, the parties' Class Action Settlement Agreement and Release and all exhibits thereto (collectively, the "Settlement Agreement" or "Settlement"), the materials previously submitted in this case, the arguments of counsel, and other materials relevant to this matter, it is hereby **ORDERED** that:

1. The Court grants preliminary approval of the Settlement based upon the terms set forth in the Settlement Agreement filed herewith.
2. The terms of the Settlement Agreement are sufficiently fair, reasonable, and

adequate to allow dissemination of the Notice according to the Notice Program.<sup>1</sup> This determination is not a final finding that the Settlement Agreement is fair, reasonable, and adequate, but instead is a determination that there is good cause to submit the proposed Settlement Agreement to Settlement Class Members and to hold a hearing concerning final approval of the proposed settlement, and ultimately approve the settlement.

3. The Parties have made a sufficient showing, under the provisions of Rule 23 of the Federal Rules of Civil Procedure, as applicable in the context of settlement classes, to establish reasonable cause, following Notice to members of the proposed Settlement Class, to hold a hearing to determine if a Class should be certified for settlement purposes only, consisting of persons who meet the following criteria:

All persons or entities in the fifty United States and the District of Columbia who currently own or lease, or previously owned or leased, a model year 2015 to 2017 U.S. specification Hyundai Sonata vehicle equipped with the Smart Trunk feature purchased in the fifty United States and the District of Columbia.

Excluded from the Settlement Class are Defendant, as well as Defendant's affiliates, employees, suppliers, officers, and directors, attorneys, agents, insurers, and dealers; third-party providers of extended warranty/service contracts; independent repair/service facilities; the attorneys representing Defendant in this case; the judges and mediator to whom this case is assigned and their immediate family members; all persons and entities who request exclusion from (opt-out of) the Settlement; all persons and entities who previously released any claims encompassed in this Settlement or whose vehicle was permanently transported outside the United States; and all persons or entities claiming personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.

If, for any reason, the proposed settlement is not approved, any order certifying a settlement class shall be vacated *nunc pro tunc* and the litigation shall proceed as though the Settlement Class had never been certified, without prejudice to the Parties' rights to either request

---

<sup>1</sup> To the extent capitalized terms are not defined in this Order, they shall have the meaning set forth in the Settlement Agreement.

or oppose class certification for purposes of litigation.

4. In making the findings set forth in Paragraph 3, the Court has exercised its discretion in conditionally certifying the Settlement Class on a nationwide basis. Named Plaintiff Joshua Riaubia is designated as the Class Representative.

5. The Court hereby appoints the following attorneys as counsel for the Settlement Class: James C. Shah and Natalie Finkelman Bennett of Shepherd, Finkelman, Miller & Shah, LLP, and Noah Axler and Marc A. Goldich of Axler Goldich LLC, and Robert P. Cocco of Robert P. Cocco, P.C. (collectively, "Class Counsel"). For purposes of these settlement proceedings, the Court finds that Shepherd, Finkelman, Miller & Shah, LLP, Axler Goldich LLC, and Robert P. Cocco, P.C., are competent and capable of exercising their responsibility as Class Counsel.

6. This Court has both subject matter jurisdiction and personal jurisdiction as to this action and all Parties before it.

7. The Settlement Agreement is for settlement purposes only. Neither the fact of, any provision contained in, nor any action taken under the Settlement Agreement shall be construed as an admission of the validity of any claim or any factual allegation that was or could have been made by Plaintiff and Settlement Class Members in the Action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or the Released Persons. The Settlement Agreement shall not be offered or be admissible in evidence by or against Defendant or the Released Persons or cited or referred to in any other action or proceeding, except one (1) brought by or against the Parties to enforce or otherwise implement the terms of the Settlement Agreement, (2) involving any Plaintiff or Settlement Class Member to support a defense of *res judicata*, collateral estoppel, release, or other theory of claim preclusion, issue preclusion, or similar defense, or (3) involving an attempt to enforce a stay of other litigation pursuant to the

terms set forth in the Settlement Agreement and the Court's Order preliminarily approving the Settlement Agreement.

8. The Notice and provisions for disseminating notice substantially as described in and attached to the Settlement Agreement are hereby approved. The Court approves the Notice attached as Exhibit B to the Settlement Agreement, as well as the Claim Form, attached as Exhibit A to the Settlement Agreement. These materials (a) provide the best practicable notice, (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed settlement, and of their right to appear, object to, or exclude themselves from the proposed settlement, (c) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and (d) fully comply with federal law, the United States Constitution, and all other applicable laws.

9. Hyundai Motor America's Consumer Affairs Division (herein referred to as "Claims Administrator"), selected pursuant to the terms of the Settlement Agreement, shall be responsible for providing notice of the proposed settlement to the Settlement Class Members in accordance with the provisions of the Settlement Agreement and to the appropriate state and federal officials as directed under the Class Action Fairness Act (28 U.S.C. § 1715). HMA will be responsible for all fees and costs associated with the Notice Program.

10. To comply with their obligations under the Settlement Agreement, the parties must obtain vehicle registration information for Settlement Class Members for the purpose of disseminating notice of the proposed settlement to those persons and entities. The Claims Administrator is hereby authorized to obtain vehicle registration information concerning Settlement Class Members from HIS Markit or a similar vendor for the sole purpose of providing notice to those persons and entities.

11. The Claims Administrator shall mail the Notice to the identified Settlement Class Members per the Notice Program within sixty (60) days of the entry of this Order. On the same date, the Claims Administrator will make an informational settlement website available to the public, which website will include a copy of this order, the Notice, the Settlement Agreement, the Claim Form, and other important documents as set forth in the Notice Program. Class Members will be able to submit their claims for reimbursement by U.S. Mail or online, through the Settlement Website.

12. Anyone who wishes to be excluded from the Settlement Class must submit a written request for exclusion (as described in the Notice and Settlement Agreement) by sending it to Hyundai Motor America's Consumer Affairs Division, by First-Class U.S. mail to the address provided in the Notice. Requests for exclusion must contain all information described in the Settlement Agreement. The envelope containing the Request for Exclusion must be postmarked on or before 30 days prior to the Final Approval Hearing. The Court shall rule on the validity of exclusions at the Final Approval Hearing.

13. Anyone who falls within the Settlement Class definition and does not submit a Request for Exclusion in complete accordance with the deadlines and other specifications set forth in this Order and the Settlement Agreement shall remain a Settlement Class Member and shall be bound by all proceedings, orders, and judgments of this Court pertaining to the Settlement Class.

14. Any Settlement Class Member who wishes to object to the proposed Settlement must send or file an objection with this Court. Objections must contain all information described in the Settlement Agreement. The envelope containing the Objection to the Settlement must be postmarked on or before 30 days prior to the date set by this order for the Final Approval Hearing. Only Settlement Class Members may object to the Settlement. A copy of such papers

being filed in support of any Objection shall also be mailed to Class Counsel and Defense Counsel no later than 30 days before the date set by this order for the Final Approval Hearing.

15. Any Settlement Class Member who does not submit an Objection to the Settlement in complete accordance with this Order and the applicable provisions of the Settlement Agreement shall not be permitted to object to the settlement.

16. Any objecting Settlement Class Member may appear at the Final Approval Hearing on the fairness of the proposed settlement held by the Court, in person or by counsel, to show cause why the Settlement Agreement should not be approved as fair, reasonable, and adequate, or to object to any petitions for attorney fees and reimbursement of litigation costs and expenses; provided, however, that the objecting Settlement Class Member must mail or file with the Clerk of the Court, a notice of intention to appear at the Final Approval Hearing (a “Notice of Intention to Appear”) on or before the date set forth in the Notice, which shall be no later than 30 days prior to the date of the Final Approval Hearing. The Notice of Intention to Appear must include all information and documents required by the Settlement Agreement. Any Settlement Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Settlement Agreement, and who has not filed an Objection to the Settlement in complete accordance with the deadlines and other specifications set forth in the Settlement Agreement, will be barred from speaking or otherwise presenting any views at any Final Approval Hearing.

17. No less than ten (10) days prior to the Final Approval Hearing, the Claims Administrator will provide to the Parties a declaration attesting that Class Notice was disseminated in a manner consistent with the terms of the Settlement Agreement.

18. HMA shall also have the obligations otherwise enumerated in the Settlement

Agreement.

19. Class Counsel shall file with the Court their petition for payment of attorneys' fees and reimbursement of litigation costs and expenses no later than thirty (30) days before the date set for the Final Approval Hearing.

20. Fourteen (14) days prior to the date set for the Final Approval Hearing, Plaintiff shall file a motion for judgment and final approval of the Settlement. The parties shall file their briefs in support of settlement approval, as well as any supplemental briefs supporting Class Counsel's motion for attorneys' fees and reimbursement of litigation costs, at that time. The briefing shall include the parties' responses to any Objections, as well as a declaration setting forth the number of Settlement Class members who opted-out of the Settlement Class. Such briefing shall be served on any other attorneys who have entered an appearance in this proceeding, and on any member of the Settlement Class to whose Objection to the Settlement the memoranda or other briefing responds.

If any Settlement Class Members object or opt-out after Plaintiff files the motion for final approval, the parties shall file supplemental briefing no later than seven (7) days prior to the date set for the Final Approval Hearing, setting forth the parties' responses to such Objections and the number of opt-outs. If appropriate, the parties shall include supplemental briefing on Class Counsel's motion for attorneys' fees at that time.

21. On \_\_\_\_\_, 2019, the Court will hold the Final Approval Hearing, which shall be held in the United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106 at a time to be set forth in the Mailed Notice. The Final Approval Hearing may be continued or rescheduled by the Court with notice to Class Counsel and Defense Counsel and to any objecting Settlement Class Member who

has filed a Notice of Intention to Appear in accordance with this Order. At the Final Approval Hearing, or as soon thereafter as practicable, the Court will determine whether the proposed settlement is fair, reasonable, and adequate and should be approved by the Court. At the Final Approval Hearing, the Court will also consider the amount of attorneys' fees and expenses that should be awarded to Class Counsel. If appropriate, the Court will issue a Final Order and Judgment memorializing its decision, in the form contemplated by the Settlement Agreement.

22. Pending further orders by this Court, all proceedings in this case shall be stayed, except for proceedings pursuant to this Order. A stay is warranted because it will conserve the parties' and various courts' resources, minimize interference with this Court's ability to rule on the proposed Settlement, and preserve the Settlement for a short period of time while Settlement Class Members receive notice and evaluate their options. A standstill of litigation will be efficient, promotes the public policy favoring settlement, and aids resolution of claims on a nationwide basis, which is in the public interest.

As directed in Paragraph 3, the nationwide class is provisionally certified, and all members of the Settlement Class under the jurisdiction of this Court are enjoined from commencing and thereafter prosecuting any action, suit, proceeding, claim, or cause of action (except those based on or relating to personal injury or wrongful death), in any jurisdiction or court against Defendant or the Released Parties relating to or arising out of the subject matter of this action until such time as the class is decertified or pursuant to further orders of this Court.

23. Class Counsel and Defense Counsel are authorized to establish other means necessary to effectuate the terms of the Settlement Agreement.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2019

---

Hon. C. Darnell Jones  
United States District Judge

# **Exhibit 2**

**SHEPHERD FINKELMAN MILLER & SHAH, LLP**

([www.sfmslaw.com](http://www.sfmslaw.com))



***Serving Our Clients Worldwide***

Shepherd, Finkelman, Miller & Shah, LLP is a results driven law firm that is focused on delivering the highest level of service possible to our clients throughout the globe. SFMS believes that approaching the representation of our clients with considered judgment and candor, as well as the highest degree of courtesy, professionalism and zeal possible, provides the best opportunity for our clients to achieve and exceed their goals in any given matter. Having begun over ten years ago as a litigation boutique, SFMS has grown into a full-service firm that is able to meet its clients' needs in virtually any matter. The Firm maintains a number of offices in the United States that are strategically located to serve our clients. In addition, through a highly respected, global network of independent law, fiduciary trust and accounting firms, as well as affiliate offices, SFMS is able to effectively meet the needs of its clients throughout the world. Although our practice has grown in terms of geographic scope to meet client needs, SFMS maintains the culture of a boutique law firm with attorneys and staff working in an interdisciplinary, team-based manner across and between different offices.

***Focused On Results***

As part of our mission statement, the Firm ensures that every client receives our best judgment and a clear recommendation in every matter. In other words, although we always discuss and fully describe the array of alternatives available to our clients, we understand the importance of advocates being plain spoken, willing to challenge convention and strategic in their thinking. That is why we make certain that, without mincing words, SFMS always provides specific recommendations to each client in clear and straightforward terms regarding the Firm's judgment as to the best way to achieve the goal at hand.

***Motivated by Challenging Issues***

The attorneys, other professionals and staff of SFMS are a diverse and accomplished group of individuals who value the professional rewards and other benefits of working in a collegial, team-oriented environment. The attorneys at SFMS have earned degrees from a variety of highly-respected colleges and law schools, including the University of California at Berkeley, University of Chicago, Cornell University, Duke University, Emory University, Fordham University, George Washington University, Hastings College of Law, the University of Maryland, the University of Oregon, University of Oxford, the University of Pennsylvania, Pennsylvania State University, Temple University, Trinity College, University of Pittsburgh, Villanova University and Yale University. Many graduated with distinction and were members and editors of their respective schools' law reviews, moot courts or honor fraternities. Most have served federal or state judicial clerkships, and others hold graduate degrees in law, tax or other disciplines.



Our professional staff also is highly experienced and accomplished. At SFMS, we believe strongly that the competence and commitment of our non-attorney staff is critical to achieving the excellent client service that we always seek to deliver. We pride ourselves on working collegially together as a Firm while eschewing artificial hierarchy and stilted interactions in favor of a team-oriented environment that fosters creativity and a commitment to excellence.

Comprised of attorneys and staff that are almost exclusively alumni of large firms, SFMS team members have a keen understanding of the benefits of working in a boutique environment in which the opinions and contributions of all attorneys and staff are considered and valued. The Firm's clients also recognize these benefits and regularly comment upon SFMS's responsiveness and the efficiencies achieved in specific engagements, where the attorneys and staff are clearly and unselfishly committed to the simple goal of achieving an excellent result for the client, while enjoying the opportunity to collaborate with peers in a workplace environment that maximizes the potential of all team members and values the contributions of all.

At SFMS, we understand that it is best to approach any case, transaction, trial or other client challenge by obtaining a full understanding of the issues at hand and then engaging in strategic thinking, as well as hard work, to establish, and then meet and exceed, our clients' established goals. At SFMS, we are motivated by, and relish, the opportunity to confront challenging issues. That is why we consider it a privilege to work cooperatively with our clients to meet their goals and overcome the inevitable challenges created by complicated transactions and the disputes that clients regularly confront.

### ***Socially Committed and Responsible***

Although superior client service is our overriding aim, at SFMS, we also are committed to approaching our practice in a socially responsible manner, while making meaningful contributions to support the communities in which we work, the world at large and the social justice system. In our first ten years, although we are proud of the over \$1 billion in recoveries that we have obtained for our clients in litigation and similar matters, the important disputes that we have resolved and the significant transactions that we have completed, we are equally proud of the more than \$100 million in charitable donations for which the Firm has been responsible in the form of *cy pres* and other donations and gifts to assist those in need, as well as supporting the arts, education and other philanthropic causes. The Firm also is actively involved in *pro bono* cases, having successfully assisted clients in a variety of diverse matters, including civil matters for indigent clients, death penalty appeals, immigration asylum matters and court-appointed prisoner rights cases.



*Areas of Expertise*

Although SFMS is not organized into formal departments or practice areas and, instead, believes that our clients are best served by an interdisciplinary approach ensuring that the best attorneys for a given matter are assigned to meet the client's needs, the following constitute the Firm's more significant practice areas:

- Antitrust, Competition and Trade Regulation
- Business Counseling and Corporate Transactions
- Employee Benefits and Fiduciary Compliance
- Insurance Coverage and Practices
- International Business and Trade
- Private Client Services
- Representative and Collective Litigation
- Arbitration, Mediation and Other ADR Procedures
- Commercial and Other Complex Litigation
- Institutional Investor Services
- Intellectual Property
- Labor and Employment
- Qui Tam, False Claims and Whistleblower Proceedings
- Securities Regulation and Corporate Governance



*Antitrust, Competition and Trade Regulation*

SFMS has broad experience in dealing with the complex legal and economic issues that antitrust, competition and trade regulation questions can present. We offer clients significant litigation and counseling experience in virtually all aspects of antitrust and trade regulation litigation. Our lawyers have successfully represented plaintiffs and defendants in major civil antitrust matters throughout the United States. SFMS attorneys also have extensive experience representing parties involved in related criminal, administrative and other regulatory proceedings. In such matters, our team members have extensive experience working with the Department of Justice, the Federal Trade Commission and various State Attorneys General, as well as, upon occasion, international regulatory bodies, including the European Union. SFMS also has worked with and represented governmental entities, including the State of Connecticut, in unfair trade practice and related matters. Finally, SFMS has represented a number of clients, both businesses and consumers, in unfair trade practice and consumer protection cases throughout the United States in a wide variety of jurisdictions, including in scores of individual and Multi-District Litigation proceedings, in cases arising under the Consumer Legal Remedies Act, the Lanham Act, the Magnuson-Moss Warranty Act, the Racketeer Influenced and Corrupt Organizations Act and the Unfair Competition Law, as well as similar statutes and state laws in over 35 states and the District of Columbia.

The Firm is actively involved in litigation concerning antitrust and unfair competition issues relating to, among other matters, vertical and horizontal price agreements, market allocations, concerted refusals to deal, monopolization, covenants not to compete, price-fixing and tying arrangements, as well as unfair and deceptive trade practice, false advertising and commercial disparagement. Our attorneys, with extensive experience in antitrust law and economics, as well as knowledge of market realities, have represented businesses and individual consumers in antitrust cases in state and federal courts in the United States, as well as related criminal and regulatory proceedings. The Firm's attorneys have successfully prosecuted and defended antitrust cases, including price discrimination cases under the Robinson-Patman Act and price-fixing and tying cases under federal and state antitrust laws, to successful jury verdict.

In antitrust, competition, consumer protection and trade regulation cases, SFMS has been appointed lead counsel in over 75 cases in the United States, in recognition of its broad range of experience and the excellent results that it has obtained for its clients in previous engagements.



### ***Arbitration, Mediation and Other ADR Proceedings***

SFMS considers the use of arbitration, mediation and other alternative dispute resolution (“ADR”) devices to be an integral part of the practice of law and the advice that we provide to our clients. The Firm’s arbitration and mediation practice, and the other ADR strategies that we employ, enable us to achieve results that promote our clients’ goals, reduce the expense and delay associated with resolving disputes, and avoid the distractions that more protracted proceedings may impose upon clients.

SFMS lawyers have a broad range of ADR experience in the fields of domestic and international arbitration, direct negotiation, mediation and other customized ADR options, including dispute review boards, med-arbs, mini-trials, private judging and summary jury trials in the fields of antitrust, commercial transactions, construction, consumer and financial transactions, corporate and contract law, employment and labor disputes, intellectual property, insurance, and securities and corporate governance. In addition to regularly representing our clients in these ADR proceedings, SFMS attorneys have extensive experience acting as arbitrators, mediators, private judges and settlement counsel.

Members of the SFMS team have acted as advocates and/or neutrals in proceedings before the American Arbitration Association, the Federal Mediation and Conciliation Service, the Financial Industry Regulatory Authority f/k/a as the National Association of Securities Dealers and New York Stock Exchange, the Grain and Feed Trade Association in London, the International Centre for Dispute Resolution, the International Chamber of Commerce, Judicial Arbitration and Mediation Services, Inc., both domestically and internationally, and the London Court of International Arbitration, as well as in a number of quasi-public and private ADR proceedings.

### ***Business Counseling and Corporate Transactions***

SFMS has extensive experience counseling its business clients in a variety of matters. The Firm’s attorneys have experience in significant transactional work, as well as vast experience providing corporate and business counseling to our clients, including in the areas of business formations, capital markers, contract drafting, sales or purchases of businesses, mergers and consolidations, joint ventures, employee and independent contractor agreements, confidentiality agreements, public and private offerings, stock sale, transfer and other arrangements, severance packages, third party agreements and corporate governance matters. On the rare occasions when a corporate or business matter requires even greater expertise from a transactional, taxation or other perspective, we work with our clients to identify the best co-counsel with which to work on that particular matter and with whom we maintain relationships around the world, and then supervise the work of such counsel to ensure that the client’s needs are being met in cost-effective and efficient manner.



SFMS acts as outside general counsel for a number of small- to mid-size businesses, as well as certain subsidiaries of overseas corporations. Since the Firm uses a multi-disciplinary, team-oriented approach to staffing all business counseling and corporate transactional work, SFMS is able to provide high quality, cost-effective representation for the clients that choose to so engage us. In fact, certain clients have apprised us that, based upon the efficient and business-minded manner in which we approach such matters, it often makes sense for them to engage SFMS, even though the Firm may, at times, bill at higher hourly rates than other law firms. Since SFMS approaches every engagement based upon the principles of value billing and seeks to reward productivity and outcomes, as opposed to time spent on an engagement, the Firm consistently is informed by its corporate clients that it provides higher quality and lower cost services than many of its competitors, both large and small, that work exclusively or predominantly in the area of business counseling and corporate transactions.

### ***Commercial and Other Complex Litigation***

SFMS has extensive experience handling a wide variety of commercial litigation matters. The attorneys at SFMS have decades of experience representing large national and international corporations, as well as smaller businesses and other entities in such matters. The broad range of commercial litigation matters that SFMS lawyers have handled include contract disputes, breach of duty claims, abuse of trust cases, business torts, trade disputes, unfair competition claims and related issues, including risk assessment and litigation avoidance. We represent clients in diverse industry sectors, including large publicly traded and international companies, as well as smaller business enterprises in connection with their complex commercial litigation matters. In addition to handling such matters in federal and state courts in the United States, SFMS attorneys also have significant experience handling claims in international arbitration forums and with co-counsel in courts outside of the United States. In representing clients in commercial litigation matters, SFMS attorneys have recovered hundreds of millions of dollars, including recoveries from governments and state trading entities. SFMS attorneys regularly appear in federal and state courts throughout the United States, as well as bankruptcy and appellate courts. In fact, on the appellate front, as a result of our track record of winning many significant and groundbreaking appeals over the last decade, other practitioners regularly approach us and request that we assist them in pursuing or defending appeals in federal and state courts.

The Firm handles commercial litigation pursuant to traditional hourly billing arrangements and, on an increasingly frequent basis, has been retained to handle litigation for corporate plaintiffs on a contingent fee basis. We have found that, while many corporate counsel tend to be reluctant to deviate from tried and true hourly billing procedures, in appropriate circumstances, a contingent fee structure ensures the proper incentives and often works to further the client's interests, while providing desirable incentives to litigate efficiently, maximize recoveries and minimize the length of pretrial proceedings.



### ***Employee Benefits and Fiduciary Compliance***

SFMS handles a variety of employee benefits and fiduciary litigation, as well as compliance issues, for our clients -- most of which arise under the Internal Revenue Code and the Employee Retirement Income Security Act of 1974. SFMS attorneys have represented employee benefit plan fiduciaries, including plan trustees, as plaintiffs and defendants in a wide variety of employee benefits and fiduciary compliance matters. The Firm's attorneys also have experience working with independent fiduciaries in certain cases. The attorneys at SFMS also have represented clients in a number of cases involving Taft-Hartley fund delinquent contributions and similar matters. The Firm has handled a number of novel and ground-breaking ERISA cases, including issues regarding revenue-sharing practices, cash balance and cross-tested plans, common stock declines and stock options with regard to qualified retirement plans, including 401(k), 403(b), 457, profit sharing, money purchase pension, cash balance, annuity, and defined benefit plans.

Most of the employee benefits and fiduciary compliance litigation that SFMS handles involving employee benefits and fiduciary compliance occurs in federal district courts in the United States. In such litigation, SFMS has significant experience working with the U.S. Department of Labor, as well as the Department of Justice. SFMS attorneys also have experience representing the interest of our clients in bankruptcy court and related proceedings in connection with both employee benefits and fiduciary compliance matters.

### ***Institutional Investor Services***

SFMS provides a variety of compliance, litigation, monitoring, regulatory and transactional services to institutional investors, including educational and endowment based funds, hedge funds, public and private pension funds and private equity firms. Among the other services that it provides to institutional clients, the Firm performs corporate governance and securities investment monitoring for virtually all of its institutional clients pursuant to which it advises clients when they should consider legal action to protect their rights as shareholders in a corporation. In connection with its SFMS Tracker<sup>SM</sup> service, SFMS offers the following portfolio services to institutional investor clients: (a) the development of guidelines and policy statements regarding securities and other shareholder litigation, as well as other corporate governance initiatives, to meet fiduciary obligations; (b) the monitoring of securities and related litigation that affects the client's investments; (c) the investigation and evaluation of potential and pending litigation to evaluate the appropriate role, if any, for the client; (d) the preparation of presentations for institutional clients regarding the status of potential and pending litigation and other corporate governance initiatives; (e) provision of updates regarding the settlement or other resolution of litigation, disputes and other initiatives; (f) assistance to clients in completing appropriate claim forms and other documentation to maximize recoveries; and (g) coordination of the holding of certain securities in custodial accounts with a financial institution pursuant to a specialized agreement that SFMS was instrumental in crafting to protect client interests in appropriate circumstances.



### *Insurance Coverage and Practices*

SFMS has significant experience in handling legal issues related to insurance coverage and practices. SFMS attorneys have experience negotiating and litigating with many major U.S. insurance companies, as well as Lloyd's, the London Market and other international insurers. The Firm has achieved outstanding results for our clients across a wide variety of issues and forums. SFMS attorneys have handled insurance coverage matters related to business interruption, defamation, health insurance, privacy, advertising, personal injury claims, Directors' and Officers' liability, employment practices liability, environmental cleanup and 'toxic tort' liability, fidelity bonds and crime policies, financial insurance, intellectual property (copyright, trademark and patent infringement), product liability, professional errors and omissions (malpractice) liability, property and valuable articles coverage, 'self-insurance' and workers' compensation insurance. In such matters, SFMS attorneys have experience with all principal coverage issues that arise under standard liability and first-party property policies, as well as many specialty coverages, have addressed many of the procedural aspects of insurance coverage litigation, including choice of law, forum non conveniens, party joinder and case management issues, duty-to-defend disputes, and independent counsel and fee-rate limitation issues. The Firm also has extensive experience in handling claims regarding insurance marketing, settlement and payment practices, as well as insurance practices regarding the calculation of benefits. SFMS attorneys have played a substantial role in litigating major insurance practice-related claims with respect to automobile insurance loss adjustment practices, burial insurance, health insurance and continuation of benefits issues, title insurance charges and vanishing premium insurance policies.

### *Intellectual Property*

SFMS has significant experience providing an array of legal services in the areas of patent, copyright, trademark, trade secret, outsourcing, software, technology, restrictive covenants and franchise law. These services include obtaining protection, registrations, amendments and renewals with respect to patents, copyrights, trade secrets, service marks and trademarks. SFMS also counsels its clients on licensing, marketing, distribution and other commercial transactions regarding products, services and technologies protectable under international, federal, state or local intellectual property laws. SFMS attorneys also have litigated and provided advice about disputes involving the protection and enforcement of rights in patents, trademarks, copyrights, confidential information and trade secrets, technology, covenants not to compete, and other intellectual property. SFMS has significant experience in prosecuting and defending copyright, trademark and patent infringement cases, unfair competition actions, Internet and technology disputes (including those involving software and computer technology), franchise disputes, false advertising claims, litigation concerning trade secrets and restrictive covenants, and other claims relating to intellectual property. SFMS attorneys also are well-versed not only on the substance of intellectual property law, but also on federal and state court procedural issues, including obtaining and defending against temporary restraining orders and preliminary injunctions that



often are sought in intellectual property actions. Finally, SFMS attorneys are proficient in resolving intellectual property disputes through alternative dispute resolution mechanisms, such as arbitration and mediation.

### ***International Business and Trade***

SFMS represents companies and other business entities based in the United States and overseas in a variety of international business and trade matters. The Firm's attorneys have assisted our foreign and United States clients with organizing foreign subsidiaries, joint ventures, mergers, acquisitions and recapitalizations, manufacturing agreements, sales, leasing and supply agreements, international distribution of goods and services, cross-border technology licensing, licensing agreements and registration of U.S. and foreign trademarks, copyrights and patents, privacy and data protection, as well as Foreign Corrupt Practices Act compliance. SFMS attorneys also assist our clients in addressing immigration matters, international estate planning, and real estate acquisition issues to the extent that those needs arise. In addition, the Firm regularly represents a number of clients based overseas in arbitration, mediation, other ADR proceedings and litigation matters.

SFMS's International Business and Trade practice works with local counsel in many countries to help clients understand and manage risks posed by different legal systems. As an active member of IAG International (Integrated Advisory Group), <http://www.iaginternational.org>, a consortium of independent law, fiduciary trust and accounting firms in Asia, Canada, Central America, Europe, the Middle East, South America and the United States, SFMS is able to effectively meet the needs of its clients on a global basis. As part of its growing international practice, SFMS actively encourages its more junior lawyers to actively participate in AIJA (the International Association of Young Lawyers), <http://www.aija.org>, since we understand that, by building and maintaining professional relationships throughout the globe, SFMS is able to provide a service level in international matters that is infrequently matched by other boutique firms.

We have attorneys fluent or proficient in Cantonese Chinese, Mandarin Chinese, Japanese, French, Italian and Spanish, and many have spent substantial time working outside the United States. We are experienced working internationally and counsel our clients on the cultural and legal norms of doing business in various foreign jurisdictions. We also assist our clients to achieve their goals with our team approach and a thorough understanding of their international business needs. We have experience in many areas throughout the world, including Argentina, Australia, Bermuda, Brazil, British Virgin Islands, Canada, Chile, China, Denmark, Dominican Republic, Dubai, France, Germany, Hong Kong, India, Israel, Italy, Japan, Korea, Kuwait, Mexico, the Netherlands, Russia, Singapore, Spain, Switzerland, Taiwan, Turkey, the United Kingdom and Yemen.



### ***Labor and Employment***

SFMS has a significant and eclectic practice in the field of labor and employment matters. The Firm has represented individuals, companies, governmental entities and other employers, as well as labor organizations, in a wide range of employment and labor litigation, as well as other matters. SFMS attorneys have extensive experience counseling and representing their clients in litigation, as well as other disputes and challenges, regarding ERISA and employment benefits, federal and state wage and hour laws, questions regarding H1N1 (swine) flu workforce resources, immigration, international employment, labor-management relations, noncompetition agreements and trade secrets, occupational safety and health, equal employment and affirmative action matters, workplace safety, changes, reductions-in-force and training.

The Firm's attorneys have negotiated collective bargaining agreements, appeared before the National Labor Relations Board, the Equal Employment Opportunity Commission and other fair employment practice agencies, as well as before various mediation and arbitration panels that specialize in employment and labor issues. SFMS has vast experience working on a diverse array of employment and labor cases, including cases involving age, defamation, gender, gender dysphoria, race and sexual orientation discrimination, ERISA and benefits matters, breach of contract claims, and wage/hour claims. SFMS and its attorneys also have served as lead counsel in a number of wage/hour class actions, as well as discrimination and other employment class actions. In those cases in which the Firm has represented plaintiffs, it has recovered millions of dollars for its clients. Finally, the Firm serves as national labor counsel for several select employers and also is pleased to count a number of local and international labor organizations among its clients.

### ***Private Client Services***

SFMS also provides private client services to existing and select clients with respect to domestic and international estate planning, charitable planned giving, trust and estate administration, family law matters, executive compensation, real estate and federal and state tax issues. In addition, upon occasion, the Firm will represent existing clients in personal litigation. In these areas, SFMS has a broad range of expertise, having assisted clients in the United States and overseas with significant estate planning issues, having negotiated executive compensation packages, as well as severance packages, for senior executives at U.S. and international concerns, and having assisted existing clients in custody, divorce, guardianship and separation matters arising from family crises or disputes. The Firm also has experience assisting our clients in negotiating and closing real estate transactions, both in the commercial and non-commercial fields. SFMS regularly works with accountants and auditors to address federal, state and local tax issues for its clients and has significant experience handling offers in compromise and defending tax proceedings initiated by government entities, including the Internal Revenue Service and the Department of Justice. SFMS believes strongly that, when the need arises, its attorneys and other professionals must and should be prepared to assist our clients in these important private matters.



### ***Qui Tam, False Claims and Whistleblower Proceedings***

SFMS has broad experience in handling legal issues related to false claims, whistleblower and qui tam cases under the federal False Claims Act and similar state laws, as well as assisting clients in internal investigations. The federal False Claims Act has proven to be an effective, powerful and, sometimes, frightening tool in fighting Medicare and Medicaid fraud, defense contractor fraud and other types of fraud perpetrated against federal and state governments. The ‘qui tam’ provisions, which allow whistleblowers to file False Claims Act lawsuits against companies and individuals that allegedly defraud the government with the opportunity to obtain a “bounty,” have been a key ingredient in the False Claims Act’s success, as the federal government has recovered more than \$15 billion as a result of qui tam lawsuits since 1986, with whistleblowers’ rewards totaling more than \$2.5 billion. SFMS attorneys have represented clients in a number of significant cases under the False Claims Act. In addition, the Firm has significant experience representing clients in qui tam cases brought under similar state laws against companies and individuals accused of defrauding state and local government agencies. The Firm currently is representing clients in a number of qui tam actions under the False Claims Act and state law, many of which, including several large prosecutions, are ‘under seal’ and, therefore, cannot be publicly disclosed. SFMS similarly has significant experience handling qui tam, false claims and whistleblower cases under the Dodd-Frank Act for alleged securities fraud and related misconduct, as well as the Foreign Corrupt Practices Act, related to alleged bribery of foreign officials and others to secure business preferences overseas. Finally, the Firm has represented clients performing internal investigations arising from whistleblower complaints and has developed effective, methodological tools to address such matters.

### ***Representative and Collective Litigation***

SFMS has a broad range of experience in representing clients in class action and other representative/collective litigation. The attorneys at SFMS have been appointed lead counsel in scores of class action and similar cases, and the courts that have appointed SFMS in such litigation have consistently recognized the excellent representation provided by SFMS in such engagements. SFMS attorneys have extensive experience representing the interests of their clients in antitrust, consumer protection, employment discrimination/civil rights, employee benefits, ERISA, fiduciary compliance, housing practices, insurance coverage/practices, securities fraud/breach of fiduciary duty, and wage and hour class action litigation.

In such litigation, SFMS has represented a variety of private and public plaintiffs, including institutional and other significant investors, private companies, officers and directors, other fiduciaries and labor organizations. In such litigation, SFMS has been successful in recovering hundreds of millions of dollars for our clients and, in addition, has procured tens of millions of dollars in charitable cy pres donations to worthy organizations as a result of the outcomes that we have achieved. Unlike certain lawyers who exclusively handle class action litigation, we know how to prosecute cases to trial and have extensive experience trying cases. In federal and



state courts, as well as arbitral forums, SFMS attorneys have tried such cases for both plaintiffs and defendants to successful jury verdict, judgment and award.

***Securities Regulation and Corporate Governance***

SFMS has significant experience in the fields of securities regulation and corporate governance. In such matters, SFMS has represented a variety of private and public entities, including institutional and other investors, investment managers, hedge funds, public and private pension funds, as well as private companies, officers and directors, and labor organizations. In addition to counseling our clients on matters related to securities regulation and corporate governance, SFMS attorneys have litigated complex securities and directors' and officers' liability cases in federal and state courts across the country. Our securities litigation practice is one of the largest and strongest practice areas of the Firm. We have significant trial and appellate experience in the following areas: shareholder class actions; significant shareholder opt-out cases; derivative/director and officer cases and investigations; corporate control contests; regulatory enforcement and criminal prosecution matters. Our attorneys have worked with and against the SEC, Department of Justice and various self-regulatory organizations, including FINRA, in representing our clients. SFMS attorneys also have experience with a variety of securities registration and regulation issues under federal and state law and have worked with clients with respect to Blue Sky and other compliance issues. Finally, the Firm has served as lead counsel in a number of securities class action and other corporate governance matters and, in such representations, SFMS has recovered tens of millions of dollars for our clients, while achieving important corporate governance reforms.



*Representative Clients*

At SFMS, we place our clients' interests first. We strive to provide our clients with thoughtful, comprehensive and high quality legal services at all times. Our diverse client base includes:

Start-up and other smaller companies

Multi-national corporations

Biotechnology and life science concerns

Construction companies

Educational institutions

Healthcare and manufacturing concerns

Hospitality and leisure businesses

Individuals, including significant shareholders, highly compensated employees, consumers, small business owners and professionals

Labor organizations, including local and international labor unions

Private pension funds

Public pension funds

Multi-employer and Taft-Hartley pension funds

Large and mid-size financial institutions

Hedge funds and money managers

International and other significant investors

State and local governmental entities

Technology companies and entrepreneurs



*Consistent Achievements: Accolades From Clients and Courts Alike*

“[SFMS] took the case, acted promptly in crafting a strategy and then was innovative in creating a fee structure based upon shared risk that made it possible for us to proceed with the matter. Our prior counsel who reviewed the matter did none of these things. [SFMS] then proceeded to obtain a result that exceeded our expectations. That is why [SFMS] is our new go to firm in the United States.” Chief Financial Officer, Multinational Corporation based in Europe

“[SFMS] helped us achieve a remarkable result in high stakes litigation against one of the biggest corporations in the world. I recommend them without qualification.” President, Architectural and Design Firm based in California

“When I decided that I would be opening a new business, my first meeting was with my lawyer at [SFMS]. Despite very big challenges from a regulatory perspective, the firm handled the matter seamlessly and in a cost effective manner. I have worked with attorneys at [SFMS] for over ten years in the context of litigation, regulatory proceedings and transactions and would never consider using another law firm.” President and Owner, For Profit Educational Institution based in Connecticut

“I have referred SFMS a number of transactional and litigation matters over the years, and they never have disappointed me. Efficient, cost-effective and creative. That is how I would describe the firm.” Accountant and CFO of Multinational Corporation based in Florida

“I only refer my clients with legal needs to the lawyers at SFMS. In addition to having represented me in a variety of cases, the firm always has performed at a very high level for my clients in an efficient and responsive manner. The fact that my clients receive personal attention and that [SFMS] is able to handle work across the United States and throughout the world is a significant advantage.” Accountant for U.S. Companies and Foreign Subsidiaries based in New Jersey

“The lawyers at [SFMS] are truly amazing. They take a multi-disciplinary approach that provides great efficiency and insight to legal projects. In addition to providing services for my firm, they also have provided me with great legal services on a personal level upon occasion.” Managing Partner, Private Equity Firm based in New York

“I first was represented by the lawyers at [SFMS] in a litigation matter and since have used them to negotiate employment contracts, joint venture agreements and provide general legal advice. Their work has always been top notch and I always have enjoyed working with them.” President of Technology Consulting Company based in Pennsylvania



“I was skeptical of lawyers until I had the pleasure of working with the team at [SFMS]. They were hard working, honest and truly committed to helping us achieve a great result. I now call on the firm anytime that I have a problem, even sometimes when it has nothing to do with the law.” President and Owner, Telecommunications Company based in Wisconsin

“The lawyers at [SFMS] have grown from being trusted advisors to true friends. Our business would not have survived and achieved the success it has over the last decade without the hard work and dedication of the firm, including both the attorneys and staff. When they take on an assignment, whether it’s negotiating a contract or litigating a dispute, you know you have a partner in your corner who will stand with you through thick and thin.” Vice President and Owner, Construction Company based in Illinois

“It was my distinct honor and privilege to be represented by the lawyers at SFMS. I have never seen lawyers work with such diligence and care in presenting a case at trial.” Chief Executive Officer, Restaurant Group based in Wisconsin

“This is the best settlement of a class action that I have seen in my years on the bench. You [SFMS] should be proud of the work that you have done in this case.” The Honorable Jack Komar, Superior Court of California

In approving the resolution of a case involving the Comprehensive Omnibus Reconciliation Act of 1985 (“COBRA”) involving health insurance gap coverage, SFMS was commended for handling a “tremendously important lawsuit” and for the “outstanding job” done. The Honorable Daniel T. K. Hurley of the United States District Court for the Southern District of Florida

“You [SFMS] have achieved a very significant result in this case. Counsel on both sides are to be complimented on their professionalism and the fine work that they have done in this case.” The Honorable Alfred Covello, United States District Court for the District of Connecticut

“Let me say this. This case has been superbly tried on both sides. I’m honored to have so well prepared, professional and courteous advocates, and I’m particularly grateful to the District of Connecticut for the opportunity to sit on this case. And I thank counsel. Now, some of them have representative clients here, but all the clients should understand that the attorneys [including the trial team of SFMS] here have been absolutely first rate.... And, again, with my most sincere thanks.” The Honorable William G. Young, United States District Court for the District of Massachusetts



### ***Pro Bono, Community Service and Charitable Work***

SFMS believes that our attorneys should provide *pro bono* and public interest legal services, as a matter of professional responsibility and in recognition of both the overwhelming need for, and positive outcomes arising from, the provision of such services. SFMS attorneys regularly accept unpopular and challenging cases, participating in *pro bono* activities that range from political asylum and death penalty litigation to civil rights, housing, constitutional and mortgage foreclosure class actions to individual civil and criminal matters for low income, disabled and other people who are disadvantaged and in need. SFMS also has represented certain non-profit organizations in *pro bono* assignments.

SFMS has contributed thousands of hours of professional time to *pro bono* matters. We believe that our work benefits the clients we serve, the public at large, and our attorneys who develop additional skills and enjoy the great professional fulfillment derived from performing such public service. The Firm actively encourages partners and associates to accept *pro bono* legal assignments and to treat such assignments as matters of the highest priority. In addition to being committed to *pro bono* work, SFMS attorneys and staff are highly committed to community services. SFMS representatives regularly and actively work on behalf of a number of community organizations, including the Special Olympics, and serve on boards and commissions, including in elected roles, to support the communities in which we work and live. SFMS also is committed to charitable work and regularly provides financial support to a number of community and charitable organizations, including YMCA camps and organizations supporting the underprivileged, arts, education and culture. In addition, the Firm is actively engaged in working to promote the donation of cy pres funds from representative proceedings and other litigation. As a direct result of the efforts of SFMS attorneys in such matters, more than \$100 million has been donated to charities, public schools, colleges and other educational institutions, and non-profit institutions promoting the social justice system and other good works. The Firm also actively supports the credit internship program of the Cornell University School of Industrial and Labor Relations. At any given time, SFMS typically employs one or more full-time interns from the Cornell ILR School to provide these students with practical experience in the workplace related to their chosen field of study. Finally, the Firm actively encourages its attorneys to contribute to the profession through professional writings, service on American Bar Association and state bar committees and support for the bar organizations that assist indigent and other clients obtain access to the justice system.

If you have a question about the Firm's *pro bono*, community service or charitable work or would like us to consider a specific *pro bono* assignment or a community service/charitable work or donation request, please send us an email or other correspondence regarding the same at [probono@sfmslaw.com](mailto:probono@sfmslaw.com). If you would like to make arrangements for a cy pres donation with the assistance of SFMS or would like to be considered for a cy pres award, please send us an email or other correspondence regarding the same at [cypres@sfmslaw.com](mailto:cypres@sfmslaw.com). The appropriate SFMS representative will respond to your inquiry as promptly as possible.

*The Members of our Firm*

As described above, the members of our Firm are an accomplished and diverse group of individuals. On the pages that follow, we have provided individual biographical pages for the members of the SFMS team that we anticipate being most significantly devoted to this engagement. If you have any questions or require additional information, please contact us at [info@sfmslaw.com](mailto:info@sfmslaw.com).

Attorneys Admitted To Practice Law Before The State And Federal Appellate And Trial Courts  
Of Arizona, California, Connecticut, District Of Columbia, Florida, Illinois, New Jersey,  
New York, Oregon, Pennsylvania and Wisconsin, as well as the Federal Circuit Court  
of Appeals and the United States Supreme Court

Toll-Free: 866/540-5505 - 877/891-9880

[www.sfmslaw.com](http://www.sfmslaw.com)

**Scott R. Shepherd**  
**Pennsylvania Office**  
**Telephone: 610-891-9800**  
**Facsimile: 866-300-7367**  
**Florida Office**  
**Telephone: 954-515-0123**  
**Facsimile: 866-300-7367**  
**Email: [sshepherd@sfmslaw.com](mailto:sshepherd@sfmslaw.com)**

Scott R. Shepherd founded what is now known as SFMS in 2000. He is admitted to practice law in the States of Florida and Illinois, as well as in the Commonwealth of Pennsylvania and the United States District Courts for the Southern and Middle Districts of Florida, the Northern District of Illinois, the Eastern District of Pennsylvania, the United States Courts of Appeal for the Third, Fourth, Seventh and Eleventh Circuits, and the United States Supreme Court. In addition to these courts and jurisdictions, Scott has worked on cases with local and co-counsel throughout the country and worldwide.

Scott's practice is concentrated on representing clients in whistleblower, securities, consumer and False Claims Act cases. Scott also is experienced in handling a variety of antitrust, employment and other complex commercial matters. Finally, Scott has substantial experience representing clients in employee benefit, health and life insurance cases and other matters. In addition to his regular private practice, Scott also has handled a number of significant pro bono matters. He has represented clients in a number of political rights cases, including political asylum and voting rights actions. He has also handled numerous criminal appeals, including death penalty cases.

Scott earned his undergraduate degree summa cum laude from Westminister College in New Wilmington, Pennsylvania and his law degree from the University of Chicago Law School. Scott began his law practice in 1985 in Chicago, representing defendants in class action, securities and products liability litigation with one of the largest law firms in the country. Returning to Pennsylvania in 1989, Scott worked with a large Philadelphia corporate and defense law firm. He subsequently became a partner at Greenfield & Rifkin LLP, a well-known firm that handled significant class actions, before starting a predecessor firm in 1998.

Scott is a member of the American Association for Justice, the National Association of Securities and Consumer Attorneys, the American Health Lawyers Association, and the Palm Beach County and Delaware County Bar Associations. Scott is active in community, as well as political and charitable activities, and divides his time between the Firm's Pennsylvania and Florida offices.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

**Natalie Finkelman Bennett**  
**Pennsylvania Office**  
**Telephone: 610-891-9800**  
**Facsimile: 866-300-7367**  
**Email: [nfinkelman@sfmslaw.com](mailto:nfinkelman@sfmslaw.com)**

Natalie Finkelman Bennett joined SFMS in 2000. She is admitted to practice law in the State of New Jersey, as well as the Commonwealth of Pennsylvania and numerous federal courts, including the United States District Courts for the United States District Courts for the District of New Jersey and Eastern District of Pennsylvania, and in the United States Courts of Appeal for the Third and Ninth Circuit. In addition to these courts and jurisdictions, Natalie has worked on cases with local and co-counsel across the country and worldwide.

Natalie concentrates her practice on antitrust, consumer and insurance litigation, as well as complex commercial matters. She also has significant experiencing representing clients in a wide variety of corporate governance, securities, employment benefit, wage/hour and unfair trade practices cases. In addition, Natalie represents clients in “whistleblower” cases brought under the United States False Claims Act. Finally, Natalie has significant experience representing physicians and physician groups in a wide variety of matters.

Natalie earned her undergraduate degree magna cum laude from the Pennsylvania State University in 1986 and was elected a member of Phi Beta Kappa Honor Society. Natalie earned her law degree magna cum laude from the Temple University School of Law in 1989. She served as the Managing Editor of the Temple Law Review. After clerking for former Chief Judge Farnan of the United States District Court for the District of Delaware, Natalie began working in private practice at Schnader Harrison Segal & Lewis in 1990. At Schnader, she practiced in many areas of complex commercial litigation, including product liability, insurance coverage and defense, antitrust, contract and commercial lease matters. In 1996, Natalie became an associate at the law firm of Mager Liebenberg & White, a well-known firm that specialized in class actions, where her practice was concentrated in antitrust and consumer protection class action litigation. In 1998, Natalie became a Partner in the law firm of Liebenberg & White.

Natalie is a member of the American Bar Association, Pennsylvania Bar Association, Philadelphia Bar Association and the National Association of Consumer Advocates. She also is a former member of the Pennsylvania Bar Association Commission on Women in the Profession and the Temple American Inn of Court. She resides in Wallingford, Pennsylvania with her family and is active in community affairs and charitable activities.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

**James E. Miller**  
**Connecticut Office**  
**Telephone: 860-526-1100**  
**Facsimile: 866-300-7367**  
**Email: [jmiller@sfmslaw.com](mailto:jmiller@sfmslaw.com)**

James E. Miller joined SFMS in 2002. He is admitted to practice law in the States of California, Connecticut and New Jersey, as well as the Commonwealth of Pennsylvania and numerous federal courts, including the United States District Courts for the Southern District of California, District of Connecticut, Eastern District of Pennsylvania, District of New Jersey, Eastern District of Wisconsin, the United States Court of Appeals for the Third Circuit and Ninth Circuit and the United States Supreme Court. In addition to these courts and jurisdictions, Jim has worked on cases with local and co-counsel nationwide and internationally.

Jim concentrates his practice on whistleblower and securities and corporate governance litigation, as well as significant employment, ERISA, employment benefits, defamation and wage/hour cases. He also has significant experience representing clients in a wide variety of consumer and antitrust class actions and other complex commercial litigation, as well as unsuitable trading, churning and trade disputes in FINRA arbitrations/mediations and before international tribunals. Finally, having begun his career working for the labor movement after majoring in Industrial and Labor Relations at Cornell, Jim serves as labor counsel for certain select clients of the Firm.

Jim earned his undergraduate degree from Cornell University (B.S. 1988) and his law degree from the University of Pennsylvania School of Law (J.D. 1991). While at Penn Law School, he was awarded the Edwin R. Keedy Cup and was Editor of the Comparative Labor Law Journal. Following graduation, he served as Law Clerk to the Honorable Daniel H. Huyett, 3rd, United States District Judge for the Eastern District of Pennsylvania.

Jim began his law practice in 1992 in Philadelphia, Pennsylvania, where his practice concentrated on labor and employment litigation, as well as other complex commercial litigation. In 2000, he relocated with his family to Connecticut where he served in a lead role in several consumer and securities class actions, while also representing both institutional and individual investors in major unsuitable trading and churning cases. In 2002, Jim joined the Firm to open its office in Connecticut. Jim is a member of the National Association of Securities and Consumer Attorneys, National Employment Lawyers Association, the American Bar Association, the Connecticut Bar Association, the New Jersey Bar Association and the Pennsylvania Bar Association. He resides with his family in Chester, Connecticut, where he holds elected office, and is active in community, political and charitable activities.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

**James C. Shah**  
**Pennsylvania Office**  
**Telephone: 610-891-9800**  
**Facsimile: 866-300-7367**  
**Email: [jshah@sfmslaw.com](mailto:jshah@sfmslaw.com)**

James C. Shah joined SFMS in 2000. He is admitted to practice law in the States of California, New Jersey, New York, Wisconsin, as well as the Commonwealth of Pennsylvania and numerous federal courts, including the United States District Courts for the Southern District of California, Eastern District of Pennsylvania, District of New Jersey, Eastern District of Wisconsin and the United States Court of Appeals for the Ninth Circuit. In addition to these courts and jurisdictions, Jim has worked on cases with local and co-counsel nationwide and internationally.

Jim concentrates his practice on antitrust, consumer and insurance litigation, as well as complex commercial and employment matters. He also has significant experience representing clients in a wide variety of corporate governance, securities, construction defect, employment and wage/hour cases. Finally, Jim has represented clients in a number of FINRA arbitrations and other proceedings, as well as in a variety of United States and international arbitral and other alternative dispute resolution forums.

Jim earned his undergraduate degree in Political Science from the University of Oregon and his law degree from Temple University School of Law. Jim was a member of Temple's nationally acclaimed Trial Team and also participated on Moot Court. Before joining the Firm, Jim practiced as a litigator in Philadelphia with Pelino & Lentz, P.C., where he concentrated his practice on employment and labor law, securities disputes and general commercial litigation. In 2000, Jim joined forces with Scott Shepherd at which time the Firm was created and, since that time, has been involved in all aspects of the Firm's practice.

Jim is a member of the New Jersey and Pennsylvania Bar Associations, as well as the American Association for Justice, the National Association of Securities and Consumer Attorneys. He resides with his family in Collingswood, New Jersey and is active in community, political and charitable activities.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

**Nathan C. Zipperian**  
**Florida Office**  
**Telephone: 954-515-0123**  
**Facsimile: 866-300-7367**  
**Email: [nzipperian@sfmslaw.com](mailto:nzipperian@sfmslaw.com)**

Nathan C. Zipperian joined SFMS in 2005. He is admitted to practice law in the States of Arizona, Florida, New Jersey and Oregon, as well as in the Commonwealth of Pennsylvania and numerous federal courts, including the United States District Courts for the Southern and Middle Districts of Florida, the District of Arizona and the United States Court of Appeal for the Second Circuit. In addition to these courts and jurisdictions, Nathan has worked on cases with local and co-counsel throughout the country and worldwide.

Nathan concentrates his practice on antitrust, consumer and insurance litigation, as well as complex commercial and employment matters. He also has significant experience representing clients in a wide variety of corporate governance, securities, construction defect, employment and wage/hour cases. Finally, Nathan has represented clients in a variety of personal injury and medical malpractice litigation.

Nathan earned his undergraduate degree in Political Science from the University of Oregon and his law degree from the Temple University School of Law. While at Temple, Nathan was an Editor of the Environmental Law and Technology Journal. Before joining Shepherd, Finkelman, Miller & Shah, LLP, Nathan was a litigator in Oregon at Bailey Pinney and Associates, where his practice focused on employee rights, and in Arizona with Martin Hart & Fullerton, where he litigated a wide variety of cases including personal injury, medical malpractice and product liability cases.

Nathan is a member of the American Bar Association, Oregon Bar Association, and Arizona Bar Association. He resides with his family in Weston, Florida and is active in the South Florida community.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

**Laurie Rubinow**  
**Connecticut Office**  
**Telephone: 860-526-1100**  
**Facsimile: 866-300-7367**  
**Email: [lrubinow@sfmslaw.com](mailto:lrubinow@sfmslaw.com)**

Laurie Rubinow joined SFMS in 2005. She is admitted to practice law in the State of Connecticut, as well as the Commonwealth of Pennsylvania and numerous federal courts, including the United States District Courts for District of Connecticut and the United States Court of Appeals for the First Circuit. In addition to these courts and jurisdictions, Laurie has worked on cases with local and co-counsel nationwide and internationally.

Laurie focuses her practice on representing the Firm's clients in whistleblower cases, as well as antitrust, consumer, complex commercial and insurance litigation. Laurie also has significant experience handling employment, intellectual property and real estate matters. Finally, Laurie is active in the Firm's pro bono work and has represented a number of pro bono clients in federal and state matters.

Laurie earned her undergraduate degree from the University of California at Berkeley, where she was Phi Beta Kappa, graduated summa cum laude, and earned her law degree from Temple University School of Law. She also completed certain of her undergraduate studies at McGill University and, while at Temple Law School, she served as a legal intern with the United States Attorney's Office, the Public Defender's Office, the Pennsylvania Attorney General's Office and for United States Magistrate Judge Powers. In addition, Laurie has received a Certificate in Negotiation, Mediation and Conflict Resolution from the Seton Hall University School of Law. Laurie has a diverse legal background, having worked in private practice as an Associate at a law firm and as a solo practitioner for approximately five years before beginning a career as an in-house attorney at a nationally recognized insurance company, where she worked for approximately eleven years, rising to the position of National Manager. In that position, she was responsible for the management of five regional field offices responsible for defending complex insurance related litigation, including toxic tort and environmental actions. She also has served as an Adjunct Professor in the Department of Sociology at Central Connecticut State University. Laurie joined the Firm's Connecticut office in 2005, where she represents clients in a variety of antitrust, consumer, securities and insurance litigation. Laurie also was actively involved in the Firm's representation of the State of Connecticut in complex litigation against six different pharmaceutical manufacturers.

Laurie is a member of the Chester Bar Association and the Connecticut Bar Association. She resides in Chester, Connecticut with her family and is active in community affairs. Laurie also holds an elected office as a member of the local school board.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

**Jayne A. Goldstein**  
**Florida Office**  
**Telephone: 954-515-0123**  
**Facsimile: 866-300-7367**  
**Email: [jgoldstein@sfmslaw.com](mailto:jgoldstein@sfmslaw.com)**

Jayne Arnold Goldstein joined SFMS in January 2017 in the firm's Ft. Lauderdale, Florida office. She brings to SFMS her expertise in representing individuals, businesses, institutional investors and labor organizations in a variety of complex commercial litigation, including violations of federal and state antitrust and securities laws and unfair and deceptive trade practices. Jayne was lead counsel in *In re Sara Lee Securities Litigation*, and has played a principal role in numerous other securities class actions that resulted in recoveries of over \$100 million.

Jayne began her legal career, in 1986, with a wide-ranging general practice firm in Philadelphia. In 2000, she was a founding shareholder of Mager & White, P.C. and opened its Florida office, where she concentrated her practice on securities, consumer and antitrust litigation. In 2002, the firm became Mager White & Goldstein, LLP. In 2005, Jayne was a founding partner of Mager & Goldstein LLP. Most recently, she was a partner at Pomerantz LLP.

Jayne, a registered nurse, received her law degree from Temple University School of Law in 1986 and her Bachelor of Science (highest honors) from Philadelphia College of Textiles and Science.

Jayne is a member the Florida Public Pension Trustees Association and the Illinois Public Pension Fund Association. Since 2010, Jayne served as co-chair of P.L.I.'s Class Action Litigation Strategies Annual Conference held in New York. In January 2017 Jayne will chair P.L.I.'s new program Women Lawyers in Leadership, a program she developed. Jayne has been a frequent speaker at Public Pension Fund Conferences having recently appeared on Panels at the Florida Public Pension Trustees' Association and Illinois Public Pension Fund Association.

Jayne is admitted to practice law in the Supreme Court of the United States, the State of Florida, as well as in the Commonwealth of Pennsylvania, State of Illinois and numerous federal courts, including the United States District Courts for the Southern, Northern and Middle Districts of Florida, the Eastern District of Pennsylvania, the Northern District of Illinois, the United States Courts of Appeal for the First, Second, Third and Eleventh Circuits. In addition to these courts and jurisdictions, Jayne has worked on cases with local and co-counsel throughout the country and worldwide.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

**Ronald S. Kravitz**  
**California Office - San Francisco**  
**Telephone: 415-429-5272**  
**Facsimile: 866-300-7367**  
**Email: [rkravitz@sfmslaw.com](mailto:rkravitz@sfmslaw.com)**

Ronald S. Kravitz joined SFMS in 2014. He is admitted to practice law in the States of California and Texas and the Commonwealth of Pennsylvania and numerous federal courts, including the United States District Courts for all Districts of California, the Middle District of Florida, the Northern District of Illinois, the Eastern District of Michigan, the Northern District of Ohio, Eastern District of Pennsylvania, the Northern and Southern Districts of Texas, the United States Court of Appeals for the Fourth Circuit, Fifth Circuit, Ninth Circuit and Eleventh Circuit and the United States Supreme Court. In addition to these courts and jurisdictions, Ron has worked on cases with local and co-counsel nationwide and internationally. Ron began his legal career as an Attorney Advisor for the U.S. Department of Justice.

With more than 25 years of experience as legal counsel in complex business litigation matters, his practice has been focused primarily on ERISA, employment, intellectual property, and securities-related matters since 1992. He has represented numerous fiduciaries, third-party plan administrators, broker-dealers, and registered representatives in connection with plan administration and investment matters. Ron has served as lead or co-lead class counsel in numerous ERISA class actions throughout the country.

Ron is a past Chairman of the Integrated Advisory Group (IAG), current co-chair of IAG's Litigation Specialist Group, a regional board member of the Anti-Defamation League and the co-chair of the ABA Employee Benefits Committee Fiduciary sub-committee. In addition, Ron is a Lifetime Fellow of the American Bar Foundation and is active in the University of San Francisco Inn of Court.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

**Kolin C. Tang**  
**California Office - Los Angeles**  
**Telephone: 323-510-4060**  
**Facsimile: 866-300-7367**  
**Email: [ktang@sfmslaw.com](mailto:ktang@sfmslaw.com)**

Kolin C. Tang joined SFMS in 2009. He is admitted to practice law in the State of California with his admission pending in the State of New York.

At SFMS, Kolin concentrates his work on securities and commercial litigation throughout the United States. Kolin plays a key role on the SFMS Tracker<sup>SM</sup> team, a group within the Firm that is dedicated to working with attorneys, computer programmers, investment analysts and other staff members to ensure that clients' investment portfolios are appropriately monitored to identify losses arising from corporate fraud and other misconduct, as well as to recommend the level of participation a given situation requires and recover funds obtained on clients' behalf through appropriate action. In addition to his work in securities and commercial litigation, Kolin also performs significant work in the Firm's growing whistleblower practice, on both cases arising in the United States and overseas.

Kolin received his undergraduate degree in Economics and History with honors from the University of California at Berkeley, and earned his law degree from The George Washington University Law School in 2011, where he was a member of The George Washington International Law Review. As a summer associate with SFMS in 2009 and 2010, Kolin worked on antitrust, consumer fraud, and securities cases. He has also worked as a legal intern at the Federal Trade Commission, where he was involved with antitrust and consumer protection issues. Currently, Kolin's practice is focused on representing clients in securities, complex litigation and whistleblower matters.

Kolin is a member of the American Bar Association and currently resides in New York City.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

**Bruce D. Parke**  
**Pennsylvania Office**  
**Telephone: 610-891-9800**  
**Facsimile: 866-300-7367**  
**Email: [bparke@sfmslaw.com](mailto:bparke@sfmslaw.com)**

Bruce D. Parke joined SFMS in 2008. Bruce is admitted to practice law in Pennsylvania as well as the United States District Court for the Eastern District of Pennsylvania.

Bruce represents clients in complex commercial litigation, including: securities, antitrust, and consumer protection. In addition, he has experience representing clients in employment and ERISA cases. Bruce has participated in some historic class action recoveries including: In re AOL Time Warner, Inc. Securities Litigation (\$2.65 billion), In re McKesson Securities Litigation (\$1.04 billion), In re Broadcom Corporation Securities Litigation (\$150 million), In re Motorola Securities Litigation (\$190 million), In re Raytheon Securities Litigation (\$460 million), and In re Automotive Refinishing Paint Antitrust Litigation (\$105 million).

Bruce earned his undergraduate degree in Administration of Justice from the Pennsylvania State University and his law degree from the Dickinson School of Law of the Pennsylvania State University (J.D. 2002). Prior to joining the firm he was an associate for the law firms of Mager White & Goldstein LLP and Mager & Goldstein LLP where he practiced securities, antitrust, and consumer protection litigation.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

**Chiharu Sekino**  
**California Office - San Diego**  
**Telephone: 619-235-2416**  
**Facsimile: 866-300-7367**  
**Email: [csekino@sfmslaw.com](mailto:csekino@sfmslaw.com)**

Chiharu Sekino joined SFMS in 2008. She is admitted to practice law in the State of California. At SFMS, she concentrates her work on securities litigation throughout the country and other matters pending in California courts. Chiharu plays a key role on the SFMS Tracker<sup>SM</sup> team, a group within the Firm that is dedicated to working with attorneys, computer programmers, investment analysts and other staff members to ensure that clients' investment portfolios are appropriately monitored to identify losses arising from corporate fraud and other misconduct, as well as to recommend the level of participation a given situation requires and recover funds obtained on clients' behalf through appropriate action. Her work as an Associate focuses primarily on securities litigation, class action cases and other litigation. Chiharu also handles all aspects of discovery, including in conducting surveys, and assists in preparing and filing pleadings. Finally, Chiharu is involved in a variety of whistleblower cases around the world.

Chiharu earned her Bachelor of Arts degree from the University of California at San Diego, where she double-majored in Political Science and Japanese Studies. She also is a graduate of Independence High School (San Jose, CA) and received a Diploma from the Grossman Academy, where she pursued special studies in Japanese to English translations. Chiharu is Bilingual (Japanese/English), resides in San Diego and is active in community affairs. She tutors elementary school children and also is a volunteer for CASA (the Court Appointed Special Advocate Program), an organization that advocates for children who have been abused and/or neglected and are under the protection of the court system.

While working for the Firm, she concurrently received her law degree from California Western School of Law, graduating cum laude, and a Masters in Social Work from San Diego State University in 2015. She was a member of The California Western Law Review and served as a Law Clerk for the San Diego Public Defender's Office, Juvenile Division and San Diego Volunteer Lawyer Program. She also provided individual counseling to students as a social work intern at Monroe Clark Middle School.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

**Jaclyn Reinhart**  
**California Office - San Diego**  
**Telephone: 619-235-2416**  
**Facsimile: 866-300-7367**  
**Email: [jreinhart@sfmslaw.com](mailto:jreinhart@sfmslaw.com)**

Jaclyn Reinhart joined SFMS in 2016 as a summer associate. She began working for the firm full-time in September 2017, after graduating cum laude from Boston University School of Law in May 2017. She is admitted to practice law in the State of California. At BU Law, Jaclyn was an Articles Editor for the Boston University Law Review and a Student Director of the Stone Moot Court Competition. She works primarily on class actions, including consumer class actions and wage and hour disputes, as well as qui tam suits.

Jaclyn earned her Bachelor of Arts degree from the University of Rochester in 2014, where she majored in Political Science and minored in American Sign Language. Jaclyn is from Buffalo, NY originally, but currently resides in San Diego where she is an active member in the legal community.

To learn more about SFMS and for biographies of all of its professionals, please visit our website at [www.sfmslaw.com](http://www.sfmslaw.com).

# **Exhibit 3**

# AXLER | GOLDICH LLC

## ATTORNEYS AT LAW

1520 Locust Street, Suite 301  
Philadelphia, PA 19102  
(t) 267.534.7400  
(f) 267.534.7407  
www.axlergoldich.com

Axler Goldich LLC, based in Philadelphia, is a class action and consumer litigation firm whose lawyers have recovered millions of dollars for consumers, employees, and other harmed individuals and their families. The firm has the ability to devote skilled lawyers and the resources necessary to the successful prosecution of complex class-action litigation. By concentrating exclusively on representing those harmed by the misconduct and negligence of corporations, the firm avoids the conflicts of interest, both actual and philosophical, that can arise from multi-faceted representation, and is able to offer the kind of hard-hitting approach that complex plaintiffs' litigation demands.

Marc A. Goldich and Noah Axler, co-managing partners of the firm, have served or are currently serving as lead counsel, co-lead counsel, or in other leadership positions in a wide variety of class-action cases nationwide. *See, e.g., Q+ Food, LLC, et al. v. Mitsubishi-Fuso Truck of America, Inc.*, No. 14-CV-6046 (D.N.J.); *In re Pacquiao-Mayweather Boxing Match Pay-Per-View Litigation*, MDL No. 2:15-ml-02639 (C.D. Cal.); *Murray, et al. v. Accor North America, Inc., et al.*, No. 2:15-cv-04907 (E.D. Pa.); *King v. General Information Services Inc.*, No. 10-06850 (E.D. Pa.); *Smith v. Levine Leichtman Capital Partners, Inc.*, No. 3:10-cv-0010 (N.D. Cal.); *Sonoda v. Amerisave Mortgage Corp.*, No. 11-1803 (N.D. Cal.); *Brown v. Access Midstream Partners, L.P.*, 2015 WL 1471598 (M.D. Pa.); *Little v. LGE*, No. 13-1214 (W.D. Ky.); *Rothstein v. AAA*, No. 15-cv-09391 (S.D.N.Y.); *Riaubia v. Hyundai Motor Company*, No. 2:16-cv-05150 (E.D. Pa.); *In re Seagate Technologies, LLC*, No. 3:16-cv-523 (N.D. Cal.); *In re Condry et al. v. United HealthGroup Inc., et al.*, No. 3:17-cv-00183 (N.D. Cal.); *Lewis et al v. GEICO*, 1:18-cv-05111 (D. N.J.); *Lundquist v. First National Insurance Company of America*, 3:18-cv-05301-RJB (W.D. Wa.); *Olberg et al v. Allstate Insurance Company*, 2:18-cv-00573-JCC (W.D. Wa.).

Prior to founding Axler Goldich, Mr. Goldich was at a prominent plaintiffs' firm with a practice focused on consumer protection class action, products liability, qui tam/whistleblower, pharmaceutical litigation and mass tort litigation. Mr. Goldich also previously maintained a commercial litigation practice for more than a decade at Reed Smith LLP, representing Fortune 500 companies and corporate clients from various industries in complex commercial litigation and consumer class-action cases.

Prior to founding Axler Goldich, Mr. Axler was a partner at Donovan Axler LLC, a nationally recognized plaintiffs' class-action litigation firm, where he litigated numerous class-action cases, including consumer, antitrust, employment and environmental actions, and was repeatedly appointed lead counsel or co-lead counsel to represent plaintiff classes in state and federal courts throughout the country.

## MARC A. GOLDICH

Mr. Goldich co-manages the firm's practice with a focus on class action, consumer protection, wage and hour, products liability, and qui tam/whistleblower litigation. Mr. Goldich's practice is largely focused on representing consumers, employees, and other aggrieved parties in class-action cases against corporate defendants such as automobile manufacturers, pharmaceutical manufacturers, financial institutions, and national and international corporations in a variety of industries.

Prior to founding Axler Goldich LLC, Mr. Goldich was at a prominent plaintiffs' firm with a practice focused on consumer protection class action, products liability, wage and hour, qui tam/whistleblower, pharmaceutical litigation and mass tort litigation. Mr. Goldich also previously maintained a commercial litigation practice for more than a decade at Reed Smith LLP, representing Fortune 500 companies and corporate clients from various industries in complex commercial litigation, serving in lead roles on trial teams in consumer class-action cases involving consumer protection, breach of contract and fraud. *See, e.g., White, et al. v. The PNC Financial Services Group, Inc., et al.*, No. 2:11-cv-07928 (E.D. Pa.); *Judith Cunningham, et al. v. M & T Bank Corp., et al.*, No. 1:12-CV-123 (M.D. Pa); *Commonwealth of Pennsylvania v. Vahan Karian and Pure Weight Loss, Inc.*, Commonwealth Court of Pennsylvania, No. 36 M.D. 2008; *Ferrare v. IDT Energy, Inc.*, No. 14-4658 (E.D. Pa.).

While at Reed Smith LLP, Mr. Goldich's practice included leadership roles in other high stakes, complex commercial litigation, *see, e.g., WellSpan Health, et al. v. Quantum Imaging & Therapeutic Associates, Inc., et al.*, York Co. Court of Common Pleas, Case No. 2007-SU-5039-Y01. Mr. Goldich also represented Fortune 500 companies and their employees in connection with regulatory proceedings. *See, e.g., In the Matter of National Century Financial Enterprises, Inc., United States Securities and Exchange Commission*, No. C-03688; *Department of Enforcement v. Suzanne K. Courter-Jann*, FINRA Disciplinary Proceeding No. 2007011550101 (CRD No. 1282573).

Mr. Goldich was appointed as Class Counsel in *Q+ Food, LLC, et al. v. Mitsubishi-Fuso Truck of America, Inc.*, No. 14-CV-6046 (D.N.J.), an automobile defect and warranty class action case that recently obtained final court approval of a \$17.5 million dollar settlement and in a wage-and-hour collective action case, *Murray, et al. v. Accor North America, Inc., et al.*, No. 2:15-cv-04907 (E.D. Pa.), which obtained final approval of a settlement consisting of 100% of back pay for the collective class members plus an equal amount of liquidated damages. Mr. Goldich is currently serving on the leadership in *In re Pacquiao-Mayweather Boxing Match Pay-Per-View MDL litigation* (MDL No. 2639, 2:15-ml-02639), in a warranty class action currently pending in the Eastern District of Pennsylvania, *Riaubia v. Hyundai Motor Company*, No. 2:16-cv-05150 (E.D. Pa.), and in an ERISA class action currently pending in the Northern District of California, *In re Condry et al. v. United HealthGroup Inc., et al.*, No. 3:17-cv-00183 (N.D. Cal).

Furthermore, Mr. Goldich has also authored numerous publications, such as:

- TO BUNDLE OR NOT TO BUNDLE: PUBLIC COMPANY STRATEGIES IN PACKAGING CORRECTIVE DISCLOSURES IN PRESS RELEASES, ADLAW By Request, 18 July 2008;

- CHARTER SERVICE: HOW THE NEW RULE IMPACTS YOU, Mass Transit, 9 May 2008;
- THE FEDERAL TRANSIT ADMINISTRATION RELEASES ITS FINAL RULE ON CHARTER SERVICE, Reed Smith Client Alerts, 17 March 2008;
- MORTGAGE LENDERS AND SERVICERS SHOULD EVALUATE AND STREAMLINE THEIR PRE-FORECLOSURE NOTICE PROCEDURES TO AVOID PITFALLS, 67 Consumer Fin. L. Q. Rep. 178 (2013);
- FRCP AMENDMENTS COULD CHANGE DISCOVERY AS WE KNOW IT, Law360 Expert Analysis Section, 4 June 2013;
- DIFFERING OPINIONS FROM PA ON FRCP AMENDMENTS, Law360 Expert Analysis Section, 19 Feb 2014.

Mr. Goldich has served or is currently serving in a variety of leadership roles for non-profit organizations including his current service as a member of the Board of Directors of the Elmwood Park Zoo.

## NOAH AXLER

Mr. Axler co-manages the firm's practice with a focus on class action, consumer protection, products liability, qui tam/whistleblower and mass tort litigation. Mr. Axler's practice is largely focused on representing consumers in class-action cases against corporate defendants such as automobile manufacturers, pharmaceutical manufacturers, financial institutions, and national and international corporations in a variety of industries.

Prior to founding Axler Goldich, Mr. Axler was a partner at Donovan Axler LLC, a nationally recognized plaintiffs' class action litigation firm, where he litigated numerous class-action cases, including consumer, antitrust, employment and environmental actions, and was appointed lead counsel or co-lead counsel to represent plaintiff classes in numerous class actions.

Some of Mr. Axler's representative class and collective action settlements include *Sonoda v. Amerisave Mortgage Corp.*, No. 11-1803 (N.D. Cal.) (alleging violations of Truth in Lending Act and California law against online mortgage broker, resulting in \$3.2 million settlement); *Smith v. Levine Leichtman Capital Partners, Inc., et al.*, No. 10-10 (N.D. Cal.) (alleging violation of RICO and debt collection laws against bad check recovery Company, resulting in \$3.25 million settlement); *Murray, et al. v. Accor North America, Inc., et al.*, 2:15-cv-04907 (E.D. Pa.) (alleging failure to pay overtime and resulting in 100% recovery of overtime wages).

A sample of Mr. Axler's reported decisions include: *Haber v. Bank of America, N.A.*, No. 14-0169, 2014 WL 2921659 (E.D. Pa. June 27, 2014) (defeating motion to dismiss on two of three counts in consumer class action, under Fair Debt Collection Practices Act ("FDCPA") and FCRA); *Newton v. Savit Collection Agency*, No. 09-4911, 2011 WL 6724034 (D.N.J. Dec. 21, 2011) (defeating summary judgment in consumer class action, under FDCPA); and *Sonoda v. Amerisave Mortgage Corp.*, No. 11-1803, 2011 WL 2653565 (N.D. Cal. Jul. 6, 2011) (defeating motion to transfer venue in consumer class action, under TILA and California law).

Mr. Axler is also the author of a number of publications on class-action and consumer litigation topics, including:

- SURVEY OF STATE CLASS ACTION LAW (ABA 2012-2018) (co-author of Pennsylvania chapter);
- PENNSYLVANIA CONSUMER LAW (Bisel 2012-2014) (author of usury chapter);

- THE EXPLOSION & EVOLUTION OF CLASS ACTION LAW (PBI 2004) (co-author).

## AWARDS

Super Lawyer, Super Lawyers Magazine

Noah Axler, 2014-2019

Rising Star, Super Lawyers Magazine

Noah Axler, 2007, 2010-2011

Rising Star, Super Lawyers Magazine

Marc A. Goldich, 2013-2018

Lawyer on the Fast Track, American Lawyer Media / The Legal Intelligencer

Marc A. Goldich, 2013

Pro Bono Honor Roll, E.D.P.A.

Marc A. Goldich, 2010

Pro Bono Unsung Hero

Marc A. Goldich, 2008

# **Exhibit 4**

LAW OFFICES OF  
ROBERT P. COCCO, P.C.

---

1500 WALNUT STREET, SUITE 900  
PHILADELPHIA, PENNSYLVANIA 19102

(215) 351-0200  
Fax: (215) 261-60556  
E-mail: rcocco @ rcn.com

**CURRICULUM VITAE**

Admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the Pennsylvania state courts. I am a 1987 graduate of St. Joseph's University and a 1991 graduate of the Temple University Beasley School of Law. Since 2001, I have focused my practice in consumer protection litigation, including predatory mortgage lending, fair debt collection practices, auto fraud litigation, fair credit reporting, student loan disputes, and consumer class actions.

In 2008 and 2013, received, respectively, a Community Leadership Award from the Pa. State Senate and a Community Services Award, both sponsored by then Pennsylvania State Senator Shirley Kitchen to recognize my legal efforts to help those victimized in abusive consumer transactions.

Class Counsel Certifications

Certified to serve as class counsel in *Alexander v. Coast Professional* (E.D. Pa. 0:14-cv-04735)

Notable Cases

I have represented hundreds of consumer debtors in both the state and federal litigation, including the following published case holdings:

*McMaster v. CIT Group/Consumer Fin., Inc.*, 2006 U.S. Dist. LEXIS 28831 (E.D. Pa. 2006)

*Johnson v. Chase Manhattan Bank*, 2007 U.S. Dist. LEXIS 50569 (E.D. Pa. 2007).

Lectures/Presentations

Speaker, PREDATORY LENDING: Bringing and Defending Against Consumer Lending Lawsuits, National Business Institute, March 3, 2009

Speaker, The Federal and Pennsylvania Response to the Credit Crisis, Pennsylvania Bar Institute, March 18, 2009

Speaker, Defending a Foreclosure: Helping Families Save Their Homes, LawReview CLE, August 20, 2013

Speaker, NACA 2009 Consumer Rights Litigation Conference, National Association of Consumer Advocates, Oct. 22-25, 2009 (Philadelphia, PA)

Speaker, Why the Fuss about Arbitration? American Bar Association, January 13, 2015 (New Orleans, LA)

Speaker, The Million Dollar Sentence and Other Recent Trends in Employment Background Check Litigation, Phila. Bar Association Labor & Employment Law Committee, August 25, 2017 (Phila., PA)

#### Memberships

National Association of Consumer Advocates, Philadelphia Bar Association, and Pennsylvania Bar Association.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing Plaintiff's Unopposed Motion for Certification of Settlement Class, Preliminary Approval of Settlement, Appointment of Class Counsel, and Approval of Class Notice to be served on all counsel of record via the Court's ECF system on February 15, 2019:

/s/ James C. Shah