

1 Elaine T. Byszewski (SBN 222304)
elaine@hbsslaw.com
2 Hagens Berman Sobol Shapiro LLP
301 North Lake Avenue, Suite 203
3 Pasadena, CA 91101
4 Tel. (213) 330-7150
Fax (213) 330-7152

5 Robert B. Carey (*pro hac vice*)
rob@hbsslaw.com
6 John M. DeStefano (*pro hac vice*)
johnd@hbsslaw.com
7 Hagens Berman Sobol Shapiro LLP
11 West Jefferson Street, Suite 1000
8 Phoenix, AZ 85003
9 Tel. (602) 840-5900
Fax (602) 840-3012

10 Steve W. Berman (*pro hac vice*)
steve@hbsslaw.com
11 Hagens Berman Sobol Shapiro LLP
1918 Eighth Avenue, Suite 3300
12 Seattle, WA 98101
13 Tel. (206) 623-7292
14 Fax. (206) 623-0594
*Attorneys for Plaintiff Kaylene P. Brady, et al. and
Nicole Marie Hunter, et al.*

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 IN RE: HYUNDAI AND KIA FUEL
18 ECONOMY LITIGATION

MDL Case No. 2:13-ml-2424-GW-(FFMx)

19 **DECLARATION OF ROBERT B.
20 CAREY IN SUPPORT OF HUNTER
21 AND BRADY PLAINTIFFS' MOTION
22 FOR AN AWARD OF ATTORNEYS'
23 FEES AND REIMBURSEMENT OF
24 EXPENSES**

25 Date: February 26, 2015
26 Time: 8:30 a.m.
27 Judge: Hon. George Wu
28 Courtroom: 10

1 I, Robert B. Carey, declare:

2 1. I am an attorney admitted *pro hac vice* before this Court. I am a
3 partner at the law firm of Hagens Berman Sobol Shapiro LLP (“Hagens
4 Berman”) and counsel for plaintiffs Nicole Hunter and Kaylene Brady, Travis
5 Brissey, Ronald Burkard, Adam Cloutier, Steven Craig, John Dixson, Erin
6 Fanthorpe, Eric Hadesh, Michael Keeth, John Kirk MacDonald, Michael
7 Mandahl, Nicholas McDaniel, Mary Moran-Spicuzza, Gary Pincas, Brandon
8 Potter, Thomas Purdy, Rocco Renghini, Michelle Singleton, Ken Smiley,
9 Gregory M. Sonstein, Roman Staro, Gayle Stephenson, Andres Villicana, and
10 Richard Williams (the *Hunter* and *Brady* Plaintiffs).

11 2. Steve W. Berman (the Managing Partner of Hagens Berman) and I
12 are members of the bar with extensive experience in prosecuting complex
13 litigation, including consumer class actions. We were appointed by the Court
14 as settlement class counsel (“Class Counsel”) in this matter on August 29, 2014
15 (Order Granting Preliminary Approval of Class Settlement and Certifying
16 Settlement Class, Dkt 319 at 2).

17 3. I am submitting this declaration in support of Class Counsel’s
18 application for an award of attorneys’ fees and expenses in connection with
19 services rendered in the above-entitled action.

20 4. A true and correct copy of the December 22, 2014 Expert Report of
21 Dwight J. Duncan on the Valuation of Kia Lump-Sum Settlement Benefits is
22 attached to this Declaration as Exhibit A.

23 5. A true and correct copy of the August 15, 2014 Expert Report of
24 Dwight J. Duncan on the Valuation of Hyundai Lump-Sum Settlement
25 Benefits is attached to this Declaration as Exhibit B.

26 6. Class Counsel have been involved in all aspects of this litigation
27 from the November 2, 2012 announcement forward. Class Counsel
28

1 (i) researched and investigated the legal and factual allegations for the *Hunter*
2 and *Brady* Complaints; (ii) prepared for and appeared at hearings in this
3 matter; (iii) communicated with opposing counsel; (iv) engaged in significant,
4 arms' length settlement negotiations with Defendants over several months; (v)
5 traveled to and attended several in-person meetings with opposing counsel
6 regarding the settlement; (vi) researched and negotiated the settlement
7 agreement and shepherded it through several amendments; (vii) engaged in
8 confirmatory discovery with opposing counsel and non-settling plaintiffs,
9 including substantial document review and in-person interviews overseas;
10 (viii) attended mediation sessions with Defendants' counsel before the
11 Honorable Stephen J. Sundvold (Ret.); (ix) prepared the preliminary motion
12 for approval of the settlement, and responded to objections; (x) prepared the
13 motion for certification of the settlement class and responded to objections;
14 (xi) briefed the *Gentry* Plaintiffs' Rule 23(f) petition, leading to the Ninth
15 Circuit's dismissal of that petition; (xii) attended to class member inquiries
16 throughout this period; (xiii) worked with liaison counsel to ensure that
17 dozens of nonsettling counsel were kept apprised of the case; and (xiv)
18 prepared the brief in support of attorneys' fees and expenses.

19 7. Settling Plaintiffs' counsel conducted confirmatory discovery in
20 this action throughout 2013 and in the first months of 2014. Counsel served
21 requests for production and interrogatories, which led to the production of
22 over 18,000 documents totaling more than 157,000 pages beginning in April
23 2013. These documents included advertising materials, press releases,
24 communications with dealers and customers, documents about the
25 reimbursement program, product launch and planning documents, quality
26 reports, and documents produced to various federal and state government
27 agencies. Counsel for the *Hunter* and *Brady* Plaintiffs conducted an extensive
28

1 review of these documents to obtain a more complete understanding of the
2 events that gave rise to the testing mistakes and eliminate certain facts that
3 would have substantially affected counsel's assessment of the case.

4 8. Moving Class Counsel also interviewed key employees of the
5 Defendants. To conduct these interviews, Moving Class Counsel traveled not
6 just in the U.S., but also to Defendants' facilities in South Korea. The
7 interviews extended from front-line engineers and supervisors to marketing
8 officials to the chief executive of Hyundai Motor America.

9 9. After the Settlement Agreement between Settling Plaintiffs and
10 Defendants was signed, the parties engaged the Honorable Stephen J.
11 Sundvold (Ret.) to mediate an award of attorneys' fees and expenses for Class
12 Counsel. The parties submitted confidential mediation statements to Judge
13 Sundvold, and Class Counsel's submission included exhibits of our billing
14 statement reflecting details of the work performed and our then-current
15 lodestar and expenses and a discussion of the post-settlement efforts that
16 would be required. The parties then participated in a mediation session in
17 Orange, California, on July 30 and 31, 2014. After two days of vigorous
18 mediation, the parties were unable to reach agreement on the amount of fees
19 to be paid. Counsel reported this outcome to the Court on September 3, 2014.
20 The parties continued negotiation efforts over the course of September and
21 eventually came to terms on the amount of fees to be paid in the Hunter and
22 Brady actions, as reported to the Court on October 6, 2014.

23 10. As a result of these negotiations, Defendants agreed to pay the
24 *Hunter* and *Brady* Plaintiffs' fees in the amount of \$2.7 million, and reimburse
25 costs in the amount of \$250,000. These amounts were agreed to increase if
26 Defendants agree to pay a larger amount to counsel in *Espinosa*, but it is not
27 subject to decrease.

28

1 11. The total number of hours spent on this litigation by Class Counsel
 2 is 5,512 with another 975 hours anticipated to reach the end of the litigation.
 3 This 975 hours comprises 375 hours of attorney time and 600 hours of
 4 paralegal time. The total lodestar amount for attorney/professional time
 5 based on the firm's hourly rate is currently \$1,909,995.00, with the total final
 6 lodestar amount expected to be approximately \$2,209,000. The hourly rates
 7 shown below are the usual and customary rates charged for each individual in
 8 all of our cases. A breakdown of the lodestar is as follows:

ATTORNEY TIME			
NAME	RATE	HOURS	AMOUNT
Steve Berman	900.00	19.10	\$17,190.00
	800.00	84.00	\$67,200.00
	725.00	25.00	\$18,125.00
Thomas Sobol	800.00	0.20	\$160.00
	700.00	8.00	\$5,600.00
Robert Carey	700.00	32.00	\$22,400.00
	600.00	775.10	\$465,060.00
	575.00	32.60	\$18,745.00
Thomas Loeser	650.00	3.20	\$2,080.00
	525.00	326.00	\$171,150.00
Sean Matt	600.00	1.00	\$600.00
Leonard Aragon	550.00	6.50	\$3,575.00
	460.00	23.00	\$10,580.00
	400.00	0.50	\$200.00

1	Elaine Byszewski	550.00	1.3	\$715.00
2		500.00	11.90	\$5,950.00
3		425.00	22.00	\$9,350.00
4	Chris O'Hara	500.00	22.00	\$11,000.00
5	Michella Kras	500.00	7.10	\$3,550.00
6		495.00	86.30	\$42,718.50
7	John DeStefano	450.00	81.60	\$36,720.00
8		395.00	505.60	\$199,712.00
9	Camille Bass	350.00	269.10	\$94,185.00
10		295.00	181.60	\$53,572.00
11	Rachel Freeman	350.00	0.60	\$210.00
12		295.00	37.90	\$11,180.50
13	Andy St. John	340.00	91.30	\$31,042.00
14	Claudia Horan	250.00	873.70	\$218,425.00
15	Crystal Ewell	250.00	10.60	\$2,650.00
16	Sigurd Kristianson	250.00	858.30	\$214,575.00
17	Jennifer Shavers	250.00	33.90	\$8,475.00
18	Attorney Subtotal			\$1,746,695.00

PARALEGAL TIME

21	NAME	RATE	HOURS	AMOUNT
22	Andy Katz	200.00	4.20	\$840.00
23	Carrie Flexer	190.00	23.00	\$4,370.00
24	Dawn Cornelius	170.00	1.00	\$170.00
25	Cindy Johnson	150.00	267.00	\$40,050.00
26	Marci Perkins	150.00	450.90	\$67,635.00

Audrey Moore	150.00	163.30	\$24,495.00
Megan Bilek	150.00	127.00	\$19,050.00
Jennifer Conte	150.00	37.10	\$5,565.00
Adrian Garcia	150.00	5.00	\$750.00
Georgia O’Neill	150.00	1.5	\$225.00
Sherrie Malloy	150.00	1.00	\$150.00
Paralegal Subtotal			\$163,600.00
GRAND TOTAL			\$1,909,995.00

12. Based on the briefing that will take place before Final Approval, as well as the post-Settlement issues that are likely to arise, Class Counsel estimates it will expend 375 hours of attorney time to complete this Litigation.

13. A true and correct copy of the Order in *Marsikyan v. Mercedes-Benz USA, LLC*, No. 08-cv-04876, (C.D. Cal. May 17, 2010), is attached as Exhibit C to this Declaration.

14. My firm has incurred a total of \$213,883.58 in expenses in connection with the prosecution of this litigation to date. Costs included multiple settlement meetings – including the mediation – for which Class Counsel had to travel, and charges for computerized factual and legal research included online legal services such as LEXIS/Nexis. The scope of discovery in this case also required the use of a dedicated document management system at considerable expense. These costs were necessarily and reasonably incurred to bring this case to a successful outcome, and reflect market rates. The total costs are broken down as follows:

EXPENSE	AMOUNT
Certificates of Good Standing	67.50
Electronic discovery	128,721.95

1	Expert	28,823.39
2	In-house copies	856.50
3	Mediator	5,100.00
4	Messenger/Process Service	3,071.80
5	Pacer	982.60
6	Phone conferencing	12.00
7	Postage	11.50
8	<i>Pro hac vice</i>	1,625.00
9	Travel (airfare, hotel, taxis, etc.)	42,417.50
10	UPS/FedEx	403.58
11	Westlaw and LexisNexis	1,790.26
12	Total	\$213,883.58

13
14
15 15. Class Counsel estimates that it will expend approximately \$35,000
16 more in costs before the close of the litigation for items such as legal research
17 for the brief on objections and settlement administration, expert expenses and
18 travel for hearings relating to final approval, transcript expenses,
19 correspondence with Class Members, and photocopies.

20 16. The expenses pertaining to this case are reflected in the books and
21 records of this firm. These books and records are prepared from expense
22 vouchers, check records, and other documents and are an accurate record of
23 the expenses.

24 17. Attached to this declaration as Exhibits D-G are true and correct
25 copies of Class Counsel's billing statements for the fees and costs expended in
26 this litigation up to and including December 10, 2014.

1 18. From the inception of this litigation, Class Counsel have
2 aggressively prosecuted this case and vigorously represented the best interests
3 of the Plaintiffs and the Class.

4 19. Before the final approval hearing on June 26, 2015, Class Counsel
5 will have to respond to any objections from Class Members, submit
6 declarations from Class Members discussing their reactions to the proposed
7 settlement, and file a brief in response to any objections by Class Members
8 that also summarizes the administration of the Settlement. (Order re Schedule
9 for Mailing Class Notice Opt-Outs, Attorneys' Fees Motion, and for Final
10 Approval of Class Settlement, Dkt. 353 at 1-2). Class Counsel estimates they
11 will need to be prepared to perform approximately 375 additional hours to
12 finish the in-process work and the above tasks to bring the Settlement before
13 the Court for final approval. If the Settlement is granted final approval, Class
14 Counsel and opposing counsel will have to attend to the issues that will arise
15 during administration of the Settlement, field inquiries from Class Members
16 regarding the Settlement, and walk Class Members through the process of
17 determining and choosing compensation. The estimated total lodestar and
18 cost amount to conclude this litigation is \$300,000.

19 20. In *Cirulli v. Hyundai Motor America*, United States District Court for
20 the Central District of California (No. SACV08-00854 AG (MLGx)), Class
21 Counsel expended approximately 100 post-settlement-approval hours dealing
22 with various class member issues – this represented roughly a 3% response
23 rate from the class members. The *Cirulli* settlement offered a simple repair to
24 class members. If the subframe repair exceeded the fair-market value of the
25 vehicle, the class member was eligible for a buyback remedy. Because of the
26 nature of the defect, only a few class members partook of that remedy, and
27 achieving resolution through communication and exchange of documents
28

1 with those class members and counsel for HMA took several hours for each
2 person. This Settlement involves questions of compensation for erroneous
3 fuel efficiency ratings for a vastly larger number of consumers. It entails
4 complexity because it requires class members to make a choice between up-
5 front lump sum payments (with options to receive those payments in the form
6 of larger service credits and new car rebates), and continuing or registering for
7 participation in the Reimbursement Program. Lump-sum payments vary
8 depending upon when the class member bought and sold the vehicle. The
9 Settlement also provides for separate payments for 4x40 class members who
10 choose the Reimbursement Program. If a Class Member contacts Class
11 Counsel about the different options available, Class Counsel will have to
12 verify detailed information about the Class Member's ownership history and
13 any past participation in the Reimbursement Program. Counsel will then have
14 to explain the specific options available to that particular class member
15 according to their eligibility. Therefore, Class Counsel believes that there will
16 be a high rate of Class-Member inquiries about the claim process, each of
17 which will require substantial time.

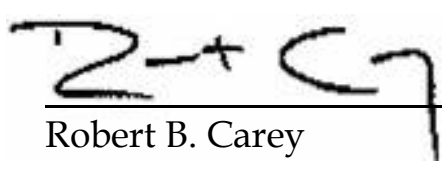
18 21. Class Counsel pursued this case on a contingency basis. We
19 worked diligently to craft theories that would encourage settlement of the fuel
20 economy dispute and devise a creative resolution that preserved and
21 amplified class members' ability to obtain relief. Class Counsel have
22 successfully defended the settlement from several challenges made by a small
23 group of non-settling plaintiffs, challenges which have increased the risk and
24 expense of the case even though none of them led to any renegotiation of the
25 compensation due to the class. Class Counsel have cooperated in fine-tuning
26 the claims process in accordance with the Court's suggestions. Class Counsel
27 have expended many hours working on this case and born all expenses and
28

1 risks of the litigation, including the future risks of objections and any appeal.
2 The Class Representatives and Class Members are not responsible for any fees
3 or costs.

4 22. The time-consuming work involved in successfully litigating this
5 action over several years caused Class Counsel to forego the pursuit of other
6 employment. Class Counsel is a nationwide firm specializing in class actions,
7 and it must allocate its resources carefully to investigate and initiate suits it
8 believes are worthwhile. This Litigation resulted in a significant expenditure
9 of time and money – an expenditure that limited Class Counsel’s pursuit of
10 other cases.

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

13 Executed this 23rd day of December, 2014 at Phoenix, Arizona.

14 
15 _____
16 Robert B. Carey

17
18
19
20
21
22
23
24
25
26
27
28

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

CERTIFICATE OF SERVICE

I, Robert B. Carey, hereby certify that on December 23, 2014, a true and correct copy of the foregoing document was filed electronically with the Clerk of Courts at my direction using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/Robert B. Carey