Nos. 15-56014, 15-56025, 15-56059, 15-56061, 15-56064, 15-56067

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE: HYUNDAI AND KIA
FUEL ECONOMY LITIGATION

Kaylene P. Brady, et al. and Nicole Marie Hunter, et al.
Plaintiffs-Appellees,

Kehlie R. Espinosa; et al.,
Plaintiffs-Appellees,

Hyundai Motor America, Inc.; et al.
Defendants-Appellees.

v.

Caitlin Ahearn; Andrew York; et al.
Objectors-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
THE HONORABLE GEORGE H. WU
CASE NO. 2:13-ml-02424-GW-FFM

PETITION FOR REHEARING EN BANC

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INTRODUCTION AND RULE 35(B) STATEMENT

The panel majority's decision vacates certification of a nationwide class and remands for the district court to determine whether differences among state consumer protection laws—in the settlement context—predominate over common factual questions regarding the conduct of the defendants in misrepresenting the fuel economy ratings of their vehicles. This conflicts with Supreme Court and circuit precedent: *Amchem Prods. v. Windsor*, 521 U.S. 591 (1997), and *Hanlon v Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998). *En banc* review is necessary to secure and maintain uniformity of the Court's decisions under FRAP 35(a)(1) & (b)(1)(A). And the proceeding involves a question of exceptional importance under FRAP 35(a)(2) & (b)(1)(B), because the panel decision conflicts with the Third Circuit's *en banc* decision in *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 297 (3d Cir. 2011).

In *Amchem* the Supreme Court directed that 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." So *Amchem* forfends the district court from having to unnecessarily delve into whether application of the consumer protection laws of fifty states would create a predominance of individual issues. And this ultimately benefits all class members. *See* section I.

Moreover, this Court, in an opinion penned by Chief Judge Thomas, affirmed certification in *Hanlon* because the "idiosyncratic differences between state

consumer protection laws" do not defeat predominance for a nationwide settlement class. As Judge Nguyen, in dissent here, put it: "The problem created by the majority can easily be avoided by simply adhering to our own precedent, which is on all fours." Disregarding *Hanlon*, the majority erroneously extends *Mazza* beyond its logical limitation to litigation classes. *See* section II.

Further, the Third Circuit has addressed this very issue *en banc* in *Sullivan*, holding that "variations in the rights and remedies available to injured class members under the various laws of the fifty states do not defeat commonality and predominance" for a settlement class. So *Sullivan* stands starkly at odds with the majority's decision. And this circuit split creates an issue of exceptional importance, because the likelihood of a global settlement getting approved should not turn on where the JPML sends an MDL. *See* section III.

Finally, the new ground staked out by the panel increases the expense and uncertainty of nationwide settlements, which reduces their likelihood, contrary to public policy. Contravening *Amchem* and *Hanlon*, the majority announced a new rule for certifying nationwide settlement classes that will create disruptive and pointless burdens for both litigants and district judges. Instead, manageability concerns should be mooted by settlement, which "eases crowded court dockets and results in savings to the litigants and the judicial system." *See* section IV.

For all these reason, consideration by the full Court is necessary.

ISSUES PRESENTED

1. *Amchem* relieves the lower courts of an unnecessary manageability inquiry in the settlement context. Does the majority contravene *Amchem* by requiring the district court to engage in multi-state consumer-law analysis for settled claims, even when the district court found predominant common facts justifying certification regardless of which state laws applied?

2. According to the Ninth Circuit in *Hanlon*, "idiosyncratic differences between state consumer protection laws" do not defeat predominance as to a nationwide settlement class of consumers alleging the deceptive advertising of their vehicles. Does the majority decision fail to adhere to *Hanlon* by vacating certification of the nationwide settlement class in order for the district court to determine whether differences in state law predominate?

3. According to an *en banc* panel of the Third Circuit in *Sullivan*, "variations in the rights and remedies available to injured class members under the various laws of the fifty states do not defeat commonality and predominance" for a nationwide settlement class. Does the majority's decision conflict with *Sullivan*?

STATEMENT OF THE CASE

In early 2012, the *Espinosa* complaint was filed on behalf of a nationwide class, alleging that defendants Hyundai and Kia falsely advertised the in-use fuel

economy of their vehicles.[1] After an EPA investigation found that defendants had overstated their fuel economy ratings, defendants revised them and offered consumers a lifetime reimbursement program (LRP) to compensate for the extra cost of gas.[2] Over 50 additional class suits, including the *Hunter* and *Brady* cases, were then filed across the country, alleging violation of warranty and other consumer protection laws.[3] The JPML created an MDL and sent it to Judge Wu.[4]

The plaintiffs in *Espinosa*, *Hunter*, and *Brady* then signed a global settlement.[5] At their election, class members could remain or enroll in the LRP. Or they could choose one the following: (1) a lump sum benefit based on the lifetime cost of additional fuel to a typical driver, with average awards ranging from $353 to $667; (2) a dealer service credit worth 150% of the lump-sum payment amount; or (3) a rebate on a new Hyundai or Kia vehicle worth 200% of the lump-sum payment.[6] There was no limit on the amount to be distributed to claimants under any option.[7] The settlement also resulted in a multi-year extension of the deadline to enroll in the

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[1] Scott Excerpts of Record, No. 15-56064, Dkt. 10, Vol. 9 ER 1977-78.

[2] Appellants' Joint Excerpts of Record, Dkt. 15, ER 19, 21.

[3] *Id*. at ER 21-23, 149, 157-58.

[4] Scott 9 ER 1888-91.

[5] Joint ER 24-25.

[6] *Id*. at ER 162-63; No. 13-md-2424, Dkts. 342-2 at 2, 342-5 at 2, 444 at 7.

[7] Scott 4 ER 764-68.

LRP.[8] The settlement ultimately added over $97 million in value to the compensation provided by the existing LRP, based on actual claims.[9]

In late 2013, the plaintiffs moved for certification of a nationwide settlement class.[10] After four hearings, the district court granted the motion based on, *inter alia*, the predominance of common factual questions across the nationwide settlement class under *Hanlon*.[11] The district court also approved the settlement as fair, reasonable, and adequate as to all class members.[12]

Following appeal by objectors, a panel of this Court vacated the district court's decision and remanded for consideration of the effect of multi-state consumer-protection laws on predominance.[13] The dissent would have affirmed based on, *inter alia*, the predominance of common factual questions under *Hanlon*.[14]

Plaintiffs now seek rehearing *en banc*.[15]

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[8] Correspondence to Court, No. 15-56014, Dkt. 73 at 2-3 (Feb. 13, 2017).

[9] *Id.*

[10] Scott 9 ER 1860.

[11] Joint ER 159; Appellees' Supp. Excerpts of Record, Dkt. 37, Vol. 1 SER 9.

[12] Joint ER 32-38.

[13] *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679, 707 (9th Cir. 2018). Internal citations and quotations omitted and emphasis added unless otherwise indicated.

[14] *Id.* at 708, 719.

[15] More fully set forth facts can be found in the panel decision and defendants' petition.

REASONS FOR GRANTING THE PETITION

I. Requiring multi-state consumer law analysis in the settlement context is contrary to Supreme Court precedent relieving lower courts of an unnecessary manageability inquiry.

A. A single, factual question fundamental to the litigation and held in common among class members can satisfy predominance.

As the Supreme Court recently stated in *Tyson Foods, Inc. v. Bouaphakeo*, when "one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3)."[16] So, as the dissent points out, even a single common issue will do.[17]

Here, the district court found multiple factual questions to predominate above all else: (1) "whether the fuel economy statements were in fact accurate"; and (2) "whether defendants knew that their fuel economy statements were false or misleading."[18] And the fuel economy statements were "uniformly made" via the "Monroney stickers and nationwide advertising."[19] Such key factual issues provide "sufficient unity so that absent members can fairly be bound."[20] Thus, "[p]redominance is a test readily met in certain cases alleging consumer [] fraud."[21]

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[16] 136 S. Ct. 1036, 1045 (2016).

[17] *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d at 708.

[18] Joint ER 159.

[19] *Id.*

[20] *Amchem*, 521 U.S. at 621.

[21] *Id.* at 625.

B. Manageability concerns cannot defeat such predominance in the settlement context—and whether to try a nationwide class using the law of a single state, multi-state groupings, or the laws of fifty states is a matter of manageability.

"Settlement is relevant to a class certification," according to our highest court.[22] "Confronted with a request for settlement-only class certification," *Amchem* directs that 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."[23] Thus, in determining whether to certify a nationwide settlement class, a district court need not determine whether the law of a single state will apply or whether the law of multiple states will apply to subclasses, because these are matters of manageability:

a. Materially different state laws can be grouped for litigation.[24] But requiring a detailed analysis of claims similar at their core—though subject to ever evolving, and often conflicting, caselaw at their margins—is wasteful make-work for litigants and lower courts when a case will not be tried.[25] For example, there is

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[22] *Id*. at 619; *see also* Fed. R. Civ. P. 23(b)(3)(D) (matters pertinent to predominance inquiry include "the likely difficulties in managing a class action").

[23] *Id*. at 620. It was only with respect to the pre-settlement proposed nationwide litigation class that the district court found application of the laws of fifty states would cause individual questions of law to predominate. *See* Appellees' 3 SER 382, 395-96.

[24] *E.g.*, *Klay v. Humana*, 382 F.3d 1241, 1262 (11th Cir. 2004), *abrogated in part on other grounds* (collecting cases re state law groupings for litigation).

[25] In the context of a litigation class, it is of course critical to the manageability analysis.

considerable debate at present in the district courts regarding whether pure omissions are actionable under California consumer protection laws absent a safety concern. This single aspect of California law is subject to at least eight pending appeals before this Court[26] and a request for certification to the California Supreme Court.[27] *Amchem* does not require litigants and lower courts to determine this or any other rule on a fifty-state basis for a nationwide case that will never be tried. The whole point of settlement is to avoid uncertainty in the law, including that attendant multi-state law analysis, and put the litigation effort to a halt. Clinging to hypothetical manageability concerns defeats the benefits of settlement, contrary to *Amchem*.

b. As an alternative to grouping, settling parties could instead seek certification of fifty separate state-law classes (with a lump sum to be distributed across all claimants). This would generate extra paperwork from the litigants and possibly require joinder of additional class representatives for whom service payments would be sought. More critically, it would compound the work of the lower courts in approving nationwide settlements. But it would mean that variation in state law could not defeat predominance: each one of the fifty state classes would have the law of only a single state applied. And any manageability concern with

[26] 9th Cir. Case Nos. 16-15794, 16-15444, 16-15789, 16-55041, 16-55280, 16-55212, 16-55211, 16-53845.

[27] *E.g.*, 9th Cir. Case No. 16-55041, Dkt. 38.

having fifty state classes is moot under *Amchem*. With the outcome of this exercise assured, its purpose is found wanting. But the fact that it would solve the majority's predominance concern reveals that it rests on manageability, contrary to *Amchem*.

C. Absent class members benefit fairly from nationwide settlements of consumer protection law claims, even where state law variations might have required different litigation strategies.

The concern for absent class members animating the reluctance to forego manageability concerns is misplaced. If nationwide settlement classes cannot be certified, then absent class members recover nothing as "economic reality dictates" that such suits "proceed as a class action or not at all."[28] If the nationwide settlement class can be certified, but only after undertaking multi-state consumer-law analysis, then the risk, burden, and uncertainty of global settlement increases, making them less likely. Again, absent class members lose out.

Moreover, the idea that absent class members are hurt by some without claims (or weaker claims) potentially being included in the class is mistaken, given practical realities. Here, there was no limit on the compensation that could have been claimed by class members.[29] So additional absent class members could have made claims without prejudicing the rights of others to do so.[30] As "class-action practice has

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[28] *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 161 (1974).

[29] Scott 4 ER 764-68.

[30] Thus, contrary to the majority's holding, the inclusion of used car purchasers who were not exposed to advertising, even assumed true, is harmless error. In

become ever more adventuresome as a means of coping with claims too numerous to secure their just, speedy, and inexpensive determination one by one," such settlements ensure "the efficient use of court resources and the conservation of funds to compensate claimants who do not line up early in a litigation queue."[31]

Even in fund-sharing settlements, which this is not, claimants often end up with more than their actual share of the settlement fund due to the limited number of class members actually making claims.[32] Absent class members are certainly not hurt in these circumstances either. As Judge Posner has noted, "[t]o object to a settlement on the ground that you shouldn't have done as well in the settlement as you did identifies you as an ideological litigant."[33]

Now some objectors here claim they should recover more, but courts do not countenance objections that the settlement could have been better by providing different or additional relief—unless it arises to a conflict among class members. As this Court has stated: "Of course it is possible, as many of the objectors' affidavits

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addition, there is no requirement in *Tobacco II* that absent class members establish reliance (only exposure). Indeed, *Tobacco II* was considered a major victory for consumers precisely because it required only named plaintiffs to establish reliance. *See In re Tobacco II Cases*, 207 P.3d 20, 38 (Cal. 2009).

[31] *Amchem*, 521 U.S. at 617-18.

[32] *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944-45 (9th Cir. 2015).

[33] *Ragsdale v. Turnock*, 941 F.2d 501, 506 (7th Cir. 1991).

imply, that the settlement could have been better. But this possibility does not mean the settlement presented was not fair, reasonable or adequate."[34]

Indeed, differences at the margins of the consumer protection laws, *even if* material enough to require application of each state's law under *Mazza* for a litigation class,[35] do *not* translate into materially different settlement compensation. For example, a few states require a showing of reliance,[36] while most do not.[37] But even states that require reliance may permit an inference rather than direct proof.[38] So while issues of reliance may need to be litigated differently, the settlement value is similar. Likewise, some states may require knowledge by the defendant, while others do not. Again, these issues may require different litigation strategies, but where there is evidence of the defendant's knowledge, as here,[39] the settlement values are on par.

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[34] *Hanlon*, 150 F.3d at 1027.

[35] *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 591 (9th Cir. 2012) (identifying three material variations among consumer protection laws: reliance, scienter, and remedies). Variation in damages amount, as opposed to type of injury, is insufficient on its own to defeat class certification. *E.g., Vaquero v. Ashley Furniture Industries, Inc.*, 824 F.3d 1150, 1155 (9th Cir. 2016).

[36] *E.g.*, *Feitler v. The Animation Celection, Inc.*, 13 P.3d 1044, 1047 (Or. Ct. App. 2000).

[37] *E.g., Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 984 (11th Cir. 2016) (Florida law).

[38] *E.g.*, *Strawn v. Farmers Ins. Co.*, 258 P.3d 1199, 1213 (Or. 2011).

[39] Scott 9 ER 1842-43.

All this is not to say that significant valuation differences are never accounted for as part of a nationwide settlement. For example, in *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Prac. & Prod. Liab. Litig*, some states permitted recovery of diminished value without manifestation of the unintended acceleration defect, while other states required manifestation of the defect, and in still others it was unclear whether manifestation was required.[40] So the $2 billion nationwide settlement accounted for these significant differences in law affecting case valuation among states.[41] But there are no such differences here. Instead, all absent class members stand to benefit fairly from this settlement.

II. Vacating the certification of a settlement class for failure to determine whether differences in state law defeat predominance conflicts with precedent from this Circuit.

The majority's decision to vacate the district court's certification of a nationwide settlement class for an assessment of whether variations in state consumer protection laws, including warranty laws, preclude a finding of predominance entirely contradicts *Hanlon*. Indeed, the dissenting judge below describes *Hanlon* as precedent "on all fours."[42]

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[40] No 8:10-ml-02151-JVS, 2013 WL 3224585, *3 (C.D. Cal. June 17, 2013).

[41] *Id*.

[42] *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d at 713.

In *Hanlon*, this Court affirmed the certification of a nationwide settlement class asserting the same claims as here.[43] In so doing, the Court held that the nationwide class of minivan owners did "not present an allocation dilemma."[44] Absent class members were "not divided into conflicting discrete categories, such as those with present health problems and those who may develop symptoms in the future."[45] Instead, each absent class member had "the same problem: an allegedly defective rear latchgate which requires repair or commensurate compensation."[46] Likewise here: each absent class member was subjected to defendants' same misrepresentations regarding their fuel economy ratings, which reduced the value of the vehicles and resulted in consumers paying more than expected for gas.

Hanlon then held that this "common nucleus of facts and potential legal remedies" that "dominates" the litigation satisfied the predominance inquiry under rule 23(b)(3).[47] And this Court, with Chief Judge Thomas writing for the panel, held that "the idiosyncratic differences between state consumer protection laws are not

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[43] The claims included, as here, negligent misrepresentation, fraud, breach of warranty, and violation of unfair and deceptive trade practices acts. *See Hanlon v. Chrysler Corp.*, No. C95-2010, 1995 WL 18241629 (N.D. Cal. June 16, 1995).

[44] *Hanlon*, 150 F.3d at 1021.

[45] *Id.* (discussing *Amchem*).

[46] *Id.*

[47] *Id.* at 1022.

sufficiently substantive to predominate over shared claims."[48] Rather, "the proposed class action is paradigmatic."[49]

In *Hanlon*, this Court made plain that "local variants of a generally homogenous collection of causes" do not defeat predominance for a settlement class.[50] Put another way, "although some class members may possess slightly differing remedies based on state statute or common law," the claims "are not sufficiently anomalous to deny class certification."[51] Instead, the same conduct of defendants caused the same type of injury to all class members, as here. And, under *Hanlon*, this is sufficient to cohere a nationwide settlement class.

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[48] *Id*. at 1022-23.

[49] *Id*. at 1023.

[50] *Id.* at 1022. The Court also stated that class counsel should be prepared to demonstrate the commonality of substantive law applicable to all class members, *id*., but this was unnecessary here because settling plaintiffs' claims were also at issue in *Hanlon*. Conversely, and assuming choice of law were a relevant inquiry for a settlement class rather than a moot manageability concern, it was objectors' burden to show (1) material conflicts of law, (2) true conflicts of interests among jurisdictions under the circumstances of the particular case, and (3) impairment of such interests. Yet objectors did nothing more than recite *Mazza*—even as to the warranty claims, which were not even at issue in *Mazza*. This is plainly inadequate and addressed further in defendants' petition. *See, e.g., J.P. Morgan & Co. v. Super. Ct.*, 6 Cal. Rptr. 3d 314, 225 (Cal. Ct. App. 2003) (a separate conflict-of-law inquiry must be made with respect to each claim).

[51] *Hanlon*, 150 F.3d at 1022. The Court also explained that "even if the named representatives did not include a broad cross-section of claimants, the prospects for irreparable conflict of interest are minimal in this case because of the relatively small differences in damages and potential remedies." *Id*. at 1021.

III. Vacating the certification of a settlement class for failure to determine whether differences in state law defeat predominance also conflicts with precedent from the Third Circuit.

In *Sullivan*, the Third Circuit *en banc* held that "variations in the rights and remedies available to injured class members under the various laws of the fifty states do not defeat commonality and predominance."[52] Instead, "concerns regarding variations in state law largely dissipate when a court is considering the certification of a settlement."[53]

The *en banc* panel relied on Third Circuit precedent in *In re Warfarin Sodium Antitrust Litig.*, a case arising out the defendant drug manufacturers' alleged dissemination of misleading information about a competitor's product.[54] The objectors argued that class certification was inappropriate due to differences in state consumer fraud statutes' eligibility for treble or punitive damages.[55] But the Third Circuit affirmed the district court's ruling that class members "shared predominantly common issues as to the conduct of the defendants despite possessing claims arising under differing state laws."[56]

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[52] 667 F.3d at 301.

[53] *Id.* at 297. *See also Mazza*, 666 F.3d at 590 n.2 (distinguishing another case where "Honda settled with plaintiffs … without addressing whether the application of California law to a nationwide class is appropriate").

[54] 391 F.3d 516 (3d Cir. 2004).

[55] *Sullivan*, 667 F.3d at 298, *citing Warfarin*, 391 F.3d at 529-31.

[56] *Id.* at 298-99, *citing Warfarin*, 391 F.3d at 530.

Relying on *Amchem*, both *Sullivan* and *Warfarin* explain that "in the settlement context, variations in state antitrust, consumer protection, and unjust enrichment laws did not present the types of insuperable obstacles that could render class litigation unmanageable."[57] Instead, a proposed settlement "obviates the difficulties inherent in proving the elements of varied claims at trial or in instructing a jury on varied state laws, and 'the different is key.'"[58] Thus, "state law variations are largely irrelevant to certification of a settlement class."[59]

In short, the majority's decision conflicts with *en banc* precedent from the Third Circuit. And this is an issue of exceptional importance because the ease of settling a nationwide class should not turn on the vagaries of where the JPML places an MDL proceeding.

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[57] *Id.* at 303; *Warfarin*, 391 F.3d at 529.

[58] *Id.* at 304, *quoting Warfarin*, 391 F.3d at 529.

[59] *Id*. And the Third Circuit distinguished cases refusing to certify nationwide classes in the litigation context. *Id*. at 303 n.27, *citing In re Bridgestone/Firestone Inc*., 288 F.3d 1012 (7th Cir. 2002).

Cases the majority relies on here can be distinguished in the same manner. *See In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d at 702, *citing Pilgrim v. Universal Health Card, LLC*, 660 F.3d 943, 947 (6th Cir. 2011); *Castano v. The American Tobacco Co*., 84 F.3d 734 (5th Cir. 1996).

IV. Compelled multi-state consumer-law analysis increases the expense and uncertainty of global settlements and thereby reduces their likelihood, contrary to public policy.

A settlement is "the preferred means of dispute resolution."[60] "[T]he policy of federal courts is to promote settlement before trial," because it "eases crowded court dockets and results in savings to the litigants and the judicial system."[61] Indeed, "there is an overriding public interest in settling and quieting litigation" and this is "particularly true in class action suits."[62]

Requiring the parties to engage in detailed choice-of-law and/or multi-state consumer-law analysis as a prerequisite to certification of a nationwide settlement class increases both the burden on the district courts and the expense and uncertainty of nationwide settlements—and makes such settlements less likely. This is unfortunate given the judicial economy of classwide resolutions.

The majority's decision also delays valuable recovery to thousands of consumers. And it delays recovery in many other cases that now must address this sea-change in approach to nationwide settlement classes—and wrestle with the conflicts created.[63] *Hanlon* has been followed many times over the past twenty years

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[60] *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

[61] *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1225 (9th Cir. 1989).

[62] *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

[63] *See, e.g., Edenborough v ADT, LLC*, No. 16-cv-02233-JST, 2018 WL 1036998 (N.D. Cal. Feb. 5, 2018) (requesting further briefing regarding the effect

by district courts in this Circuit in certifying nationwide settlement classes.[64] So *In re Hyundai & Kia Fuel Econ. Litig.* presents a significant departure from precedent for all the judges and practitioners who have relied on *Hanlon* as the law for the last two decades.

CONCLUSION

Plaintiffs respectfully request that the Court grant their petition for rehearing *en banc* to avert a conflict with *Amchem*, *Hanlon*, and *Sullivan*.

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of *In re Hyundai & Kia Fuel Econ. Litig.* on certification of the proposed nationwide settlement class).

[64] *See, e.g., Hartless v. Clorox Co.*, 273 F.R.D. 630, 638-39 (S.D. Cal. 2011); *Johnson v. Gen. Mills, Inc.*, No. SACV1000061-CJC, 2013 WL 12248151, at *4 (C.D. Cal. Mar. 6, 2013); *see also Miller v. Ghirardelli Chocolate Co.*, No. C-12-04936 LB, 2014 WL 4978433, at *3 (N.D. Cal. Oct. 2, 2014) (citing *Sullivan* and *Amchem* for the proposition that "state law variations are largely irrelevant to certification of a settlement class").

DATED: March 8, 2018

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ATTESTATION REGARDING SIGNATURES

Pursuant to Circuit Rule 25-5(e), I attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content.

/s/ Steve W. Berman
Steve W. Berman

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