



of this litigation. After setting forth my qualifications to serve as an expert (Part I, *infra*), and briefly describing the underlying litigation (Part II, *infra*), I utilize empirical data from similar cases to examine the reasonableness of Class Counsel's \$2.3 million fee request in light of six variables. Specifically, for purposes of providing this Declaration to the Court, [1] I re-reviewed fee awards in the Central District for the past five years and a resulting database of hourly rates that courts here have approved;<sup>4</sup> and [2] I collected 13 automobile defect cases – from federal and one state court throughout the country – with attributes similar to this one, in which fees have been approved by courts in the past few years. These, and other data described throughout this Declaration, enable me to reach six interrelated conclusions about Class Counsel's fee request:

- **Reasonable rates.** The hourly rates Class Counsel employ are fully consistent with rates approved by courts in the Central District in the last five years. (Section III(A), *infra*.)
- **Reasonable hours.** The quantity of hours that Class Counsel expended on this matter is fully consistent with the quantity of hours expended by class counsel in my database of 13 similar automobile defect cases. Moreover, the total number of hours all Class Counsel billed for this case – roughly 3,200 in about three and a quarter years – is the equivalent of one attorney working half time on the case throughout those three years. When the complexity of the case, as well as the investigation and the adversarial litigation undertaken by Class Counsel, are taken into account, this is a reasonable quantity of time. (Section III(B), *infra*.)
- **Reasonable multiplier.** The 1.36 multiplier that Class Counsel seeks is below the mean multiplier in federal cases, below the mean multiplier in Ninth Circuit cases, below the mean multiplier in consumer cases generally, and just (3%) above the mean of the 13 comparable automobile defect cases. It is also consistent with the risk counsel took in this case and the results that they achieved for the class: Class

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<sup>4</sup> I had initially collected these cases in conjunction with a Declaration I undertook in a separate case pending in the Central District in 2014. *See* Expert Decl. of Professor William B. Rubenstein, *In re Hyundai & Kia Fuel Economy Litig.*, No. 2:13-ml-02424-GW-FFM (C.D. Cal. Dec. 23, 2014).

Counsel invested roughly \$1.7 million of its labor into this contingent case concerning a contested factual issue in a field devoid of significant legal precedent, against a well-funded adversary. While shouldering that risk, Class Counsel secured important relief for the class, recovering comprehensive relief for all individuals affected by the vehicle defect. (Section III(C), *infra*.)

- ***Reasonable percentage.*** In common fund cases, class counsel are entitled to a percentage of the fund they created for the class. In the Ninth Circuit, 25% is the benchmark for such awards. This settlement did not create a formal fund and counsel is not taking a fee directly from their clients. Nonetheless, the 25% benchmark is a helpful guide in assessing the reasonableness of a fee request. According to Class Counsel’s economic expert, the value made available to the class in one portion of this settlement is close to \$23.7 million. The requested \$2.3 million fee is less than 10% of that total available amount, well below the 25% benchmark. (Section III(D), *infra*.)
- ***Reasonable in relation to fees in comparable cases.*** The fee is fully consistent with the gross fees that courts have awarded in my 13-case set of comparable automobile defect cases. (Section III(E), *infra*.)
- ***Reasonable process.*** The fee was negotiated only after the parties had reached a settlement agreement for the class and only with the assistance of a neutral mediator – two signs that it is not likely a collusive bargain trading off the class’s interest for a tidy fee. (Section III(F), *infra*.)

In short, the rates and hours contained in Class Counsel’s fee request are justified, as is Class Counsel’s entitlement to a fee multiplier, and, when cross-checked, the requested fee represents far less than 25% of the value Class Counsel’s expert opines was created for the class. The requested fee is, as the law requires that it must be, “reasonable.”<sup>5</sup>

## I. BACKGROUND AND QUALIFICATIONS<sup>6</sup>

2. I am the Sidley Austin Professor of Law at Harvard Law School. I graduated from Yale College, *magna cum laude*, in 1982 and from Harvard Law School, *magna cum laude*,

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<sup>5</sup> Fed. R. Civ. P. 23(h) (“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.”).

<sup>6</sup> My full c.v. is attached as Exhibit A.

in 1986. I clerked for the Hon. Stanley Sporkin in the U.S. District Court for the District of Columbia following my graduation from law school. Before joining the Harvard faculty as a tenured professor in 2007, I was a law professor at UCLA School of Law for a decade, and an adjunct faculty member at Harvard, Stanford, and Yale Law Schools while a litigator in private practice during the preceding decade. I am admitted to practice law in the Commonwealth of Massachusetts, the State of California, the Commonwealth of Pennsylvania (inactive), the District of Columbia (inactive), the U.S. Supreme Court, five U.S. Courts of Appeals, and four U.S. District Courts.

3. My principal area of scholarship is complex civil litigation, with a special emphasis on class action law. I am the author, co-author, or editor of five books and more than a dozen scholarly articles, as well as many shorter publications (a fuller bibliography appears in my c.v., Exhibit A). Much of this work concerns various aspects of class action law. I am the sole author of the leading national treatise on class action law, *Newberg on Class Actions*. For five years (2007-2011), I published a regular column entitled “Expert’s Corner” in the publication *Class Action Attorney Fee Digest*. My work has been excerpted in casebooks on complex litigation, as noted on my c.v.

4. My expertise in complex litigation has been recognized by judges, scholars, and lawyers in private practice throughout the country for whom I regularly provide consulting advice and educational training programs. For the last five years, the Judicial Panel on Multidistrict Litigation has invited me to give a presentation on the current state of class action law at the annual MDL Transferee Judges Conference. The Ninth Circuit recently invited me to moderate a panel on class action law at the 2015 Ninth Circuit/Federal Judicial Center Mid-

Winter Workshop. The American Law Institute selected me to serve as an Adviser on a Restatement-like project developing the *Principles of the Law of Aggregate Litigation*. In 2007, I was the co-chair of the Class Action Subcommittee of the Mass Torts Committee of the ABA's Litigation Section. I am on the Advisory Board of the publication *Class Action Law Monitor*. I have often presented continuing legal education programs on class action law at law firms and conferences.

5. My teaching focuses on procedure and complex litigation. I regularly teach the basic civil procedure course to first-year law students, and I have taught a variety of advanced courses on complex litigation, remedies, and federal litigation. I have received honors for my teaching activities, including: the Albert M. Sacks-Paul A. Freund Award for Teaching Excellence, as the best teacher at Harvard Law School during the 2011-2012 school year; the Rutter Award for Excellence in Teaching, as the best teacher at UCLA School of Law during the 2001-2002 school year; and the John Bingham Hurlbut Award for Excellence in Teaching, as the best teacher at Stanford Law School during the 1996-1997 school year.

6. My academic work on class action law follows a significant career as a litigator. For nearly eight years, I worked as a staff attorney and project director at the national office of the American Civil Liberties Union in New York City. In those capacities, I litigated dozens of cases on behalf of plaintiffs pursuing civil rights matters in state and federal courts throughout the United States; I also oversaw and coordinated hundreds of additional cases being litigated by ACLU affiliates and cooperating attorneys in courts around the country. I therefore have personally initiated and pursued complex litigation, including class actions.

7. I have been retained as an expert witness in roughly 50 class action cases and as an expert consultant in about another 20 cases. These cases have been in state and federal courts throughout the United States, including many MDL proceedings. I have been retained to testify as an expert witness on issues ranging from the propriety of class certification to the reasonableness of settlements and fees. I have been retained by counsel for plaintiffs, for defendants, and for objectors.

8. I have been retained in this case to provide an opinion concerning the issues set forth in the first paragraph above. I am being compensated for providing this expert opinion. I was paid a flat fee in advance of rendering my opinion, so my compensation was in no way contingent upon the content of my opinion.

9. In analyzing these issues, I have discussed the case with the counsel who retained me. I have also reviewed documents from this and related litigations, a list of which is attached as Exhibit B. I have also reviewed the applicable case law and scholarship on the topics of this Declaration.

## **II. THIS LITIGATION<sup>7</sup>**

10. This is an automobile defect case. Plaintiffs allege that certain Audi models consume excessive amounts of oil. Defendants<sup>8</sup> deny the allegations. After several years of adversarial litigation, the parties reached a settlement agreement with the assistance of a mediator.

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<sup>7</sup> The facts in this section are culled from the documents listed in Exhibit B.

<sup>8</sup> Defendants are Volkswagen Group of America, Inc. (“Volkswagen Group”), Audi AG, and Volkswagen AG (collectively, “Defendants”).

11. The settlement relates to at least three earlier-filed matters:
- The related first action, *Kim v. Volkswagen Group of America, Inc.*, was filed in the Superior Court of the State of California for the County of Alameda (Northern District) on February 7, 2012. Defendants removed that matter to the United States District Court for the Northern District of California on March 8, 2012, and, pursuant to a motion filed by the defendants in October 2012, that court transferred the case to this this Court on March 26, 2013.
  - The second related action, *Asghari v. Volkswagen Group of America, Inc.*, was filed in the United States District Court for the Northern District of California on May 1, 2012. On June 5, 2012, that court granted the plaintiffs' motion to relate the case to the *Kim* matter, effectively consolidating the actions. Hence when the Northern District transferred the *Kim* matter to this Court, the transfer order adjudicated the same issues — and reached the same conclusion — with respect to the related *Asghari* plaintiffs.
  - The third related action, *Dersarkissian v. Volkswagen Group of America, Inc.*, was filed in the Superior Court of the State of California for the County of Los Angeles (Central District) on September 30, 2013. Defendants removed that matter to this Court on November 1, 2013. Following the removal, a number of the plaintiffs therein were added to the prior actions.

Counsel Strategic Legal Practices APC and Capstone Law, APC entered appearances in the *Asghari* matter in this Court and took the lead in representing the plaintiffs in these matters.<sup>9</sup>

12. Plaintiff Asghari's facts are typical of those of the other named plaintiffs: He specifically alleged that he leased a new 2010 Audi A5 from a New York Audi dealer in December of 2009. On several occasions, he paid out of pocket to add supplemental oil between

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<sup>9</sup> See Decl. of Jordan L. Lurie in Support of Pls.' Motion for Prelim. Approval of Class Action Settlement 1 n.1, ECF No. 153-1 ("The Settlement Agreement designates *Asghari* Plaintiffs' counsel, Strategic Legal Practices APC ('SLP') and Capstone Law APC ('Capstone'), to be 'Lead Class Counsel.' (Settlement Agreement, § I.F.) All counsel for Plaintiffs, consisting of SLP, Capstone, Diversity Law Group, P.C., Law Office of Choi & Associates, Eco Tech Law Group, P.C. and the Law Office of Hovanes Margarian, are designated to be class counsel under the Settlement. (Settlement Agreement, §I.Q.) These terms reflect the parties' recognition that SLP and Capstone assumed a leadership role in the action by being primarily responsible for developing the theory of the case, directing the investigation, retaining experts, propounding and reviewing discovery, and negotiating the settlement on behalf of the Plaintiffs and all prospective settlement class members.").

oil changes. Asghari alleged that, on one occasion, the Audi dealer to whom he took his vehicle kept the vehicle for two weeks of repairs after performing an oil consumption test and finding that the vehicle was consuming excessive oil.

13. All of the actions generally alleged that the defendants designed, manufactured, distributed, marketed, sold, and warranted vehicle engines that contained a defect that caused them to consume excessive amounts of oil. Specifically, the matters (collectively) alleged violations of California's Consumer Legal Remedies Act (Cal. Civil Code § 1750, *et seq.*); violations of California's Song-Beverly Consumer Warranty Act (Cal. Civil Code § 1790, *et seq.*); violations of California's Unfair Business Practices Act (Cal. Bus. & Prof. Code § 17200, *et seq.*); violations of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.*); violations of California Commercial Code § 2313; and common law claims for breach of express and implied warranty, fraud, and negligent misrepresentation. On behalf of a New York subclass, the *Asghari* complaint alleged violations of New York's Consumer Protection from Deceptive Acts and Practices Act (N.Y. Gen. Bus. Law. § 349, *et seq.*) and violations of New York's Uniform Commercial Code §2-313.

14. The actions proceeded through four general stages of litigation:

- As noted above, the parties fought about the proper venue for the action, with state cases being removed, several motions to transfer venue among federal courts, and the variety of cases effectively being consolidated into one action.
- The parties fought several motions to dismiss, culminating in a 46-page order of this Court on November 4, 2013. That order adjudicated a host of complicated legal issues including standing, statutory notice, pleading, statutes of limitations, choice of law, the right to restitution, and the application of various warranties under various legal regimes. The Court granted "defendants' motions to dismiss *Asghari's* California claims; [a second named plaintiff's] CLRA, UCL, and Song-Beverly Act claims; [a third named plaintiff's] claim for restitution under the UCL; plaintiffs' claims for breach of express warranty under both California and New York law; and



plaintiffs' MMWA claim to the extent it [was] based on alleged breaches of an express warranty," but otherwise denied the remaining aspects of Defendants' motions, and permitted plaintiffs to file an amended complaint pleading in line with the order.<sup>10</sup>

- The parties engaged in discovery. Class Counsel report that they reviewed over 100,000 pages of documents as well as over 80,000 lines of warranty claims data provided by Defendants. Class Counsel also took the deposition of Defendants' Rule 30(b)(6) corporate representative in New York. Additionally, prior to filing the complaint and throughout the litigation, Class Counsel retained experts, who, among other things, conducted extensive testing on an exemplar vehicle purchased by Class Counsel for litigation.
- The parties ultimately engaged in settlement discussions. The parties met in person in advance of this Court's July 29, 2013 Rule 26 conference and discussed resolution of this suit. Following this Court's July 29, 2013 tentative ruling on the motions to dismiss, the parties began settlement negotiations in earnest. They met again in October of 2013 and, over the following months, held numerous telephone conferences with an eye to settlement. No agreement was forthcoming so, on March 27, 2014, the parties attended mediation before Honorable Howard B. Wiener (Ret.); both Parties submitted mediation briefs in advance of that meeting. During the mediation, the parties reached a tentative settlement agreement.

15. On September 22, 2014, the parties announced a formal Settlement Agreement and moved for preliminary approval of the settlement and conditional certification of a settlement class. The Settlement covers 2009 Audi A4 vehicles; 2010 Audi A4 and A5 vehicles; and 2011 Audi A4, A5, and Q5 vehicles, so long as the vehicle was originally equipped with a particular factory-installed 2.0 liter engine. The agreement provides three forms of relief for the class:

- Class members who are out-of-pocket for fixing the alleged defect will receive 100% reimbursement of the costs they have so paid.
- Class members who have not had the alleged defect fixed but who can document compliance with the required oil maintenance schedule for their vehicles are entitled to receive a fix free of charge.

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<sup>10</sup> Order Granting in Part and Denying in Part Defs.' Mots. to Dismiss 46, Nov. 14, 2013, ECF No. 121.

- All class members will receive a warranty extension as to the allegedly defective oil problem for either 1 year/12,000 miles from the date of the Service Adjustment, or 8 years/80,000 miles total, whichever is later, so long as class members submit records of compliance with oil and oil filter maintenance requirements and schedule.

16. The parties report that after the conclusion of the settlement negotiations, they also negotiated a fee arrangement whereby the defendants agree to pay, and not to contest, a fee of up to \$2.3 million.

17. This Court granted preliminary approval to the settlement on October 26, 2014. The Court has scheduled a fairness hearing for May 4, 2015.

### III. COUNSEL'S \$2.3 MILLION FEE REQUEST IS REASONABLE

18. Class counsel are typically paid one of two ways in class action lawsuits:
- If a common fund is created, class counsel are entitled to a percentage of that fund and are thus reimbursed for their services by their clients. The Ninth Circuit has held that 25% is the benchmark percentage-of-the-fund fee award in this Circuit.<sup>11</sup> The 25% benchmark is a “starting point” — higher or lower percentages may be appropriate based on all the circumstances in a given case.<sup>12</sup> A court may consider counsel’s lodestar — their hours multiplied by their hourly rates — as a “lodestar cross-check” on the reasonableness of a given percentage award.<sup>13</sup>
  - In the absence of the creation of a common fund, a defendant might be liable for the plaintiffs’ fees under fee shifting statutes that entitle a prevailing party to fees paid by its adversary. Courts typically utilize a lodestar (or hourly) approach to fee-shifting awards. A court may consider how counsel’s requested lodestar award compares to the value of the settlement achieved for the class, thereby undertaking a “percentage

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<sup>11</sup> *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-48 (9th Cir. 2002).

<sup>12</sup> *Id.* at 1048.

<sup>13</sup> *Id.* at 1050.

cross-check” in a lodestar case,<sup>14</sup> though such a check is not appropriate in all lodestar cases.<sup>15</sup>

In either circumstance, class counsel are entitled to apply for a fee “multiplier,” that is, an award greater than their hourly rate; fee multipliers acknowledge the risks counsel take in pursuing their clients’ cases on a contingent fee basis, and, if the results warrant it, entitle counsel to a fee greater than their hourly rate.<sup>16</sup>

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<sup>14</sup> See *Wing v. Asarco Inc.*, 114 F.3d 986, 990 (9th Cir. 1997) (noting that in setting a “reasonable fee” for the defendant to pay, per the parties’ settlement agreement, the “district court did not stop with a lodestar-multiplier approach to the determination of a reasonable fee, but employed a percentage method as an alternative basis” and referring to this as “cross-checking the . . . fee against the stated value of the Settlement Agreement”); *In re Toys R Us-Delaware, Inc. – Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 460 (C.D. Cal. 2014) (“In cases where courts apply the percentage method to calculate fees, they should use a rough calculation of the lodestar as a cross-check to assess the reasonableness of the percentage award. By the same token, a court applying the lodestar method to determine attorney’s fees may use the percentage-of-the-fund analysis as a cross-check.” (internal quotation marks and citations omitted)).

<sup>15</sup> Percentage cross-checks are often unhelpful because courts may employ the lodestar fee approach precisely because a percentage approach would be inapplicable. Indeed, many fee-shifting cases yield non-monetary relief, making a percentage cross-check impossible. Even if a class does recover money, monetary relief may be nominal and hence counsel’s lodestar can outstrip the amount of recovery that the class receives. In *City of Riverside v. Rivera*, 477 U.S. 561 (1986), for example, the Supreme Court affirmed a fee award of \$245,456.25 for counsel who had recovered \$33,350 in damages. Had a percentage cross-check been undertaken, it would have shown the lodestar to be 88% of the defendant’s total payout (the damages and fees combined). Thus, percentage cross-checks are sometimes unhelpful in that the numbers they yield may not be pertinent to the questions of whether the amount of time counsel expended, and the billing rates they employed, are in the realm of reason.

<sup>16</sup> *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011) (“Though the lodestar figure is ‘presumptively reasonable,’ the court may adjust it upward or downward by an appropriate positive or negative multiplier reflecting a host of ‘reasonableness’ factors . . . .” (citation omitted)). The rationale for multipliers is set forth in greater detail below. See *infra* ¶ 29.

19. Regardless of whether the percentage or lodestar method is used, “the critical inquiry is whether the ‘fees and expenses ultimately awarded [are] reasonable in relation to what the plaintiffs recovered.’”<sup>17</sup> Courts in the Ninth Circuit have established a non-exhaustive list of factors to determine the reasonableness of a fee request, including: “(1) the results achieved; (2) the risk involved in the litigation; (3) incidental or nonmonetary benefits conferred by the litigation; and (4) financial burden of the case on counsel.”<sup>18</sup>

20. In this case, the parties have agreed to a fee by contract, with the settlement agreement stating that the defendants will not oppose a request for fees up to \$2.3 million. Thus, the parties’ contract leaves it to this Court to determine whether the requested – and unopposed – \$2.3 million is reasonable.<sup>19</sup>

21. In the following sections, I utilize empirical data from similar cases to examine the reasonableness of Class Counsel’s \$2.3 million fee request in light of six variables:

- the reasonableness of the hourly rates (Section III(A), *infra*);
- the reasonableness of the quantity of hours (Section III(B), *infra*);

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<sup>17</sup> *Koumoulis v. LPL Fin. Corp.*, No. 09CV1973-DMS BLM, 2010 WL 4868044 at \*5 (S.D. Cal. Nov. 19, 2010) (alteration in original) (quoting *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000)).

<sup>18</sup> *In re Hydroxycut Mktg. & Sales Practices Litig.*, No. 09CV1088 BTM KSC, 2014 WL 6473044, at \*9 (S.D. Cal. Nov. 18, 2014) (citing *Vizcaino*, 290 F.3d at 1049-50).

<sup>19</sup> *Cf. Wing*, 114 F.3d at 988 (noting, with regard to similar settlement agreement, that “the fee dispute in this case arises out of contract: in the Settlement Agreement, [the defendant] agreed to pay the reasonable attorney fees and expenses as determined and awarded by the court. The Attorney Fee Agreement did not limit the district court’s discretion in determining the fee. The court clearly recognized that it could award a fee below, above or at the lodestar figure the parties arrived at in the Attorney Fee Agreement. Under the Settlement Agreement, the only constraint on the district court’s discretion was the requirement that the fee be ‘reasonable’”).

- the reasonableness of the requested multiplier (Section III(C), *infra*);
- the reasonableness of the fee in relationship to the value of the class’s recovery – that is, the so-called “percentage cross-check” (Section III(D), *infra*);
- the reasonableness of the fee in relationship to fees in similar automobile defect cases (Section III(E), *infra*); and
- the context of the fee negotiation (section III(F), *infra*).

Together, these six sections attest to the reasonableness of the requested \$2.3 million fee.

**(A)**  
***The Requested Hourly Rates Are Reasonable***

22. The *Manual for Complex Litigation* states:

What constitutes a reasonable hourly rate varies according to geographic area and the attorney’s experience, reputation, practice, qualifications, and customary charge. The rate should reflect what the attorney would normally command in the relevant marketplace.<sup>20</sup>

Two data points demonstrate the reasonableness of the requested rates: *first*, a comparison of the rates sought to the rates approved by courts in the Central District in the past few years (¶ 23, *infra*); and *second*, a comparison of the firm’s blended lodestar to rates approved by courts in the Central District in the past few years (¶ 24, *infra*).

23. For purposes of this (and an earlier) Declaration, I searched for reported Central District of California decisions that approved specific fee rates in class action cases in the past five years. My searches identified 16 such decisions, which are listed in Exhibit C. These 16

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<sup>20</sup> Federal Judicial Center, *Manual for Complex Litigation, Fourth*, § 14.122 (2004) [hereinafter *Manual for Complex Litigation*] (citing *Blum v. Stenson*, 465 U.S. 886, 895 (1984) (“[R]easonable fees’ . . . are to be calculated according to the prevailing market rates in the relevant community . . . .”); *Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167 (3d Cir. 1973)).

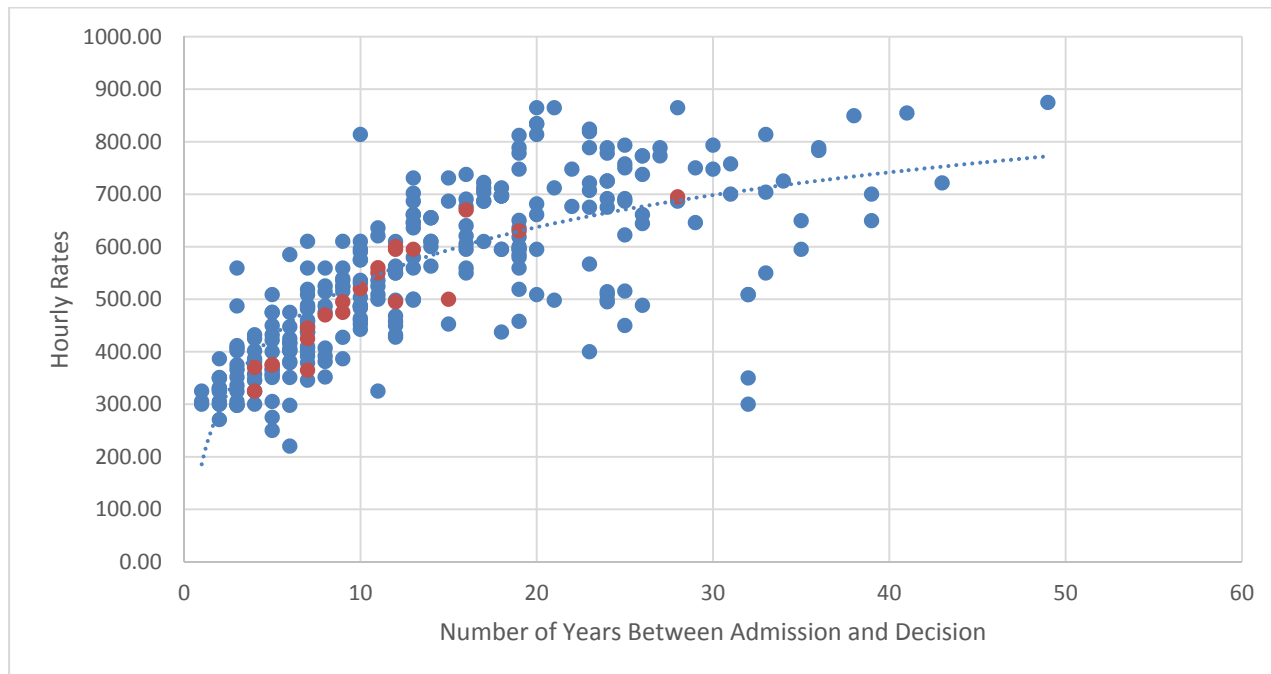
decisions affirm 280 individual hourly rates. I adjusted all these rates to 2014 dollars using the American Institute for Economic Research's cost-of-living calculator.<sup>21</sup> Once the dollars were all set at 2014 levels, I plotted the rates on an x-y axis, with the x-axis representing the years out of law school (or from admission to the bar) and the y-axis representing the hourly rate. The resulting scatter plot, set forth in Graph 1, *infra*, provides a graphic picture of recent fee rates in the Southern California area. Onto that scatter plot, I then placed the rates sought by the time-keeping counsel in this case, represented as red circles.<sup>22</sup> As the Court can see, Class Counsel's requested rates (represented by the red dots) are fully within – typically below – the court-approved rates (represented by the blue dots and the blue logarithmic trendline). In other words, the fees are completely standard.

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<sup>21</sup> This calculator can be found at: <https://www.aier.org/cost-living-calculator>. The calculator does not yet enable adjustment to 2015 dollars.

<sup>22</sup> The timekeepers, their years out of law school, and requested hourly rates appear as a chart in Exhibit D.

**GRAPH 1  
PREVAILING HOURLY RATES IN SOUTHERN CALIFORNIA**



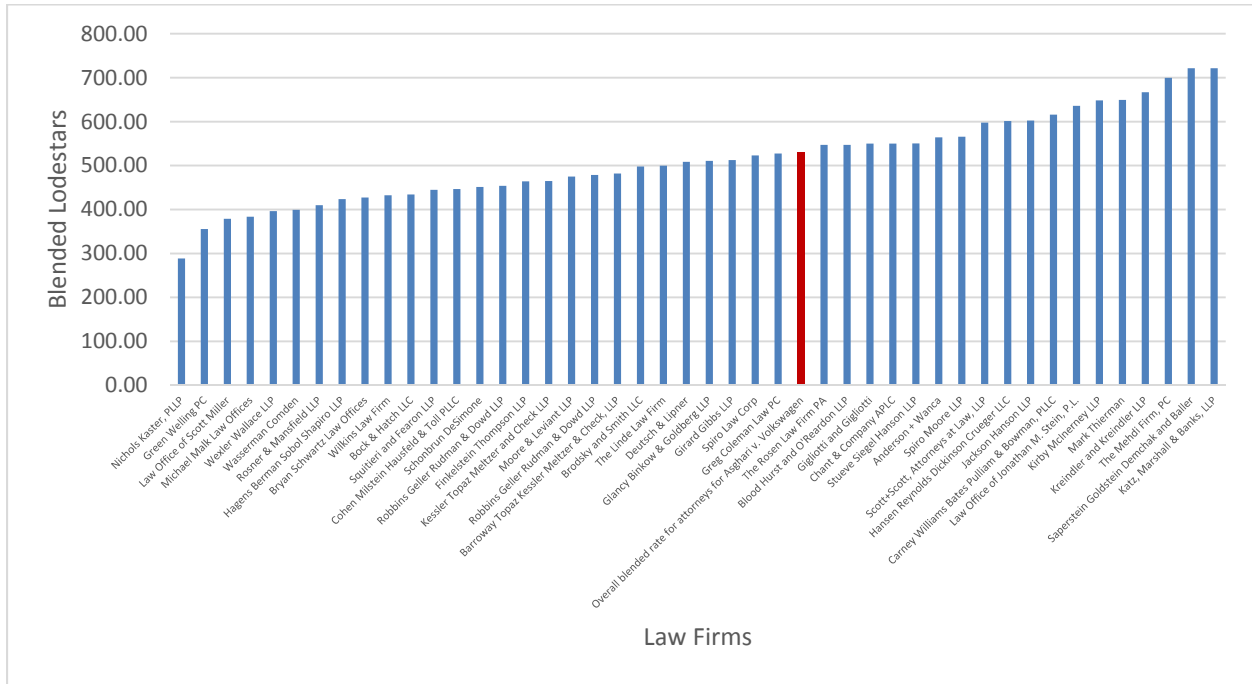
24. In addition to assessing the hourly rates of each lawyer, I also review the blended lodestar rate of all counsel herein. The “blended lodestar” is calculated by taking the total fee sought and dividing it by the total number of hours of all of the timekeepers (partners, associates, paralegals, etc.) in the case; it gives a snapshot of the lodestar level for all of the lawyering herein. I reviewed the blended lodestar here (approximately \$529.59/hr) by comparing it to that of the firms in the other 16 Central District cases identified in the previous paragraph;<sup>23</sup> there are a total of 45 blended rates in these previous cases. The blended lodestar rates (again adjusted to 2014 dollars) in these cases range from a low of \$289/hr to a high of \$721/hr. This is reflected in

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<sup>23</sup> For purposes of the blended rate analysis, I omitted the results from one case where the firm’s billing rates were inexplicably low. *See Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (reporting rates between \$300-\$400 for lawyers with more than 20 years of experience).

the following Graph 2, *infra*, with Class Counsel’s blended requested billing rate highlighted in red.

**GRAPH 2  
BLENDED LODESTARS IN RECENT CENTRAL DISTRICT FEE APPROVALS**



As is visually evident, the requested blended lodestar rate is slightly higher than the median (by about 4.13%, at \$529.59 compared to \$508.60), but nonetheless comfortably within the range of rates approved by courts in the Central District in the past few years.



(B)

*Class Counsel Expended A Reasonable Quantity of Total Hours*

25. Counsel are entitled to be compensated for reasonable time spent at all points in the litigation. Courts are cautioned to avoid “engag[ing] in an *ex post facto* determination of whether attorney hours were necessary to the relief obtained.”<sup>24</sup> The issue “is not whether hindsight vindicates an attorney’s time expenditures, but whether, at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures.”<sup>25</sup>

26. I examine the hours that Class Counsel bill in two ways: *first*, by a quantitative comparison to the hours expended in similar automobile defect cases (§ 27, *infra*); and *second*, by qualitative analysis of the tasks undertaken (§ 28, *infra*).<sup>26</sup>

27. *Quantitative Assessment.* For purposes of this Declaration, I directed my research assistants to search for automobile defect cases in which courts have approved attorney’s fees in the past few years. Their search identified 13 such cases, which are listed in Exhibit E.<sup>27</sup> I

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<sup>24</sup> *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992), *cert. denied*, 506 U.S. 1053 (1993).

<sup>25</sup> *Id.*; *accord League of Residential Neighborhood Advocates v. City of Los Angeles*, 633 F. Supp. 2d 1119, 1133 (C.D. Cal. 2009) (noting that brief quoted language of Second Circuit decision and approving time expended).

<sup>26</sup> Class Counsel did not provide me – nor did I ask to see – a breakdown of each hour expended, as I generally do not undertake such a fine-grained lodestar audit in assessing the reasonableness of a fee award. *Cf. Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-70 (D.C. Cir. 1993) (noting that “it can be exceptionally difficult for a court to review attorney billing information over the life of a complex litigation and make a determination about whether the time devoted to the litigation was necessary or reasonable” and “reiterat[ing] the Supreme Court’s warning that ‘[a] request for attorney’s fees should not result in a second major litigation’” (alteration in original) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983))).

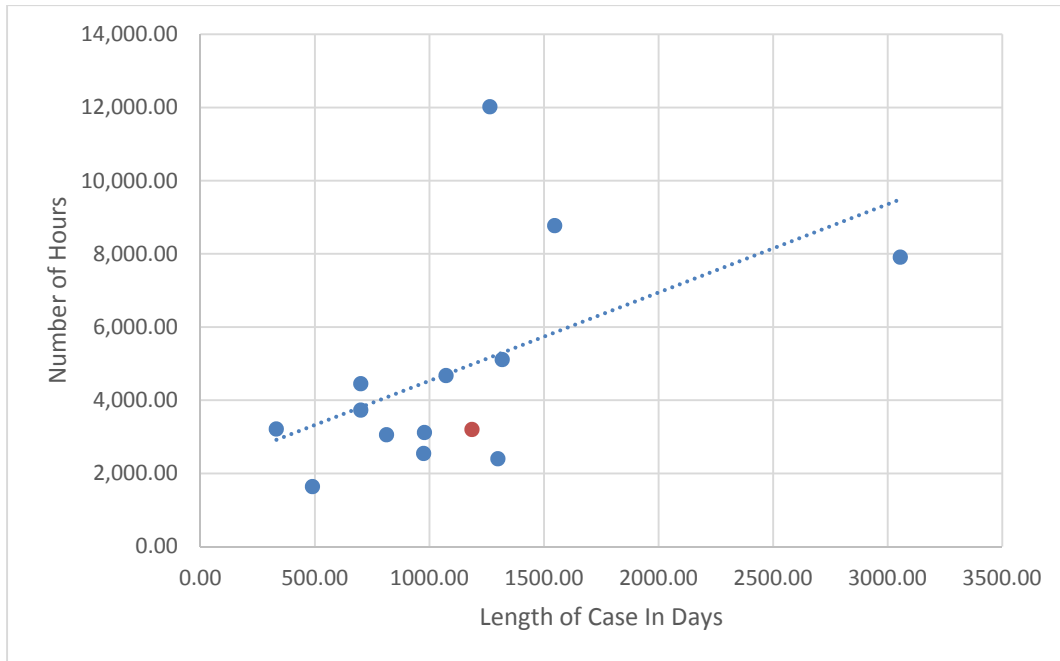
<sup>27</sup> I reviewed the attributes of these 13 cases and they generally conform to this one in terms, not only of their case type, but also of the types of claims made and recoveries realized. Using them as a comparison group enables a sufficiently “apples to apples” analysis.

plotted the hours that these cases consumed on an x-y axis, with the x-axis representing the length of the case in days<sup>28</sup> and the y-axis representing the total hours reported by counsel in seeking its fee. The resulting scatter plot, set forth in Graph 3, *infra*, provides a graphic picture of hours in automobile defect cases, with the linear trendline showing that the longer the cases lasted, the more hours counsel expended on them. Onto that scatter plot, I then placed the number of hours reported by the time-keeping counsel in this case (as of February 22, 2015), represented as a red dot. As the Court can see, Class Counsel's reported hours (represented by the red dot) are fully within the hours counsel have expended – and courts have approved (represented by the blue dots and the blue linear trendline) – in other automobile defect cases. In other words, the hours are completely standard.

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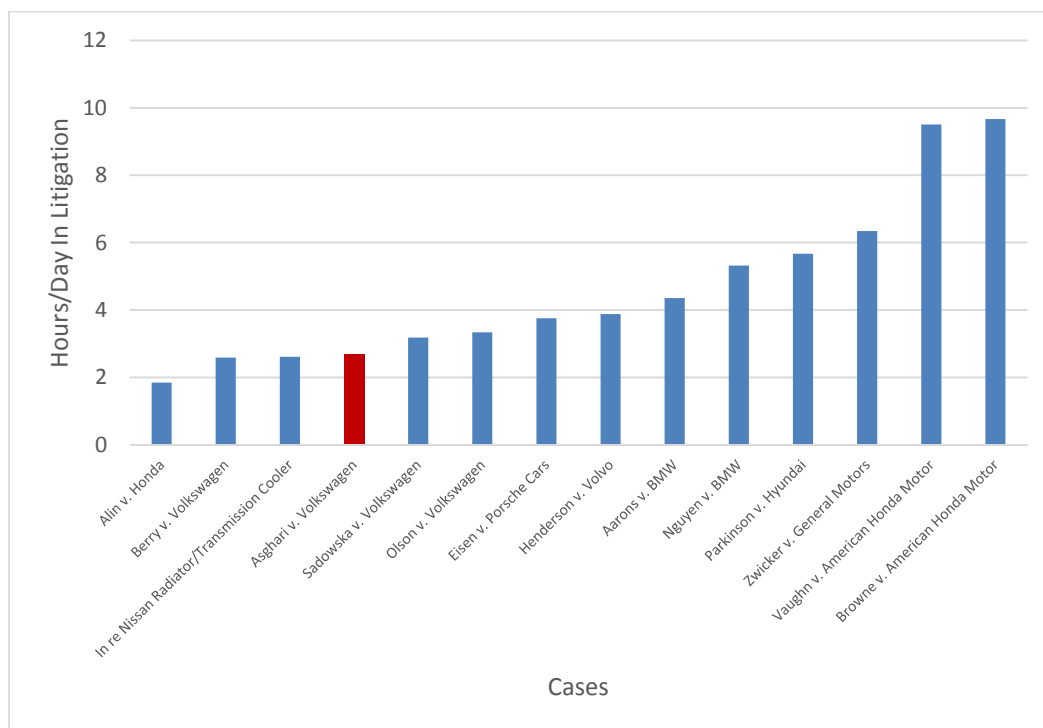
<sup>28</sup> For the 12 federal cases, I used the date that PACER reported that the case was opened and closed; for the single state case, I found the filing date of the case and the date that the fee request ended (with reconsideration denied) in the Westlaw documents for the case and utilized those dates.

**GRAPH 3**  
**HOURS BILLED ON AUTO DEFECT CASES IN TERMS OF THE LENGTH OF THOSE CASES**



The same information can be plotted graphically by simply showing the number of hours counsel billed per day the case was pending. Graph 4 represents that information, again demonstrating that the amount of time counsel spent on this case compares favorably to the amount of hours that counsel expended on similar automobile defect cases. This dispels concern that Class Counsel padded their lodestar and suggests that they performed efficiently, particularly given that the relief they achieved is comparable to that in other cases, as discussed below.

**GRAPH 4  
HOURS BILLED PER DAY AUTO DEFECT CASE PENDING**



28. *Qualitative Assessment.* Class Counsel’s involvement in these cases dates back to its initial filing of a class action complaint on May 1, 2012. Given the research that preceded the filing of that complaint, this means that the firm has been working on these matters for about three and a quarter years. In that time, Class Counsel report about 3,200 hours of total time, or just under 1,000 hours/year. 1,000 hours/year is, roughly speaking, about the number of hours of one lawyer working on this case for half of her time each year for three years. A review of all of the various aspects of Class Counsel’s work in this case supports the conclusion that these would have kept one lawyer busy for half of her time for 3.25 years. These activities have included:

- Initially learning about the oil consumption issue and undertaking all the factual investigation required to substantiate filing a complaint in court;

- Linking that factual investigation to the proper legal claims by researching relevant legal precedents under California, New York, and federal law;
- Meeting with the clients and securing their retention;
- Preparing, filing, and serving an initial complaint;
- Responding, successfully, to an initial motion to dismiss the case, including responding to supplemental briefing;
- Researching, drafting, filing, and serving a second amended complaint, including crafting complaint to encompass *Kim* plaintiff, per this Court's suggestion;
- Researching, drafting, filing, and serving a second amended complaint, including crafting complaint to encompass some of *Dersarkissian* plaintiffs, per this Court's suggestion;
- Undertaking discovery, including review of over 100,000 pages of documents and 80,000 lines of warranty claim data as well as the deposition of Defendant's Rule 30(b)(6) corporate representative;
- Researching consumer complaints including review of National Highway Traffic Safety Administration information regarding consumer complaints, review of articles and online forums containing discussions of and complaints about the oil consumption defect, and review of manuals and technical service bulletins;
- Identifying experts and working with experts to investigate the defect including through testing on an exemplar vehicle Class Counsel purchased for litigation; and
- Engaging in extensive settlement negotiations, including a formal mediation session.
- Undertaking all tasks necessary to secure preliminary approval of the settlement, including preparation of the moving papers, supporting documents and affidavits, and class notices.
- Responding to inquiries from class members following distribution of the class notices.
- Helping to ensure effectuation of the class's recovery by coordinating with Audi service centers throughout the United States.

This partial list substantiates the conclusion that Class Counsel’s less-than-1,000 hours/year of time billed to this case is reasonable.

(C)  
***The Requested Multiplier Is Reasonable***

29. Courts often award class action attorneys a multiplied fee award to take account of the contingent nature of their provision of legal services. Class action attorneys serve a critical social function in pursuing legal claims worth less than the cost of litigation (so-called “negative value claims”),<sup>29</sup> a function captured by the title “private attorneys general.”<sup>30</sup> Fees are what incentivize an attorney to set up an entire legal practice around the pursuit of such negative value claims. Yet if the contingent fee attorney were paid at only her hourly rate, she would have no incentive to invest her time and money in a client’s case – she would take the far less risky path of representing clients who could presently pay her on an hourly basis, as most defendant’s counsel are paid. The California Supreme Court has summarized the point by quoting two commentators:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.<sup>31</sup>

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<sup>29</sup> For a discussion, see William B. Rubenstein, *Why Enable Litigation: A Positive Externalities Theory of the Small Claims Class Action*, 74 U.M.K.C. L. Rev. 709 (2006).

<sup>30</sup> For a discussion, see William B. Rubenstein, *On What a “Private Attorney General” Is — And Why It Matters*, 57 Vand. L. Rev. 2129 (2004) [hereinafter *Private Attorney General*].

<sup>31</sup> *Ketchum v. Moses*, 17 P.3d 735, 742 (Cal. 2001) (quoting Richard A. Posner, *Economic Analysis of Law* 534, 567 (4th ed. 1992)) (internal quotation marks omitted).

A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.<sup>32</sup>

The Ninth Circuit has similarly embraced the multiplied fee, noting that:

[C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases. This mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases. In common fund cases, attorneys whose compensation depends on their winning the case must make up in compensation in the cases they win for the lack of compensation in the cases they lose.<sup>33</sup>

30. Class Counsel seek a fee multiplier of approximately 1.36. I examine the reasonableness of that multiplier in two ways: *first*, by a quantitative comparison to multipliers courts regularly award (§ 31, *infra*); and *second*, by qualitative analysis of the risks counsel undertook in this matter and the results they achieved for the class (§§ 32–34, *infra*).

31. Counsel’s requested multiplier of approximately 1.36 is consistent with multipliers courts approve in appropriate circumstances.

- The Ninth Circuit, in the case that established 25% as the benchmark percentage fee, approved a multiplier of 3.65, writing that this number “was within the range of multipliers applied in common fund cases”<sup>34</sup> and appending a list of such cases to its decision.

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<sup>32</sup> *Id.* (quoting John Leubsdorf, *The Contingency Factor in Attorney Fee Awards*, 90 Yale L.J. 473, 480 (1981)) (internal quotation marks omitted).

<sup>33</sup> *Vizcaino*, 290 F.3d at 1051 (internal quotation marks and citations omitted).

<sup>34</sup> *Vizcaino*, 290 F.3d at 1051; *see also Dyer v. Wells Fargo Bank, N.A.*, No. 13-CV-02858-JST, 2014 WL 5369395, at \*6 (N.D. Cal. Oct. 22, 2014) (“A 2.83 multiplier falls within the Ninth Circuit’s presumptively acceptable range of 1.0–4.0. Given the complexity and duration of this litigation, the results obtained for the class, and the risk counsel faced in bringing the litigation, the Court finds the 2.83 multiplier appropriate.” (citation omitted)).

- The three leading empirical studies of class action attorney's fees found the mean multipliers in all cases to be 1.45,<sup>35</sup> 1.81,<sup>36</sup> and 3.89.<sup>37</sup>
- The one empirical study of class action attorney's fees that breaks down the multiplier data by Circuit found the mean multiplier in Ninth Circuit cases to be 1.54.<sup>38</sup>
- The two empirical studies of class action attorney's fees that break down the multiplier data by case type found the mean multipliers in consumer cases to be 1.82<sup>39</sup> and 4.31.<sup>40</sup>
- The automobile defect cases that I discuss above (¶ 27, *supra*, and Exhibit E, *infra*) encompass multipliers ranging from a low of .8 to a high of 2.26; the median lodestar multiplier in the set is 1.13 and the mean across the 13 cases is 1.32.

The requested multiplier is therefore below the mean for all cases, below the Ninth Circuit mean, below the mean for consumer (defect) cases, and slightly above (3%) the *mean* for automobile defect cases. It is entirely reasonable.

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<sup>35</sup> Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 833-34 (2010). This average encompasses cases using both a percentage method with a lodestar cross-check and pure lodestar cases.

<sup>36</sup> See Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 272 tbl. 14 (2010). This multiplier data set excludes those cases that report a multiplier of 1. It is unclear if that data set includes only percentage of fund cases with lodestar cross-check or also pure lodestar cases.

<sup>37</sup> Stuart J. Logan, Beverly C. Moore & Jack Moshman, *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 167, 167 (2003). This multiplier data set appears to include cases that utilized a percentage of the fund method for calculating fees (without a lodestar cross-check), as well as those using a lodestar method and mixed methods. *Id.* at 169 (table headings).

<sup>38</sup> Eisenberg & Miller, *supra* note 36, at 272 tbl. 14.

<sup>39</sup> *Id.*

<sup>40</sup> Logan et al., *supra* note 37, at 196 tbl. 2.



32. *Qualitative analysis.* To further ascertain the reasonableness of the modest multiplier requested here, I consider the two factors most pertinent to that analysis: the risks counsel took and the results that they achieved for the class.<sup>41</sup>

#### Risk

33. Class Counsel invested more than 3,000 hours of labor in this case, generating a lodestar of about \$1.7 million. In addition to that, Class Counsel had out-of-pocket expenses. What this means, quite simply, is that Class Counsel loaned the class nearly \$2 million of its money. The firms involved risked losing all of that money on the outcome of this case and invested much of it when the case's outcome was uncertain. Moreover, given the amount of time Class Counsel invested here, there is little doubt that this case precluded the firms involved from working on others. The firms involved could have invested in other cases with easier returns. Class Counsel chose to invest their money in a risky, not safe, matter. Class Counsel thus invested their capital and labor in significant adversarial litigation without the promise of any easy return on its investment. Like any investor that takes risks, these risks entitle the involved

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<sup>41</sup> See, e.g., *In re Ferrero Litig.*, 583 F. App'x 665, 668 (9th Cir. 2014) (identifying “multiplier factors such as contingent representation or quality of work”); *In re Bluetooth*, 654 F.3d at 941-42 (“Though the lodestar figure is presumptively reasonable, the court may adjust it upward or downward by an appropriate positive or negative multiplier reflecting a host of ‘reasonableness’ factors, including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment. Foremost among these considerations, however, is the benefit obtained for the class.”) (some internal quotation marks and citations omitted); *Wing*, 114 F.3d at 988-89 (affirming district court multiplier decision that “considered a variety of factors, including the risk the plaintiffs’ attorneys took in taking the case on a contingency basis, the quality of the [defendant] opposition, the ongoing and continuing responsibilities class counsel would have in the case, the quality of the work of class counsel, and the results obtained”).

firms to a higher-than-average rate of return on their investment — but only if the risks they took paid off. I will now turn to that analysis.

### Results

34. The most important factor in determining a fee award is the result counsel achieved, the value they produced for their clients.<sup>42</sup> Five components of this situation's outcome speak to the results Class Counsel obtained in this matter.

- ***Counsel obtained meaningful relief for the class.*** Class Counsel's expert, Colin Johns, values the service adjustment and reimbursement portions of the settlement to be worth at least \$23,671,151. This represents a substantial value made available to the class, with those portions of the settlement alone.
- ***The claiming process is straightforward*** and imposes relatively undemanding documentary proof requirements on class members. Class members who are eligible for reimbursement need provide only a claim form and proof of the repair expense for which they seek reimbursement.<sup>43</sup> Class members who are, instead, eligible for service adjustments can make an appointment at any authorized Audi dealer nationwide and have that repair performed free of charge upon submitting proof of compliance with their vehicles' oil and oil filter maintenance requirements and schedule. Finally, so long as class members can show compliance with the oil and oil filter maintenance requirements and schedules of their vehicles, their warranties will be extended to cover engine repairs needed to correct the oil consumption defect as well as oil consumption tests.
- ***The settlement provides relief for a broad swath of consumers affected by the oil consumption defect.*** The settlement covers two groups of consumers: those who have already paid to have the defect addressed and those who have not yet sought repairs for the defect. By sweeping both of these groups into the class, the settlement provides comprehensive relief for all individuals who have been and continue to be affected by the defect at issue.

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<sup>42</sup> *In re Bluetooth*, 654 F.3d at 942 (characterizing “the benefit obtained for the class” as the “[f]oremost” consideration in the multiplier analysis).

<sup>43</sup> The settlement agreement allows class members to submit “an original or legible copy of a receipt, invoice, or other record, or some combination thereof” as proof of their past expense. See Settlement Agreement § I.M, ECF No. 153-2.

- ***The relief was achieved in a short time frame.*** After successfully defending against a motion to dismiss, Class Counsel, together with defendants, were able to reach a settlement agreement expeditiously. This will benefit the class by ensuring real relief in a time frame contemporaneous to the harm that was suffered and without the delay of prolonged litigation and appeals.
- ***The relief obtained in this class compares favorably to results achieved in similar cases.*** Specifically, a number of features in analogous settlement agreements are not present here: *First*, settlement agreements in analogous cases often provide only some automobile owners relief, typically tethering relief to proof of damage. This settlement ensures that 100% of the class members who have not yet received a service adjustment are eligible to receive one for free, simply by driving into an Audi service center, regardless of whether the problem has manifest. The settlement is therefore uniquely both reparative *and* prophylactic. *Second*, settlement agreements in analogous cases often provide a cap to the amount of reimbursement class members can receive.<sup>44</sup> This settlement agreement provides no such cap. *Third*, many settlement agreements allow class members to recover only a portion of the amount expended to correct a vehicle defect.<sup>45</sup> This settlement agreement allows class members to receive 100% of the cost of repairs. *Fourth*, other settlement agreements set substantially shorter claim windows than this settlement,<sup>46</sup> which allows class members seeking reimbursement 150 days to file a claim and class members seeking service repair 18 months for such a repair appointment.

These five factors demonstrate the strength of the settlement.

**(D)**

***The Fee Constitutes a Reasonable Percentage of the Value of the Recovery Made Available to the Class***

35. In undertaking a percentage cross-check, courts generally look to see if the lodestar method has yielded a percentage award similar to the percentages that are acceptable

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<sup>44</sup> See, e.g., Settlement Agreement, *Browne v. Amer. Honda Motor Co., Inc.*, CV09-06750-MMM-DTB, § III.A.1, at 11 (C.D. Cal. March 26, 2010) (capping reimbursement at lesser of \$125 or 50% of out-of-pocket expense).

<sup>45</sup> See, e.g., Settlement Agreement, *Browne v. Amer. Honda Motor Co., Inc.*, CV09-06750-MMM-DTB, § III.A.1, at 11 (C.D. Cal. March 26, 2010) (capping reimbursement at lesser of \$125 or 50% of out-of-pocket expense).

<sup>46</sup> See, e.g., Settlement Agreement, *Olson v. Volkswagen of America, Inc.*, CV07-05334 R, § 4.4 at 11 (C.D. Cal. Apr. 28, 2008) (providing 60 day claims period).

when courts employ a percentage of the fund fee method in common fund cases. In such cases in the Ninth Circuit, 25% is a benchmark, or normal, fee.<sup>47</sup> Empirical research shows that in common fund cases between 1993 and 2008, the mean percentage award was 25% in the Central District of California specifically,<sup>48</sup> and in the Ninth Circuit generally.<sup>49</sup> Thus, a 25% fee would surely be reasonable.

36. Class Counsel's economic expert, Colin Johns, values the settlement's service adjustment and reimbursement relief to be worth at least \$23,671,151, if 100% of the eligible class members were to claim this benefit.<sup>50</sup> Class Counsel's requested \$2,300,000 fee is therefore less than 10% of the amount made available to the class, far below the Ninth Circuit's 25% benchmark. It is likely that fewer than 100% of the eligible class members may claim this benefit – meaning it will cost the defendant less than the \$23,671,151 – but the Ninth Circuit has held that the percentage award is appropriately calculated as a percentage of the relief made available, as opposed to a percentage of the relief actually claimed.<sup>51</sup> Using this approach in the

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<sup>47</sup> *Vizcaino*, 290 F.3d at 1047-48.

<sup>48</sup> *See Eisenberg & Miller*, *supra* note 36, at 259 tbl. 3.

<sup>49</sup> *See Eisenberg & Miller*, *supra* note 36, at 260 tbl. 4.

<sup>50</sup> I did not undertake an independent evaluation of the settlement's economic value to the class.

<sup>51</sup> *See Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (holding that “the district court abused its discretion by basing the fee on the class members’ claims against the fund rather than on a percentage of the entire fund or on the lodestar”); *see also Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1297 (11th Cir. 1999) (affirming district court percentage fee based on percentage of total fund not percentage of amount claimed and stating that “class counsel are entitled to a reasonable fee based on the funds potentially available to be claimed, regardless of the amount actually claimed”) (quoting *Newberg on Class Actions*). For a discussion of the policy concerns underlying this approach, see William B. Rubenstein, *Percentage of What?*, 1 Class Action Attorney Fee Digest 63 (March 2007) (available at:

cross-check context is especially defensible as the requested fee has already been justified under the lodestar method and the percentage cross-check is simply meant as a second rough assessment of its general reasonableness.

**(E)**

***The Fee Request Is Similar to Fee Awards in Similar Automobile Defect Cases***

37. As noted above, for purposes of this Declaration, I collected and analyzed the fee awards in 13 automobile defect cases similar to this one that courts have approved in the past few years. The fee in this case is similar to the fees in those cases along several dimensions:

- The fees in those cases range from a low of \$950,000 to a high of \$9,500,000; the \$2.3 million sought here fits comfortably in that range.
- The median fee in those 13 cases is \$2,372,000; the \$2.3 million sought here is just below that median, or right in the middle of this pack of cases.
- The mean fee in those 13 cases is \$3,047,626; the \$2.3 million sought here is about 25% below that mean.
- If, as statisticians often do, one removes the highest and lowest awards from the 13, the median among the remaining 11 cases remains \$2,372,000 and the mean reduces to roughly \$2,651,740; the \$2.3 million sought here is still 13% below that new mean.

In short, the fee sought here is notably unremarkable: it is fully consistent with the fees courts award in a set of similar cases (automobile defect cases) with basically similar attributes.

**(F)**

***The Parties Bargained for the Fee Appropriately***

38. A final measuring stick of the reasonableness of the requested fee concerns the procedure by which the parties agreed upon this number. A court's task in overseeing a proposed settlement, and the attendant fee award, is to ensure that the absent class members' interests are safeguarded and, in particular, that the proposed settlement does not reflect a

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[http://www.billrubenstein.com/Downloads/rubenstein\\_mar07\\_column.pdf](http://www.billrubenstein.com/Downloads/rubenstein_mar07_column.pdf)).

collusive deal between the defendant and class counsel. Two independent criteria assist in ensuring an agreed-upon fee is reasonable: *first*, if the fee was negotiated only after the parties had agreed upon the class's recovery, courts are more comfortable concluding that counsel did not trade any of the class's interests for a larger fee for itself;<sup>52</sup> and *second*, if the settlement was negotiated with the assistance of a neutral third party, courts are more comfortable concluding that the settlement reflects an arms-length transaction.<sup>53</sup>

39. Both of these criteria are present here. Class Counsel testified in conjunction with the preliminary approval that:

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<sup>52</sup> See, e.g., *True v. American Honda Motor Co.*, 749 F. Supp. 2d 1052, 1078 (C.D. Cal. 2010) (“Where the class payment and fees are negotiated together, there is thus a concern that class counsel engaged in ‘a tradeoff between merits relief and attorney’s fees.’” (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 964, (9th Cir. 2003))); see also, e.g., *Shames v. Hertz Corp.*, No. 07-CV-2174-MMA WMC, 2012 WL 5392159, at \*1 (S.D. Cal. Nov. 5, 2012) (overruling objection to clear sailing agreement because, *inter alia*, “[t]he fee amount was negotiated separately and only after the class settlement was finalized”). See generally *Manual for Complex Litigation*, *supra* note 20, § 21.7 (“In class actions whose primary objective is to recover money damages, settlements may be negotiated on the basis of a lump sum that covers both class claims and attorney fees. Although there is no bar to such arrangements, the simultaneous negotiation of class relief and attorney fees creates a potential conflict. Separate negotiation of the class settlement before an agreement on fees is generally preferable.” (footnotes omitted)).

<sup>53</sup> See, e.g., *In re Penthouse Executive Club Compensation Litigation*, No. 10 CIV. 1145 KMW, 2013 WL 1828598, \*2 (S.D.N.Y. Apr. 30, 2013) (granting preliminary approval of proposed settlement reached through negotiations that involved formal mediation, finding that the “assistance of two experienced mediators” supported the conclusion that the proposed settlement was noncollusive, as a settlement “reached with the help of third-party neutrals enjoys a ‘presumption that the settlement achieved meets the requirements of due process’” (quoting *Johnson v. Brennan*, No. 10 CIV. 4712 CM, 2011 WL 4357376, \*8 (S.D.N.Y. Sept. 16, 2011))); *McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 813 (E.D. Wis. 2009) (approving settlement with clear sailing agreement because, *inter alia*, “the settlement was achieved after arms-length negotiation with the assistance of a Seventh Circuit mediator”). See generally, 4 William B. Rubenstein, *Newberg on Class Actions* § 13:14 (5th ed. 2014) (“Courts also find an absence of collusion when settlement negotiations are conducted by a third-party mediator.”).

[O]n March 27, 2014, the parties attended a mediation in San Diego with the Honorable Howard B. Wiener. At mediation, the parties were able to reach an agreement on all material terms of the proposed relief to the Class. Only after the parties had reached agreement on all material terms for the Class did they negotiate attorneys' fees, costs, and incentive awards.<sup>54</sup>

The post-settlement negotiation of the fees and the presence of a neutral third-party mediator provide evidence that Class Counsel did not trade off the class's interests for a greater fee.

\* \* \*

40. I have testified that the requested fee is reasonable for six inter-related reasons:

- the requested hourly rates are reasonable;
- the hours expended on the litigation are reasonable;
- the multiplier sought is reasonable;
- the fee constitutes a reasonable percentage of the value of the relief made available to the class, when cross-checked;
- the fee is consistent with fees courts have awarded in similar automobile defect cases; and
- the fee is the result of an arms-length negotiation between Class Counsel and the Defendants, undertaken only after the terms of the class's settlement had been finalized.

In sum, it is my expert opinion that the Court should approve Class Counsel's request that the Defendants be ordered to pay them \$2.3 million in attorney's fees.

Executed this 26th day of February, 2015, in Los Angeles, California.



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William B. Rubenstein

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<sup>54</sup> Decl. of Jordan L. Lurie in Support of Pls.' Motion for Prelim. Approval of Class Action Settlement 2, ECF No. 153-1.

# **EXHIBIT A**



**PROFESSOR WILLIAM B. RUBENSTEIN**

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ACADEMIC EMPLOYMENT

HARVARD LAW SCHOOL, CAMBRIDGE MA

|   |   |
|---|---|
| Sidley Austin Professor of Law          | 2011-   |
| Professor of Law                        | 2007-2011   |
| Bruce Bromley Visiting Professor of Law | 2006-2007   |
| Visiting Professor of Law               | 2003-2004, 2005-2006  |
| Lecturer in Law                         | 1990-1996   |
| <i>Courses:</i>                         | Civil Procedure; Class Action Law; Remedies                       |
| <i>Awards:</i>                          | 2012 Albert M. Sacks-Paul A. Freund Award for Teaching Excellence |

UCLA SCHOOL OF LAW, LOS ANGELES CA

|                         |   |
|-------------------------|---|
| Professor of Law        | 2002-2007   |
| Acting Professor of Law | 1997-2002   |
| <i>Courses:</i>         | Civil Procedure; Complex Litigation; Remedies   |
| <i>Awards:</i>          | 2002 Rutter Award for Excellence in Teaching<br>Top 20 California Lawyers Under 40, <i>Calif. Law Business</i> (2000) |

STANFORD LAW SCHOOL, STANFORD CA

|                                   |  |
|-----------------------------------|--|
| Acting Associate Professor of Law | 1995-1997  |
| <i>Courses:</i>                   | Civil Procedure; Federal Litigation                        |
| <i>Awards:</i>                    | 1997 John Bingham Hurlbut Award for Excellence in Teaching |

YALE LAW SCHOOL, NEW HAVEN CT

|                 |            |
|-----------------|------------|
| Lecturer in Law | 1994, 1995 |
|-----------------|------------|

BENJAMIN N. CARDOZO SCHOOL OF LAW, NEW YORK NY

|                    |             |
|--------------------|-------------|
| Visiting Professor | Summer 2005 |
|--------------------|-------------|

LITIGATION-RELATED EMPLOYMENT

AMERICAN CIVIL LIBERTIES UNION, NATIONAL OFFICE, NEW YORK NY

|                                    |           |
|------------------------------------|-----------|
| Project Director and Staff Counsel | 1987-1995 |
|------------------------------------|-----------|

Litigated impact cases in federal and state courts throughout the US. Supervised a staff of attorneys at the national office, oversaw work of ACLU attorneys around the country, and coordinated work with private cooperating counsel nationwide. Significant experience in complex litigation practice and procedural issues; appellate litigation; litigation coordination, planning and oversight.

HON. STANLEY SPORKIN, U.S. DISTRICT COURT, WASHINGTON DC

|           |         |
|-----------|---------|
| Law Clerk | 1986-87 |
|-----------|---------|

PUBLIC CITIZEN LITIGATION GROUP, WASHINGTON DC

|        |             |
|--------|-------------|
| Intern | Summer 1985 |
|--------|-------------|

## EDUCATION

HARVARD LAW SCHOOL, CAMBRIDGE MA  
J.D., 1986, *magna cum laude*

YALE COLLEGE, NEW HAVEN CT  
B.A., 1982, *magna cum laude*  
Editor-in-Chief, YALE DAILY NEWS

## SELECTED COMPLEX LITIGATION EXPERIENCE

### *Professional Service and Highlighted Activities*

- ◇ *Sole Author*, NEWBERG ON CLASS ACTIONS (4<sup>th</sup> ed. updates since 2008 and 5<sup>th</sup> ed. (2011-2015))
- ◇ *Invited Speaker*, Judicial Panel on Multidistrict Litigation, Multidistrict Litigation (MDL) Transferee Judges Conference, Palm Beach, Florida (invited to present to MDL judges on recent developments in class action law (2010-2014))
- ◇ *Adviser*, American Law Institute, *Project on the Principles of the Law of Aggregate Litigation*, Philadelphia, Pennsylvania
- ◇ *Author, Amicus* brief filed in the United States Supreme Court on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion*, No. 09-893, 131 S. Ct. 1740 (2011))
- ◇ “*Expert’s Corner*” (*Monthly Column*), *Class Action Attorney Fee Digest*, 2007-2011
- ◇ *Advisory Board*, *Class Action Law Monitor* (Strafford Publications), 2008-
- ◇ *Co-Chair*, ABA Litigation Section, Mass Torts Committee, Class Action Sub-Committee, 2007
- ◇ *Planning Committee*, American Bar Association, Annual National Institute on Class Actions Conference, 2006, 2007

### *Expert Witness*

- ◇ Submitted an expert witness declaration concerning attorney fee petition (*Ammari Electronics v. Pacific Bell Directory*, Case No. RG0522096, California Superior Court, Alameda County (2014))
- ◇ Submitted an expert witness declaration concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Deutsche Bank Securities, Inc.*, Case No. CGC-10-497839, California Superior Court, San Francisco County (2014))
- ◇ Submitted an expert witness declaration concerning plaintiff class action practices under the Private

- Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Credit Suisse Securities (USA) LLC*, Case No. CGC-10-497840, California Superior Court, San Francisco County (2014))
- ◇ Retained as expert witness on proper level of common benefit fee in MDL (*In re Neurontin Marketing and Sales Practice Litigation*, Civil Action No. 04-10981, MDL 1629, U.S. Dist. Ct., D. Mass. (2014))
  - ◇ Submitted an expert witness declaration concerning proper approach to attorney's fees under California law in a statutory fee-shifting case (*Perrin v. Nabors Well Services Co.*, Case No. 1220037974, Judicial Arbitration and Mediation Services (JAMS) (2013))
  - ◇ Submitted an expert witness declaration concerning fairness and adequacy of proposed nationwide class action settlement (*Verdejo v. Vanguard Piping Systems*, Case No. BC448383, California Superior Court, Los Angeles County (2013))
  - ◇ Retained as an expert witness regarding fairness, adequacy, and reasonableness of proposed nationwide consumer class action settlement (*Herke v. Merck*, No. 2:09-cv-07218, MDL Docket No. 1657 (*In re Vioxx Products Liability Litigation*), U.S. Dist. Ct., E. D. La. (2013))
  - ◇ Retained as an expert witness concerning ascertainability requirement for class certification and related issues (*Henderson v. Acxiom Risk Mitigation, Inc.*, Case No. 3:12-cv-00589-REP, U.S. Dist. Ct., E.D. Va. (2013))
  - ◇ Submitted an expert witness declaration concerning Rule 23(g) selection of competing counsel (*White v. Experian Information Solutions, Inc.*, Case No. 05-CV-1070, U.S. Dist. Ct., C.D. Cal. (2013))
  - ◇ Submitted an expert witness declaration concerning reasonableness of class action settlement and performing analysis of "net expected value" of settlement benefits (*In re Navistar Diesel Engine Products Liability Litigation*, Case No. 11 C 2496, U.S. Dist. Ct., N.D. Ill. (2013))
  - ◇ Submitted an expert witness declaration concerning reasonableness of class action settlement and attorney's fee request (*Commonwealth Care Alliance and Crenshaw v. Astrazeneca Pharm. LLP, et al.*, Civil Action No. 05-0269 BLS2, Massachusetts Superior Court, Suffolk County (2013))
  - ◇ Submitted an expert witness declaration concerning propriety of preliminary settlement approval in nationwide consumer class action settlement (*Anaya v. Quicktrim, LLC*, Case No. CIVVS 120177, California Superior Court, San Bernardino County (2012))
  - ◇ Submitted expert witness affidavit concerning fee issues in common fund class action (*Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Assoc.*, Case No. 217-2010-CV-00294, New Hampshire Superior Court, Merrimack County (2012))
  - ◇ Submitted expert witness declaration and deposed concerning class certification issues in nationwide fraud class action (*Lauriello v. Caremark*, Case No. 03-CV-03-6630, Circuit Court for Jefferson County, Alabama (2012))

- ◇ Submitted expert witness declaration in securities class action concerning value of proxy disclosures achieved through settlement and appropriate level for fee award (*Rational Strategies Fund v. Jhung*, Case No. BC 460783, California Superior Court, Los Angeles County (2012))
- ◇ Submitted an expert witness report and deposed concerning legal malpractice in the defense of a class action lawsuit (*KB Home v. K&L Gates, LLP*, Case No. BC484090, California Superior Court, Los Angeles County (2011))
- ◇ Retained as expert witness on choice of law issues implicated by proposed nationwide class certification (*Simon v. Metropolitan Property and Cas. Co.*, Case No. CIV-2008-1008-W, U.S. Dist. Ct., W.D. Ok. (2011))
- ◇ Retained, deposed, and testified in court as expert witness in fee-related dispute (*Blue, et al. v. Hill*, Case No. 3:10-CV-02269-O-BK, U.S. Dist. Ct., N.D. Tex. (2011))
- ◇ Retained as an expert witness in fee-related dispute (*Furth v. Furth*, Case No. C11-00071-DMR, U.S. Dist. Ct., N.D. Cal. (2011))
- ◇ Submitted expert witness declaration concerning interim fee application in complex environmental class action (*DeLeo v. Bouchard Transportation*, Civil Action No. PLCV2004-01166-B, Massachusetts Superior Court (2010))
- ◇ Retained as an expert witness on common benefit fee issues in MDL proceeding in federal court (*In re Vioxx Products Liability Litigation*, MDL Docket No. 1657, U.S. Dist. Ct., E.D. La. (2010))
- ◇ Submitted expert witness declaration concerning fee application in securities case (*In re Amicas Inc. Shareholder Litigation*, Civil Action No. 10-412BLS2, Massachusetts Superior Court (2010))
- ◇ Submitted an expert witness declaration concerning fee entitlement and enhancement in non-common fund class action settlement (*Parkinson v. Hyundai Motor America, Inc.*, Case No. 06-cv-00345, U.S. Dist. Ct., C.D. Cal. (2010), *relied upon in Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160 (C.D. Cal. 2010))
- ◇ Submitted an expert witness declaration concerning class action fee allocation among attorneys (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))
- ◇ Submitted an expert witness declaration concerning settlement approval and fee application in wage and hour class action settlement (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))
- ◇ Submitted an expert witness declaration concerning objectors' entitlement to attorney's fees (*Rodriguez v. West Publishing Corp.*, Case No. CV-05-3222, U.S. Dist. Ct., C.D. Cal. (2010))
- ◇ Submitted an expert witness declaration concerning fairness of settlement provisions and processes (*White v. Experian Information Solutions, Inc.*, Case No. 05-CV-1070, U.S. Dist. Ct., C.D. Cal. (2010), *relied upon in Radcliffe v. Experian Information Solutions Inc.*, 715 F.3d 1157, 1166 (9th Cir. 2013))

- ◇ Submitted an expert witness declaration concerning attorney's fees in class action fee dispute (*Elihu v. Toshiba America Information Systems, Inc.*, Case No. BC328566, California Superior Court, Los Angeles County (2009), discussed in *Ellis v. Toshiba America Information Systems, Inc.*, 218 Cal. App. 4th 853, 160 Cal. Rptr. 3d 557 (2d Dist. 2013))
- ◇ Submitted an expert witness declaration concerning common benefit fee in MDL proceeding in federal court (*In re Genetically Modified Rice Litigation*, MDL Docket No. 1811, U.S. Dist. Ct., E.D. Mo. (2009))
- ◇ Submitted an expert witness declaration concerning settlement approval and fee application in national MDL class action proceeding (*In re Wal-Mart Wage and Hour Employment Practices Litigation*, MDL Docket No. 1735, U.S. Dist. Ct., D. Nev. (2009))
- ◇ Submitted an expert witness declaration concerning fee application in national MDL class action proceeding (*In re Dept. of Veterans Affairs (VA) Data Theft Litigation*, MDL Docket No. 1796, U.S. Dist. Ct., D. D.C. (2009))
- ◇ Submitted an expert witness declaration concerning common benefit fee in mass tort MDL proceeding in federal court (*In re Kugel Mesh Products Liability Litigation*, MDL Docket No. 1842, U.S. Dist. Ct., D. R.I. (2009))
- ◇ Submitted an expert witness declaration and supplemental declaration concerning common benefit fee in consolidated mass tort proceedings in state court (*In re All Kugel Mesh Individual Cases*, Master Docket No. PC-2008-9999, Superior Court, State of Rhode Island (2009))
- ◇ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Warner v. Experian Information Solutions, Inc.*, Case No. BC362599, California Superior Court, Los Angeles County (2009))
- ◇ Submitted an expert witness declaration concerning process for selecting lead counsel in complex MDL antitrust class action (*In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL Docket No. 1869, U.S. Dist. Ct., D. D.C. (2008))
- ◇ Retained, deposed, and testified in court as expert witness on procedural issues in complex class action (*Hoffman v. American Express*, Case No. 2001-022881, California Superior Court, Alameda County (2008))
- ◇ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Salsgiver v. Yahoo! Inc.*, Case No. BC367430, California Superior Court, Los Angeles County (2008))
- ◇ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Voight v. Cisco Systems, Inc.*, Case No. 106CV075705, California Superior Court, Santa Clara County (2008))
- ◇ Retained and deposed as expert witness on fee issues in attorney fee dispute (*Stock v. Hafif*, Case No. KC034700, California Superior Court, Los Angeles County (2008))

- ◇ Submitted an expert witness declaration concerning fee application in consumer class action (*Nicholas v. Progressive Direct*, Civil Action No. 06-141-DLB, U.S. Dist. Ct., E.D. Ky. (2008))
- ◇ Submitted expert witness declaration concerning procedural aspects of national class action arbitration (*Johnson v. Gruma Corp.*, JAMS Arbitration No. 1220026252 (2007))
- ◇ Submitted expert witness declaration concerning fee application in securities case (*Drulias v. ADE Corp.*, Civil Action No. 06-11033 PBS, U.S. Dist. Court, D. Mass. (2007))
- ◇ Submitted expert witness declaration concerning use of expert witness on complex litigation matters in criminal trial (*U.S. v. Gallion, et al.*, No. 07-39 (WOB) U.S. Dist. Court, E. D. Ky. (2007))
- ◇ Retained as expert witness on fees matters (*Heger v. Attorneys' Title Guaranty Fund, Inc.*, No. 03-L-398, Illinois Circuit Court, Lake County, IL (2007))
- ◇ Retained as expert witness on certification in statewide insurance class action (*Wagner v. Travelers Property Casualty of America*, No. 06CV338, Colorado District Court, Boulder County, CO (2007))
- ◇ Testified as expert witness concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corporate Derivative Litigation*, Case No. 01098905, California Superior Court, Santa Barbara Cty, CA (2006))
- ◇ Submitted expert witness declaration concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corp. Corporate Derivative Litigation*, Case No. CV-03-11 RSWL, U.S. Dist. Court, C.D. Cal. (2006))
- ◇ Retained as expert witness as to certification of class action (*Canova v. Imperial Irrigation District*, Case No. L-01273, California Superior Court, Imperial Cty, CA (2005))
- ◇ Retained as expert witness as to certification of nationwide class action (*Enriquez v. Edward D. Jones & Co.*, Missouri Circuit Court, St. Louis, MO (2005))
- ◇ Submitted expert witness declaration on procedural aspects of international contract litigation filed in court in Korea (*Estate of Wakefield v. Bishop Han & Joann Methodist Church* (2002))
- ◇ Submitted expert witness declaration as to contested factual matters in case involving access to a public forum (*Cimarron Alliance Foundation v. The City of Oklahoma City*, Case No. Civ. 2001-1827-C, U.S. Dist. Ct., W.D. Ok. (2002))
- ◇ Submitted expert witness declaration concerning reasonableness of class certification, settlement, and fees (*Baird v. Thomson Elec. Co.*, Case No. 00-L-000761, Cir. Ct., Mad. Cty, IL (2001))



*Expert Consultant*

- ◇ Retained as an expert consultant on class action and procedure related issues (*Lange et al v. WPX Energy Rocky Mountain LLC*, Case No. #: 2:13-cv-00074-ABJ, U.S. Dist. Ct., D. Wy. (2013))
- ◇ Retained as an expert consultant on class action and procedure related issues (*Flo & Eddie, Inc., v. Sirius XM Radio, Inc.*, Case No. CV 13-5693, U.S. Dist. Court, C.D. Cal. (2013))
- ◇ Served as an expert consultant on substantive and procedural issues in challenge to legality of credit card late and over-time fees (*In Re Late Fee and Over-Limit Fee Litigation*, 528 F.Supp.2d 953 (N.D. Cal. 2007), *aff'd*, 741 F.3d 1022 (9th Cir. 2014))
- ◇ Retained as an expert on Class Action Fairness Act (CAFA) removal issues and successfully briefed and argued remand motion based on local controversy exception (*Trevino, et al. v. Cummins, et al.*, No. 2:13-cv-00192-JAK-MRW, U.S. Dist. Ct., C. D. Cal. (2013))
- ◇ Retained as an expert consultant on class action related issues by consortium of business groups (*In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010*, MDL No. 2179, U.S. Dist. Court, E.D. La. (2012))
- ◇ Provided presentation on class certification issues in nationwide medical monitoring classes (*In re: National Football League Players' Concussion Injury Litigation*, MDL No. 2323, Case No. 2:12-md-02323-AB, U.S. Dist. Ct., E.D. Pa. (2012))
- ◇ Retained as an expert consultant on class action related issues in mutli-state MDL consumer class action (*In re Sony Corp. SXR D Rear Projection Television Marketing, Sales Practices & Prod. Liability Litig.*, MDL No. 2102, U.S. Dist. Court, S.D. N.Y. (2009))
- ◇ Retained as an expert consultant on class action certification, manageability, and related issues in mutli-state MDL consumer class action (*In re Teflon Prod. Liability Litig.*, MDL No. 1733, U.S. Dist. Court, S.D. Iowa (2008))
- ◇ Retained as an expert consultant/co-counsel on certification, manageability, and related issues in nationwide anti-trust class action (*Brantley v. NBC Universal*, No.- CV07-06101 CAS (VBKx), U.S. Dist. Court, C.D. Cal. (2008))
- ◇ Retained as an expert consultant on class action issues in complex multi-jurisdictional construction dispute (*Antenucci, et al., v. Washington Assoc. Residential Partner, LLP, et al.*, Civil No. 08-04194, U.S. Dist. Court, E.D. Pa. (2008))
- ◇ Retained as an expert consultant on complex litigation issues in multi-jurisdictional class action litigation (*McGreevey v. Montana Power Company*, No. 08-35137, U.S. Court of Appeals for the Ninth Circuit)
- ◇ Retained as an expert consultant on class action and attorney fee issues in nationwide consumer class action (*Figueroa v. Sharper Image*, 517 F.Supp.2d 1292 (S.D. Fla. 2007))
- ◇ Retained as an expert consultant on attorney's fees issue in complex class action case (*Natural Gas*

*Anti-Trust Cases Coordinated Proceedings*, D049206, California Court of Appeals, Fourth District (2007))

- ◇ Retained as an expert consultant on remedies and procedural matters in complex class action (*Sunscreen Cases*, JCCP No. 4352, California Superior Court, Los Angeles County (2006))
- ◇ Retained as an expert consultant on complex preclusion questions in petition for review to California Supreme Court (*Mooney v. Caspari*, Supreme Court of California (2006))
- ◇ Retained as an expert consultant on attorney fee issues in complex common fund case (*In Re Diet Drugs (Phen/Fen) Products Liability Litigation*, U.S. Dist. Court, E. D. Pa. (2006))
- ◇ Retained as an expert consultant on procedural matters in series of complex construction lien cases (*In re Venetian Lien Litigation*, Supreme Court of the State of Nevada (2005-2006))
- ◇ Served as an expert consultant on class certification issues in countywide class action (*Beauchamp v. Los Angeles Cty. Metropolitan Transp. Authority*, Case No. CV-98-00402-CBM, U.S. Dist. Ct., C.D. Cal.)
- ◇ Served as an expert consultant on class certification issues in state-wide class action (*Williams v. State of California*, Case No. 312-236, Cal. Superior Court, San Francisco)
- ◇ Served as an expert consultant on procedural aspects of complex welfare litigation (*Allen v. Anderson*, U.S. Dist. Ct., C.D. Cal., *appeal dismissed as moot*, 199 F.3d 1331 (9th Cir. 1999))

#### *Ethics Opinions*

- ◇ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (20013))
- ◇ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (20011))
- ◇ Provided expert opinion on issues of professional ethics implicated by nationwide class action practice (*In re Professional Responsibility Inquiries* (2010))
- ◇ Provided expert opinion on issues of professional ethics implicated by complex litigation matter (*In re Professional Responsibility Inquiries* (2010))
- ◇ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2007))



*Publications on Class Actions & Procedure*

- ◇ NEWBERG ON CLASS ACTIONS (sole author of supplements to 4th edition since 2008 and of 5th ed (2011-2015))
- ◇ *Profit for Costs*, 63 DEPAUL L. REV. 587 (2014) (with Morris A. Ratner)
- ◇ *Procedure and Society: An Essay for Steve Yeazell*, 61 U.C.L.A. REV. DISC. 136 (2013)
- ◇ *Supreme Court Round-Up – Part II*, 5 CLASS ACTION ATTORNEY FEE DIGEST 331 (September 2011)
- ◇ *Supreme Court Round-Up – Part I*, 5 CLASS ACTION ATTORNEY FEE DIGEST 263 (July-August 2011)
- ◇ *Class Action Fee Award Procedures*, 5 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2011)
- ◇ *The Benefits of Class Action Lawsuits*, 4 CLASS ACTION ATTORNEY FEE DIGEST 423 (November 2010)
- ◇ *Contingent Fees for Representing the Government: Developments in California Law*, 4 CLASS ACTION ATTORNEY FEE DIGEST 335 (September 2010)
- ◇ *Supreme Court Roundup*, 4 CLASS ACTION ATTORNEY FEE DIGEST 251 (July 2010)
- ◇ *SCOTUS Okays Performance Enhancements in Federal Fee Shifting Cases – At Least In Principle*, 4 CLASS ACTION ATTORNEY FEE DIGEST 135 (April 2010)
- ◇ *The Puzzling Persistence of the “Mega-Fund” Concept*, 4 CLASS ACTION ATTORNEY FEE DIGEST 39 (February 2010)
- ◇ *2009: Class Action Fee Awards Go Out With A Bang, Not A Whimper*, 3 CLASS ACTION ATTORNEY FEE DIGEST 483 (December 2009)
- ◇ *Privatizing Government Litigation: Do Campaign Contributors Have An Inside Track?*, 3 CLASS ACTION ATTORNEY FEE DIGEST 407 (October 2009)
- ◇ *Supreme Court Preview*, 3 CLASS ACTION ATTORNEY FEE DIGEST 307 (August 2009)
- ◇ *Supreme Court Roundup*, 3 CLASS ACTION ATTORNEY FEE DIGEST 259 (July 2009)
- ◇ *What We Now Know About How Lead Plaintiffs Select Lead Counsel (And Hence Who Gets Attorneys Fees!) in Securities Cases*, 3 CLASS ACTION ATTORNEY FEE DIGEST 219 (June 2009)
- ◇ *Beware Of Ex Ante Incentive Award Agreements*, 3 CLASS ACTION ATTORNEY FEE DIGEST 175 (May 2009)
- ◇ *On What a “Common Benefit Fee” Is, Is Not, and Should Be*, 3 CLASS ACTION ATTORNEY FEE DIGEST 87 (March 2009)

- ◇ 2009: *Emerging Issues in Class Action Fee Awards*, 3 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2009)
- ◇ 2008: *The Year in Class Action Fee Awards*, 2 CLASS ACTION ATTORNEY FEE DIGEST 465 (December 2008)
- ◇ *The Largest Fee Award – Ever!*, 2 CLASS ACTION ATTORNEY FEE DIGEST 337 (September 2008)
- ◇ *Why Are Fee Reductions Always 50%?: On The Imprecision of Sanctions for Imprecise Fee Submissions*, 2 CLASS ACTION ATTORNEY FEE DIGEST 295 (August 2008)
- ◇ *Supreme Court Round-Up*, 2 CLASS ACTION ATTORNEY FEE DIGEST 257 (July 2008)
- ◇ *Fee-Shifting For Wrongful Removals: A Developing Trend?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 177 (May 2008)
- ◇ *You Cut, I Choose: (Two Recent Decisions About) Allocating Fees Among Class Counsel*, 2 CLASS ACTION ATTORNEY FEE DIGEST 137 (April 2008)
- ◇ *Why The Percentage Method?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 93 (March 2008)
- ◇ *Reasonable Rates: Time To Reload The (Laffey) Matrix*, 2 CLASS ACTION ATTORNEY FEE DIGEST 47 (February 2008)
- ◇ *The “Lodestar Percentage:” A New Concept For Fee Decisions?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2008)
- ◇ *Class Action Practice Today: An Overview*, in ABA SECTION OF LITIGATION, CLASS ACTIONS TODAY 4 (2008)
- ◇ *Shedding Light on Outcomes in Class Actions*, in CONFIDENTIALITY, TRANSPARENCY, AND THE U.S. CIVIL JUSTICE SYSTEM 20-59 (Joseph W. Doherty, Robert T. Reville, and Laura Zakaras eds. 2008) (with Nicholas M. Pace)
- ◇ *Finality in Class Action Litigation: Lessons From Habeas*, 82 N.Y.U. L. REV. 791 (2007)
- ◇ *The American Law Institute’s New Approach to Class Action Objectors’ Attorneys Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 347 (November 2007)
- ◇ *The American Law Institute’s New Approach to Class Action Attorneys Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 307 (October 2007)
- ◇ *“The Lawyers Got More Than The Class Did!”: Is It Necessarily Problematic When Attorneys Fees Exceed Class Compensation?*, 1 CLASS ACTION ATTORNEY FEE DIGEST 233 (August 2007)
- ◇ *Supreme Court Round-Up*, 1 CLASS ACTION ATTORNEY FEE DIGEST 201 (July 2007)
- ◇ *On The Difference Between Winning and Getting Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 163

(June 2007)

- ◇ *Divvying Up The Pot: Who Divides Aggregate Fee Awards, How, and How Publicly?*, 1 CLASS ACTION ATTORNEY FEE DIGEST 127 (May 2007)
- ◇ *On Plaintiff Incentive Payments*, 1 CLASS ACTION ATTORNEY FEE DIGEST 95 (April 2007)
- ◇ *Percentage of What?*, 1 CLASS ACTION ATTORNEY FEE DIGEST 63 (March 2007)
- ◇ *Lodestar v. Percentage: The Partial Success Wrinkle*, 1 CLASS ACTION ATTORNEY FEE DIGEST 31 (February 2007)(with Hirsh)
- ◇ *The Fairness Hearing: Adversarial and Regulatory Approaches*, 53 U.C.L.A. L. REV. 1435 (2006) (excerpted in THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION 447-449 (Richard A. Nagareda ed., 2009))
- ◇ *Why Enable Litigation? A Positive Externalities Theory of the Small Claims Class Action*, 74 U.M.K.C. L. REV. 709 (2006)
- ◇ *On What a "Private Attorney General" Is – And Why It Matters*, 57 VAND. L. REV. 2129(2004) (excerpted in COMPLEX LITIGATION 63-72 (Kevin R. Johnson, Catherine A. Rogers & John Valery White eds., 2009)).
- ◇ *The Concept of Equality in Civil Procedure*, 23 CARDOZO L. REV. 1865 (2002) (selected for the Stanford/Yale Junior Faculty Forum, June 2001)
- ◇ *A Transactional Model of Adjudication*, 89 GEORGETOWN L.J. 371 (2000)
- ◇ *The Myth of Superiority*, 16 CONSTITUTIONAL COMMENTARY 599 (1999)
- ◇ *Divided We Litigate: Addressing Disputes Among Clients and Lawyers in Civil Rights Campaigns*, 106 YALE L. J. 1623 (1997) (excerpted in COMPLEX LITIGATION 120-123 (1998))

#### *Selected Presentations*

- ◇ *Recent Developments in Class Action Law*, MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2014
- ◇ *Recent Developments in Class Action Law*, MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2013
- ◇ *Class Action Remedies*, ABA 2013 National Institute on Class Actions, Boston, Massachusetts, October 23, 2013
- ◇ *The Public Life of the Private Law: The Logic and Experience of Mass Litigation – Conference in Honor of Richard Nagareda*, Vanderbilt Law School, Nashville, Tennessee, September 27-28, 2013

- ◇ *Brave New World: The Changing Face of Litigation and Law Firm Finance*, Clifford Symposium 2013, DePaul University College of Law, Chicago, Illinois, April 18-19, 2013
- ◇ *Twenty-First Century Litigation: Pathologies and Possibilities: A Symposium in Honor of Stephen Yeazell*, UCLA Law Review, UCLA School of Law, Los Angeles, California, January 24-25, 2013
- ◇ *Litigation's Mirror: The Procedural Consequences of Social Relationships*, Sidley Austin Professor of Law Chair Talk, Harvard Law School, Cambridge, Massachusetts, October 17, 2012
- ◇ *Alternative Litigation Funding (ALF) in the Class Action Context – Some Initial Thoughts*, Alternative Litigation Funding: A Roundtable Discussion Among Experts, George Washington University Law School, Washington, D.C., May 2, 2012
- ◇ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Brooklyn Law School Faculty Workshop, Brooklyn, New York, April 2, 2012
- ◇ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Loyola Law School Faculty Workshop, Los Angeles, California, February 2, 2012
- ◇ *Recent Developments in Class Action Law and Impact on MDL Cases*, MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2011
- ◇ *Recent Developments in Class Action Law*, MDL Transferee Judges Conference, Palm Beach, Florida, October 26, 2010
- ◇ *A General Theory of the Class Suit*, University of Houston Law Center Colloquium, Houston, Texas, February 3, 2010
- ◇ *Unpacking The “Rigorous Analysis” Standard*, ALI-ABA 12<sup>th</sup> Annual National Institute on Class Actions, New York, New York, November 7, 2008
- ◇ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of California (Boalt Hall) School of Law Civil Justice Workshop, Berkeley, California, February 28, 2008
- ◇ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of Pennsylvania Law Review Symposium, Philadelphia, Pennsylvania, Dec. 1, 2007
- ◇ *Current CAFA Consequences: Has Class Action Practice Changed?*, ALI-ABA 11<sup>th</sup> Annual National Institute on Class Actions, Chicago, Illinois, October 17, 2007
- ◇ *Using Law Professors as Expert Witnesses in Class Action Lawsuits*, ALI-ABA 10<sup>th</sup> Annual National Institute on Class Actions, San Diego, California, October 6, 2006
- ◇ *Three Models for Transnational Class Actions*, Globalization of Class Action Panel, International Law Association 2006 Conference, Toronto, Canada, June 6, 2006
- ◇ *Why Create Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, UMKC Law Review Symposium, Kansas City, Missouri, April 7, 2006

- ◇ *Marks, Bonds, and Labels: Three New Proposals for Private Oversight of Class Action Settlements*, UCLA Law Review Symposium, Los Angeles, California, January 26, 2006
- ◇ Class Action Fairness Act, Arnold & Porter, Los Angeles, California, December 6, 2005
- ◇ ALI-ABA 9<sup>th</sup> Annual National Institute on Class Actions, Chicago, Illinois, September 23, 2005
- ◇ Class Action Fairness Act, UCLA Alumni Assoc., Los Angeles, California, September 9, 2005
- ◇ Class Action Fairness Act, Thelen Reid & Priest, Los Angeles, California, May 12, 2005
- ◇ Class Action Fairness Act, Sidley Austin, Los Angeles, California, May 10, 2005
- ◇ Class Action Fairness Act, Munger, Tolles & Olson, Los Angeles, California, April 28, 2005
- ◇ Class Action Fairness Act, Akin Gump Strauss Hauer Feld, Century City, CA, April 20, 2005

#### SELECTED OTHER LITIGATION EXPERIENCE

##### *United States Supreme Court*

- ◇ Authored *amicus* brief filed on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion*, No. 09-893, 131 S. Ct. 1740 (2011))
- ◇ Co-counsel in constitutional challenge to display of Christian cross on federal land in California's Mojave preserve (*Salazar v. Buono*, 130 S. Ct. 1803 (2010))
- ◇ Co-authored *amicus* brief filed on behalf of constitutional law professors arguing against constitutionality of Texas criminal law (*Lawrence v. Texas*, 539 U.S. 558 (2003))
- ◇ Co-authored *amicus* brief on scope of *Miranda* (*Illinois v. Perkins*, 496 U.S. 292 (1990))

##### *Consumer Class Action*

- ◇ Co-counsel in challenge to antenna-related design defect in Apple's iPhone4 (*Dydyk v. Apple Inc.*, 5:10-cv-02897-HRL, U.S. Dist. Court, N.D. Cal.) (complaint filed June 30, 2010)
- ◇ Co-class counsel in \$8.5 million nationwide class action settlement challenging privacy concerns raised by Google's Buzz social networking program (*In re Google Buzz Privacy Litigation*, 5:10-cv-00672-JW, U.S. Dist. Court, N.D. Cal.) (amended final judgment June 2, 2011)

##### *Disability*

- ◇ Co-counsel in successful ADA challenge (\$500,000 jury verdict) to the denial of health care in emergency room (*Howe v. Hull*, 874 F. Supp. 779, 873 F. Supp 72 (N.D. Ohio 1994))

*Employment*

- ◇ Co-counsel in challenges to scope of family benefit programs (*Ross v. Denver Dept. of Health*, 883 P.2d 516 (Colo. App. 1994)); (*Phillips v. Wisc. Personnel Com'n*, 482 N.W.2d 121 (Wisc. 1992))

*Equal Protection*

- ◇ Co-counsel in (state court phases of) successful challenge to constitutionality of a Colorado ballot initiative, Amendment 2 (*Evans v. Romer*, 882 P.2d 1335 (Colo. 1994))
- ◇ Co-counsel (and *amici*) in challenges to rules barring military service by gay people (*Able v. United States*, 44 F.3d 128 (2d Cir. 1995); *Steffan v. Perry*, 41 F.3d 677 (D.C. Cir. 1994) (en banc))
- ◇ Co-counsel in challenge to the constitutionality of the Attorney General of Georgia's firing of staff attorney (*Shahar v. Bowers*, 120 F.3d 211 (11<sup>th</sup> Cir. 1997))

*Fair Housing*

- ◇ Co-counsel in successful Fair Housing Act case on behalf of group home (*Hogar Agua y Vida En el Desierto v. Suarez-Medina*, 36 F.3d 177 (1st Cir. 1994))

*Family Law*

- ◇ Co-counsel in challenge to constitutionality of Florida law limiting adoption (*Cox v. Florida Dept. of Health and Rehab. Svcs.*, 656 So.2d 902 (Fla. 1995))
- ◇ Co-authored *amicus* brief in successful challenge to Hawaii ban on same-sex marriages (*Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993))

*First Amendment*

- ◇ Co-counsel in successful challenge to constitutionality of Alabama law barring state funding for university student groups (*GLBA v. Sessions*, 930 F.Supp. 1492 (M.D. Ala. 1996))
- ◇ Co-counsel in successful challenge to content restrictions on grants for AIDS education materials (*Gay Men's Health Crisis v. Sullivan*, 792 F.Supp. 278 (S.D.N.Y. 1992))

*Landlord / Tenant*

- ◇ Lead counsel in successful challenge to rent control regulation (*Braschi v. Stahl Associates Co.*, 544 N.E.2d 49 (N.Y. 1989))

*Police*

- ◇ Co-counsel in case challenging DEA brutality (*Anderson v. Branen*, 27 F.3d 29 (2<sup>nd</sup> Cir. 1994))

*Racial Equality*

- ◇ Co-authored *amicus* brief for constitutional law professors challenging constitutionality of Proposition 209 (*Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997))

SELECTED OTHER PUBLICATIONS

*Editorials*

- ◇ *Follow the Leaders*, NEW YORK TIMES, March 15, 2005
- ◇ *Play It Straight*, NEW YORK TIMES, October 16, 2004
- ◇ *Hiding Behind The Constitution*, NEW YORK TIMES, March 20, 2004
- ◇ *Toward More Perfect Unions*, NEW YORK TIMES, November 20, 2003 (with Brad Sears)
- ◇ *Don't Ask, Don't Tell. Don't Believe It*, NEW YORK TIMES, July 20, 1993
- ◇ *AIDS: Illness and Injustice*, WASH. POST, July 26, 1992 (with Nan D. Hunter)

BAR ADMISSIONS

- ◇ Massachusetts (2008)
- ◇ California (2004)
- ◇ District of Columbia (1987) (inactive)
- ◇ Pennsylvania (1986) (inactive)
  
- ◇ U.S. Supreme Court (1993)
  
- ◇ U.S. Court of Appeals for the First Circuit (2010)
- ◇ U.S. Court of Appeals for the Fifth Circuit (1989)
- ◇ U.S. Court of Appeals for the Ninth Circuit (2004)
- ◇ U.S. Court of Appeals for the Eleventh Circuit (1993)
- ◇ U.S. Court of Appeals for the D.C. Circuit (1993)
  
- ◇ U.S. District Courts for the Central District of California (2004)
- ◇ U.S. District Court for the District of the District of Columbia (1989)
- ◇ U.S. District Court for the District of Massachusetts (2010)
- ◇ U.S. District Court for the Northern District of California (2010)

# **EXHIBIT B**



*Asghari v. Volkswagen Group of America, Inc.*  
No. CV13-02529-MMM  
Expert Declaration of William B. Rubenstein

**EXHIBIT B**

Partial List of Documents Reviewed by Professor Rubenstein  
(other than case law and scholarship on the relevant issues)

Docket of *Asghari v. Volkswagen Group of America, Inc.*, No. CV13-02529-MMM

1. Class Action Complaint, ECF No. 1
2. First Amended Class Action Complaint, ECF No. 17
3. Volkswagen Group of America, Inc.'s Motion to Transfer Venue, ECF No. 23
4. Volkswagen Group of America, Inc.'s Motion to Dismiss the First Amended Complaint, ECF No. 25
5. Plaintiffs' Opposition to Volkswagen Group of America, Inc.'s Motion to Dismiss the First Amended Complaint, ECF No. 35
6. Order Granting Motions to Transfer, ECF No. 62
7. Volkswagen AG's and Audi AG's Motion to Dismiss the First Amended Complaint, ECF No. 80
8. Declaration of Craig L. Winterman in Support of Volkswagen AG and Audi AG's Motion to Dismiss the First Amended Complaint, ECF No. 80-1
9. Plaintiffs' Opposition to Volkswagen AG's and Audi AG's Motion to Dismiss the First Amended Complaint, ECF No. 102
10. Reply of Volkswagen AG and Audi AG to Plaintiffs' Opposition to Motion to Dismiss the First Amended Complaint, ECF No. 107
11. Defendants' Supplemental Brief in Support of Motion to Dismiss the First Amended Complaint, ECF No. 116
12. Plaintiffs' Response to Defendants' Supplemental Brief in Support of Motion to Dismiss the First Amended Complaint, ECF No. 119
13. Order Granting in Part and Denying in Part Defendants' Motion to Dismiss, ECF No. 121
14. Second Amended Class Action Complaint, ECF No. 123
15. Stipulation to Dismiss the *Dersarkissian* Action and Granting the *Asghari* Plaintiffs' Leave to File a Third Amended Complaint, ECF No. 129
16. Order re Dismissal of the *Dersarkissian* Action and Granting the *Asghari* Plaintiffs' Leave to File a Third Amended Complaint, ECF No. 132
17. Third Amended Class Action Complaint, ECF No. 133
18. Volkswagen Group of America, Inc.'s Answer, Affirmative Defenses, and Demand for Jury Trial to Plaintiffs' Third Amended Complaint, ECF No. 138
19. Joint Rule 26(f) Report, ECF No. 141
20. Fourth Amended Class Action Complaint, ECF No. 143-1
21. Volkswagen Group of America, Inc.'s Answer, Affirmative Defenses, and Demand for Jury Trial to Plaintiffs' Fourth Amended Complaint, ECF No. 146
22. Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ECF No. 153
23. Declaration of Jordan L. Lurie in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ECF No. 153-1

24. Declaration of Payam Shahian in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ECF No. 153-2
25. Declaration of Larry W. Lee in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ECF No. 153-3
26. Declaration of Edward W. Choi in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ECF No. 153-4
27. Declaration of Dara Tabesh in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ECF No. 153-5
28. Declaration of Hovanes Margarian in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ECF No. 153-6
29. Proposed Order Granting Preliminary Approval of Class Action Settlement, ECF No. 153-7
30. Declaration of Jeffrey L. Chase in Support of Plaintiffs' Motion for Preliminary Approval of Class Settlement, ECF No. 154
31. Supplemental Declaration of Payam Shahian in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ECF No. 155
32. Order Granting Preliminary Approval of Class Action Settlement, ECF No. 156

Docket of *Dersarkissian v. Volkswagen Group of America, Inc.*, No. 2:13-cv-08105-MMM-VBK

33. Notice of Removal, ECF No. 1
34. Volkswagen Group of America, Inc.'s Motion to Dismiss, ECF No. 8
35. Stipulation to Dismiss the *Dersarkissian* Action and Granting the *Asghari* Plaintiffs' Leave to File a Third Amended Complaint, ECF No. 13
36. Order re Dismissal of the *Dersarkissian* Action and Granting Leave to File a Third Amended Complaint, ECF No. 14

Docket of *Kim v. Volkswagen Group of America, Inc.*, No. 2:13-cv-02527-MMM-VBK

37. Notice of Removal, ECF No. 1
38. Order re Volkswagen Group of America, Inc.'s Motion to Dismiss, ECF No. 71

Litigation Documents from Other Cases

39. Master Settlement Agreement and Release, *Browne v. American Honda Motor, Co.*, 2:09-cv-06750-MMM-DTB (C.D. Cal. Mar. 26, 2010), ECF No. 29-1
40. Order Approving Final Settlement, *Browne v. American Honda Motor, Co.*, 2:09-cv-06750-MMM-DTB (C.D. Cal. July 29, 2010), ECF No. 55
41. Declaration of Stephen M. Harris in Support of Plaintiffs' Motion for Final Approval of Proposed Class Action Settlement, *Eisen v. Porsche Cars North America, Inc.*, 2:11-cv-09405-CAS-FFM (C.D. Cal. Dec. 23, 2013), ECF No. 56
42. Plaintiffs' Memorandum of Law in Support of Their Unopposed Motion for Attorneys' Fees, Expenses, and Incentive Awards, *Henderson v. Volvo Cars of North America, LLC*, 2:09-cv-04146-CCC-JAD (D.N.J. Aug. 31, 2012), ECF No. 77-2
43. Order Granting Plaintiffs' Unopposed Motion for Fees, Expenses, and Incentive Awards, 2:09-cv-04146-CCC-JAD (D.N.J. Mar. 22, 2013), ECF No. 93
44. Notice of Motion for Preliminary Approval of Class Settlement, *Olson v. Volkswagen of America, Inc.*, 2:07-cv-05334-R-JTL (C.D. Cal. Apr. 28, 2008), ECF No. 37

45. Agreement of Settlement, Olson v. Volkswagen of America, Inc., 2:07-cv-05334-R-JTL (C.D. Cal. Mar. 28, 2008), ECF No. 40
46. Plaintiff's Motion for Attorneys' Fees and Costs, Olson v. Volkswagen of America, Inc., 2:07-cv-05334-R-JTL (C.D. Cal. Oct. 10, 2008), ECF No. 58
47. Revised Order and Judgment Approving Class Settlement, Olson v. Volkswagen of America, Inc., 2:07-cv-05334-R-JTL (C.D. Cal. Dec. 16, 2008)

# **EXHIBIT C**

*Asghari v. Volkswagen Group of America, Inc.*  
*No. CV13-02529-MMM*  
*Expert Declaration of William B. Rubenstein*

**EXHIBIT C**

List of Central District of California Cases Affirming Class Action Fee Awards  
2010-2014

1. *Anderson v. Nextel Retail Stores, LLC*, 2010 WL 8591002 (C.D. Cal. April 12, 2010)
2. *Boyd v. Bank of America Corp.*, 2014 WL 6473804 (C.D. Cal. November 18, 2014)
3. *Carter v. Anderson Merchandisers, LP*, 2010 WL 1946757 (C.D. Cal. May 11, 2010)
4. *Elliott v. Rolling Frito-Lay Sales, LP*, 2014 WL 2761316 (C.D. Cal. June 12, 2014)
5. *Espinoza v. Domino's Pizza, LLC*, 2012 WL 5462550 (C.D. Cal. November 07, 2012)
6. *In re Toys R Us-Delaware, Inc.--Fair and Accurate Credit Transactions Act (FACTA) Litigation*, 295 F.R.D. 438 (C.D. Cal. 2014)
7. *Johnson v. General Mills, Inc.*, 2013 WL 3213832 (C.D. Cal. June 17, 2013)
8. *Kearney v. Hyundai Motor America*, 2013 WL 3287996 (C.D. Cal. June 28, 2013)
9. *Maine State Ret. Sys. v. Countrywide Fin. Corp.*, 2013 WL 6577020 (C.D. Cal. Dec. 5, 2013)
10. *Mancini v. Ticketmaster*, 2013 WL 3995269 (C.D. Cal. Aug. 2, 2013)
11. *McKenzie v. Fed. Exp. Corp.*, 2012 WL 2930201 (C.D. Cal. July 2, 2012)
12. *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160 (C.D. Cal. 2010)
13. *Pereira v. Ralph's Grocery Co.*, 2010 WL 6510346 (C.D. Cal. July 1, 2010)
14. *Roberts v. Electrolux Home Products, Inc.*, 2014 WL 4568632 (C.D. Cal. Sept. 11, 2014)
15. *Vandervort v. Balboa Capital Corp.*, 8 F.Supp.3d 1200 (C.D. Cal. 2014)
16. *Vinh Nguyen v. Radiant Pharmaceuticals Corp.*, 2014 WL 1802293 (C.D. Cal. May 06, 2014)

# **EXHIBIT D**

*Asghari v. Volkswagen Group of America, Inc.*  
 No. CV13-02529-MMM  
 Expert Declaration of William B. Rubenstein

**EXHIBIT D**  
 Timekeeper Data

| Lawyers in the current case                     | Year of admission | Years between admission and decision | Billing rate | Hours billed (as of Feb. 22, 2015) | Amount billed |
|---|-------------------|--------------------------------------|--------------|------------------------------------|---------------|
| <b>Capstone</b>                                 |                   |                                      |              |                                    |               |
| Cody Padgett                                    | 2011              | 4.00                                 | 370.00       | 357.90                             | 132,423.00    |
| David Cheng                                     | 2005              | 10.00                                | 520.00       | 45.10                              | 23,452.00     |
| Eduardo Santos                                  | 2007              | 8.00                                 | 470.00       | 67.80                              | 31,866.00     |
| Jordan Lurie                                    | 1987              | 28.00                                | 695.00       | 237.90                             | 165,340.50    |
| Lucas Rogers                                    | 2008              | 7.00                                 | 445.00       | 130.30                             | 57,983.50     |
| Ryan Wu   | 2002              | 13.00                                | 595.00       | 258.60                             | 153,867.00    |
| Tarek Zohdy                                     | 2006              | 9.00                                 | 495.00       | 84.20                              | 41,679.00     |
| Robert Byrnes                                   | 1999              | 16.00                                | 670.00       | 172.40                             | 115,508.00    |
| <b>Strategic Legal Practices APC</b>            |                   |                                      |              |                                    |               |
| Payam Shahian                                   | 2003              | 12.00                                | 595.00       | 683.10                             | 406,444.50    |
| Gregory Yu                                      | 2004              | 11.00                                | 550.00       | 181.20                             | 99,660.00     |
| Joshua Valero                                   | 2010              | 5.00                                 | 375.00       | 20.60                              | 7,725.00      |
| Karen Nakon                                     | 2010              | 5.00                                 | 375.00       | 84.30                              | 31,612.50     |
| Alison Wilson                                   | 2008              | 7.00                                 | 425.00       | 67.50                              | 28,687.50     |
| Christopher Swanson                             | 2011              | 4.00                                 | 325.00       | 155.40                             | 50,505.00     |
| <b>EcoTech Law Group PC</b>                     |                   |                                      |              |                                    |               |
| Dara Tabesh                                     | 2004              | 11.00                                | 560.00       | 148.50                             | 83,160.00     |
| <b>Law Offices of Mark Yablonovich</b>          |                   |                                      |              |                                    |               |
| Michael Coats                                   | 2008              | 7.00                                 | 365.00       | 18.00                              | 6,570.00      |
| Neda Roshanian                                  | 2003              | 12.00                                | 495.00       | 118.00                             | 58,410.00     |
| Mark Yablonovich                                | 1996              | 19.00                                | 630.00       | 58.00                              | 36,540.00     |
| <b>Diversity Law Group, P.C.</b>                |                   |                                      |              |                                    |               |
| Larry Lee                                       | 2003              | 12.00                                | 600.00       | 110.00                             | 66,000.00     |
| <b>The Law Offices of Choi &amp; Associates</b> |                   |                                      |              |                                    |               |
| Edward Choi                                     | 2000              | 15.00                                | 500.00       | 65.00                              | 32,500.00     |
| <b>Law Offices of Havanés Margarian</b>         |                   |                                      |              |                                    |               |
| Hovanés Margarian                               | 2006              | 9.00                                 | 475.00       | 135.00                             | 64,125.00     |

# **EXHIBIT E**



*Asghari v. Volkswagen Group of America, Inc.*  
 No. CV13-02529-MMM  
 Expert Declaration of William B. Rubenstein

**EXHIBIT E**

List of Recent Court-Approved Fees in Automobile Defect Cases

| <b>Case</b>  | <b>Alleged defect</b>           | <b>Fees</b>                           | <b>Relationship to Lodestar</b> | <b>Hours</b> |
|--|---------------------------------|---------------------------------------|---------------------------------|--------------|
| Vaughn v. American Honda Motor, Co., No. 2:04-CV142 (E.D. Tex. 2007)<br>FILED – 4/13/2004<br>CLOSED – 9/28/2007  | Defective odometers             | \$9.5 million fees                    | 2.26                            | 12,018.7     |
| Berry v. Volkswagen Group of America, Inc., 397 S.W.3d 425 (Mo. 2013) (en banc)<br>FILED – 1/15/2005 (per appellant brief: 2011 WL 6844465)<br>CLOSED – 5/28/13 (rehearing denied per WL case history) | Defective car window regulators | \$6,174,640 fees                      | 2.0                             | 7,910        |
| Olson v. Volkswagen of America, Inc., No. CV07-05334 R (JTLx) (C.D. Cal. 2008)<br>FILED – 08/15/2007<br>CLOSED – 12/16/2008  | Defective timing belt           | \$2 million fees                      | 1.9                             | 1,635.35     |
| Alin v. Honda Motor Co., Ltd., No. 08-4825 (D.N.J. 2012)<br>FILED – 09/26/2008<br>CLOSED – 04/16/2012  | Air conditioning system defects | \$2,525,000 fees and expenses         | 1.67                            | 2,396.35     |
| Browne v. American Honda Motor Co., Inc., No. CV 09-06750 (C.D. Cal. 2010)<br>FILED – 09/16/2009<br>CLOSED – 8/13/2010   | Defective brake pads            | \$2 million fees and expenses         | 1.4                             | 3,210.07     |
| Sadowska v. Volkswagen Grp. of Am., Inc., No. CV 11-00665-BRO (C.D. Cal. 2013)<br>FILED – 1/21/2011<br>CLOSED – 9/25/2013  | Defective transmissions         | \$2,375,000 fees, costs, and expenses | 1.37                            | 3,115        |
| Henderson v. Volvo Cars of North America, LLC, No. 2:09-cv-04146 (D.N.J. 2013)<br>FILED – 8/13/2009<br>CLOSED – 3/22/2013  | Flawed transmission             | \$3 million fees and expenses         | 1.13                            | 5,110        |
| Zwicker v. General Motors Corp., No. C07-291 JCC (W.D. Wash. 2008)<br>FILED – 2/23/2007<br>CLOSED 1/23/2009  | Defective instrument clusters   | \$2.372 million fees and costs        | 1.1                             | 4,447.6      |

|   |                         |                               |      |          |
|---|-------------------------|-------------------------------|------|----------|
| In re Nissan Radiator/Transmission Cooler Litig., No. 10 CV 7493(VB) (S.D.N.Y. 2013)<br>FILED – 9/30/2010<br>CLOSED – 5/31/2013 | Defective radiators     | \$1.62 million                | 0.95 | 2,543.71 |
| Parkinson v. Hyundai Motor America, No. CV 06-345 (C.D. Cal. 2010)<br>FILED – 4/4/2006<br>CLOSED – 6/28/2010                    | Defective transmission  | \$3.7 million fees            | 0.90 | 8,771    |
| Aarons v. BMW of N. Am., LLC, No. CV 11-7667 PSG CWX (C.D. Cal. 2014)<br>FILED – 9/15/2011<br>CLOSED – 8/22/2014                | Defective transmission  | \$1,992,500 fees and expenses | 0.89 | 4,673.2  |
| Eisen v. Porsche Cars N. Am., Inc., No. 2:11-CV-09405-CAS (C.D. Cal. 2014)<br>FILED – 11/10/2011<br>CLOSED 1/30/2014            | Engine failure defect   | \$950,000 fees and costs      | 0.85 | 3,054.4  |
| Nguyen v. BMW of N. Am. LLC, No. C 10-02257 SI (N.D. Cal. 2012)<br>FILED – 05/25/2010<br>CLOSED – 04/24/2012                    | Defective turbochargers | \$1.41 million fees           | 0.80 | 3,727.03 |