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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

Aberin et al. v. American Honda Motor Co., Inc.

Case No. 4:16-cv-04384-JST

**NOTICE OF MOTION, MOTION, AND
MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
MOTION FOR ATTORNEY FEES,
COSTS AND EXPENSES, AND FOR
SERVICE AWARDS**

Hearing Date: August 15, 2024
Time: 2:00 p.m. (Pacific)
Hon. Jon S. Tigar

NOTICE AND MOTION

TO THE COURT, ALL PARTIES, AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on _____ 2024, beginning at 10:00 a.m., in Courtroom 6 of the United States District Court for the Northern District of California, 2d Floor, 1301 Clay Street, Oakland, CA 94612, before the Honorable Jon S. Tigar, Plaintiffs Lindsay and Jeff Aberin, Don Awtrey, Charles Burgess, John Kelly, and Joy Matza, by and through their undersigned counsel, will and hereby do move the Court for an order awarding attorneys' fees and expenses to Class Counsel and service awards to the Named Plaintiffs. The motion, which is unopposed, will be based upon this Notice, the Memorandum of Points and Authorities filed herewith, the exhibits attached thereto, including the Declarations of Christopher A. Seeger, James E. Cecchi, Steve W. Berman, James Shah, filed simultaneously herewith, and there record in this matter, along with any oral argument that may be presented to the Court and evidence submitted in connection therewith.

DATED: April 4, 2024

Respectfully submitted,

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21 82 Geo. Wash. L. Rev. 651 (2014) 23

I. MEMORANDUM OF POINTS AND AUTHORITIES

1
2 This is an action for damages, restitution and injunctive relief, which Plaintiffs Lindsay
3 and Jeff Aberin et al. brought on behalf of themselves and a proposed class of consumers whose
4 Acura automobiles, manufactured and sold by the Defendant American Honda Company, Inc.
5 (“Honda”), suffered from a design defect in the “Hands-Free” Bluetooth system, HandsFreeLink™
6 (“HFL”) which caused excessive parasitic electric drain. The goal of the litigation was, and remains,
7 to remedy Honda’s misrepresentations and breach of warranties resulting from the undisclosed
8 defect. After eight years of hard-fought litigation, Class Counsel seeks an award of reasonable and
9 fair attorney’s fees in the amount of \$10,900,000 and reimbursement of costs in the amount of
10 \$1,037,458.66 for the reasons set forth below.¹

12 Specifically, the Plaintiffs contended that the HFL units in the Acura models 2004-2008 TL,
13 2005-2008 MDX, and 2007-2009 RDX that they purchased in the states of California, Kansas, New
14 York, and Washington, would fail to switch off when not in use, generating excessive parasitic
15 electrical drain, and resulting in a strain on the vehicles’ electric system, dead batteries, frequent
16 battery replacements, and replacement or disconnection of the HFL unit. This defect created a safety
17 hazard, leaving vehicles with unreliable batteries and prematurely aged alternators that could cause
18 a vehicle to lose power during operation. As more fully described in Plaintiffs’ Memorandum in
19 Support of Preliminary Approval (ECF No. 436), Plaintiffs and the Settlement Class contend that
20 Honda’s actions violated (1) the California Consumer Legal Remedies Act (Cal. Civ. Code § 1750
21 *et. seq.*) (“CLRA”), the California Unfair Business Practices Act (Cal. Bus. & Prof. Code § 17200,
22 *et. seq.*) (UCL), the New York General Business Law (“GBL”) § 349, the Kansas Consumer
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26 ¹ Given that Class Counsel and their co-counsel have litigated this case for nearly eight years without compensation,
27 they respectfully submit that, to the extent any withholding is made of any award of fees pending post-distribution
accounting after distribution of the Settlement payments, the amount be at or under 10% .

1 Protection Act (“KCPA”), K.S.A. § 50-626 et seq., and two subsections of the Washington
2 Consumer Protection Act; (2) breach of implied warranty laws of California, New York and Kansas;
3 (3) the Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. § 2301; and (4) the fraudulent
4 concealment laws of California, New York, Kansas and Washington.

5 It is not a stretch to say that Class Counsel has invested tremendous resources in the
6 prosecution of this case. The docket speaks clearly to this point and brief summary of work shows
7 it to be true: Class Counsel investigated, drafted and filed five complaints (ECF Nos. 1, 29, 98, 148, 403),
8 opposed a motion to transfer venue (ECF Nos. 30-34), opposed two motions for spoliation of evidence and
9 sanctions (ECF Nos. 105, 116-17), a motion for judgment on the pleadings (ECF Nos. 355, 365), a motion
10 for summary judgment (ECF Nos. 357-58, 366), six motions to strike Plaintiffs’ expert witnesses (ECF
11 Nos. 264-68, 359-60), and three motions to dismiss by Honda (ECF Nos. 42-44, 105, 407). On the
12 affirmative side Class Counsel took or defended 24 depositions, successfully moved for class certification
13 (ECF Nos. 259, 260, 275-79, 281, 291), and successfully opposed in the Ninth Circuit Honda’s Rule 23(f)
14 petition for permission to appeal the Court’s class certification approval decision, ECF No. 302; Dkt. No.
15 21-80033 (9th Cir.)
16
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18 Moreover, counsel’s efforts to achieve a positive result for the clients were not focused solely on
19 litigation - we tried to resolve this case long ago. A mediation was held on February 11, 2020 in California
20 with mediator Ellen Relkin before Plaintiffs undertook the time and expense of expert discovery in advance
21 of class briefing and the extensive briefing necessitated by a motion for class certification. ECF No. 229.
22 That early effort was unsuccessful - but not because of Class Counsel’s unwillingness to resolve the case
23 early and reasonably. Accordingly, Plaintiffs pushed ahead with expert discovery relevant to the class
24 motion, and undertook the labors of class briefing and responding to Defendant’s opposition to that motion
25 as well as its *Daubert* challenges, each of which were unsuccessful. ECF No. 291. The case finally did
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1 settle through efforts of Hon. Daniel J. Buckley (ret.), after the Parties had fully briefed Defendant’s last
2 round of challenges to Plaintiffs’ experts and dispositive motions, including summary judgment. *See*
3 Declaration of James E. Cecchi (“Cecchi Decl.”) ¶¶ 7-8.

4 The parties have entered into a Settlement Agreement (*see* Declaration of Christopher A.
5 Seeger in Support of Preliminary Approval, filed April 27, 2023, Exhibit A (ECF No. 429-2)), which
6 was preliminarily approved by this Court by order filed February 1, 2024. ECF No. 436.

7 The Settlement class is defined as all purchasers of Acura models 2004-2008 TL, 2005-2008
8 MDX, and 2007-2009 RDX, that purchased or leased their vehicles in the states of California,
9 Kansas, New York, and Washington, prior to the vehicle reaching 10 years or 120,000 miles,
10 whichever occurs first.

11 The Settlement provides eligible Class Members with (a) an HFL Replacement
12 Reimbursement for actual out of pocket payments for parts or labor up to \$500 and/or (b) an HFL
13 Disconnection Payment in the amount of \$350 if the HFL was disconnected or simply if parasitic
14 electric drain was indicated. Class Counsel’s fee request is well within the range commonly awarded
15 in comparable cases, and is well-justified here, particularly taking into account the results achieved
16 on behalf of the Class and the amount of work contributed by Class Counsel. Class Counsel’s request
17 is also supported by a lodestar multiplier cross-check.

18 Moreover, as part of the settlement, Honda “may oppose” Class Counsel’s application for
19 attorney’s fees and expenses, and for service awards. This reflects that the parties to the Settlement
20 did not enter into a “clear sailing” agreement under which the defendant agrees to not oppose a
21 request for attorney fees, thereby satisfying the Ninth Circuit’s precedent holding that such
22 agreements are disfavored because they may be evidence of collusion. *See Roes, 1-2 v. SFBSC*
23 *Mgmt., LLC*, 944 F.3d 1035, 1050-51 (9th Cir. 2019) (“clear sailing agreements on attorneys’ fees
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1 are important warning signs of collusion, . . . because [t]he very existence of a clear sailing provision
2 increases the likelihood that class counsel will have bargained away something of value to the
3 class,") (citation and internal quotation marks omitted) (quoting *In re Bluetooth*, 654 F.3d 935, 948
4 (9th Cir. 2011) (footnote omitted). Not only that, but the fees and costs are to be paid separate and
5 apart from class recovery and in no way reduce the class benefits achieved. Thus, because the request
6 award is reasonable and appropriate, the Court should grant Plaintiffs' motion in full.

7
8 After combining the lodestar of the Class Counsel law firms, there is a total lodestar in this
9 matter of \$8,759,878.00 at counsel's customary billing rates. Based on the total lodestar, the fee
10 requested is equivalent to a reasonable multiplier of 1.24. The counsel's declarations include time
11 records documenting the tasks completed and the amount of time spent on the prosecution of this
12 case (as well as costs), as required by the Court. *See* Cecchi Decl. Exs A-C; Declaration of
13 Christopher A. Seeger Exs A-C ("Seeger Decl." - Exhibit D to the Cecchi Decl.); Declaration of
14 Steve W. Berman Exs A-C ("Berman Decl." - Exhibit E to the Cecchi Decl.); Declaration of James
15 Shah Exs. A-C ("Shah Dec." - Exhibit F to the Cecchi Decl.); and Declaration of Amanda M. Steiner
16 Exs A-C ("Steiner Decl." - Exhibit F to the Cecchi Decl.).

17
18 Plaintiffs further request that the Court award counsel \$1, 037,458.66 for litigation costs.

19 Lastly, Plaintiffs request Service Awards of \$7,500 to each of the Class Representatives for
20 their services to the Class. Plaintiffs performed their duties as Class Representatives and have always
21 put the interests of the Class Members above their own. These amounts are justified by Plaintiffs'
22 dedication to this action.
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1 **II. Argument**

2 **A. Legal Standards**

3 “In a certified class action, the court may award reasonable attorney’s fees and nontaxable
4 costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).²“ A federal
5 court sitting in diversity applies the law of the forum state regarding an award of attorneys’ fees.”
6 *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 883 (9th Cir. 2000). “Because this is a diversity
7 case, state law governs both ‘the right to fees’ and ‘the method of calculating the fees.’” *Close v.*
8 *Sotheby’s, Inc.*, 909 F.3d 1204, 1208 (9th Cir. 2018) (quoting *Mangold v. Cal. Pub. Utils. Comm’n*,
9 67 F.3d 1470, 1478 (9th Cir. 1995)). “The touchstone for determining the reasonableness of
10 attorneys’ fees in a class action is the benefit to the class.” *Lowery v. Rhapsody Int’l, Inc.*, 75 F.4th
11 985, 988 (9th Cir. 2023).

12 **1. *Lowery v. Rhapsody Int’l, Inc.* Does Not Limit Fees Here**

13 In *Lowery*, the Ninth Circuit recently held that in determining the value of a “claims-made”
14 class action settlement for purposes of attorney’s fees, the court should consider its actual or
15 anticipated value to the class members based on the timely submitted claims,” rather than the
16 maximum amount that hypothetically could have been paid to the class if all claims were submitted.
17 *Id.* at 988-99, 992. *Lowery* is inapplicable here and would wreak havoc with the utility of class
18 action settlement in consumer protection actions under state law. First, *Lowery* involved federal
19 copyright law, *see id.* at 989, 992, 995, and hence any determination of the attorney’s fee was
20 governed by federal law. In contrast, because jurisdiction here is based on diversity, California state
21 law governs the determination of the attorney’s fee. *See Close*, 909 F.3d at 1208, 1211-12. Under
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27 ² *See also Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG CWX, 2014 WL 4090564, at *14
(C.D. Cal. Apr. 29, 2014) (“the CLRA mandates an award of fees and costs”) (citing cases).

1 California law, as with any state law including a fee-shifting provision to ensure consumers' rights
2 can be vindicated, they are entitled to *all* attorney fees reasonably expended, without any limitation
3 to a proportion of the actual recovery. See *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th
4 140, 164 (2006);³ *In re HP Printer Firmware Update Litig.*, No. 5:16-CV-05820-EJD, 2019 WL
5 2716287, at *2 (N.D. Cal. June 28, 2019); see also *Patel v. Mercedes-Benz USA, LLC*, 43 Cal. App.
6 5th 1007, 1017, 256 Cal. Rptr. 3d 603, 611 (2019) (“discussing “purposes behind fee awards in
7 consumer protection legislation Attorney fee provisions in consumer protection statutes ‘allow[
8] consumers to pursue remedies in cases as here, where the compensatory damages are relatively
9 modest’”) (citation omitted). This includes work “relating solely to the fee.” *Ketchum v. Moses*, 24
10 Cal.4th 1122, 1133, 104 Cal.Rptr.2d 377, 17 P.3d 735 (2001). “To limit the fee award to an amount
11 less than that reasonably incurred in prosecuting such a case, would impede the legislative purpose
12 underlying [the consumer fraud statutes at issue].” *Id.* at 150; *Hayword v. Ventura Volvo*, 108 Cal.
13 App. 4th 509 (2003) (same). “[T]he purpose behind statutory fee authorizations—*i.e.*, encouraging
14 attorneys to act as private attorneys general and to vindicate important rights affecting the public
15 interest—‘will often be frustrated, sometimes nullified, if awards are diluted or dissipated by lengthy,
16 uncompensated proceedings to fix or defend a rightful fee claim.’” *Serrano v. Unruh*, 32 Cal. 3d 621,
17 632 (1982); see *Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 285-88 (6th Cir. 2016);
18 *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1171 (C.D. Cal. 2010) (“California’s fee-
19 shifting and private attorney general statutes incentivize counsel to take cases on behalf of plaintiffs
20 who could not otherwise afford to vindicate their rights through litigation.”). Thus, proportionality
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25 ³ Even if the law of the other states at issue applied here as to the determination of fees, the
26 consumer protection laws of those states (KS, NY, WA), like California law, involve fee shifting
27 statutes. Kan. Stat. Ann. § 50-634(e)(2); N.Y. Gen. Bus. Law § 349; Wash. Rev. Code Ann. §
19.86.090.

1 is an improper consideration when determining fee awards under consumer protection statutes.
 2 *Graciano*, 144 Cal. App. 4th at 164; *see also Douyon v. NY Med. Health Care, P.C.*, 49 F. Supp. 3d
 3 328, 339-40 (E.D.N.Y. 2014). Indeed, no California decision has adopted *Lowery*'s holding or the
 4 principle that attorney's fee awards in fee shifting cases should be based on the amount of benefits
 5 actually claimed by class members.

6 Second, courts in this Circuit have declined to apply *Lowery*'s rule on the ground that it does
 7 not apply in cases where fee shifting statutes and small amounts of damages are at issue. *See, e.g.*,
 8 *In re Outlaw Lab'ys, LP Litig.*, No. 18-CV-840-GPC-BGS, 2023 WL 6522383, at *7-8 (S.D. Cal.
 9 Oct. 5, 2023). Thus, *Lowery* should not apply here because state law governs the determination of
 10 fees, California law does not limit fees to a proportion of the recovery, the consumer fraud statutes
 11 at issue are fee shifting statutes, and the damages of each class member are small. *See id.*; *see also*
 12 *Guttmann v. Ole Mexican Foods, Inc.*, No. 14-CV-04845-HSG, 2016 WL 9107426, at *5 n.1 (N.D.
 13 Cal. Aug. 1, 2016) ("The CLRA itself contains a mandatory fee-shifting provision that awards
 14 attorneys' fees to a prevailing plaintiff.") (citing Cal. Civ. Code § 1780(e)).⁴ Without such a practical
 15 approach, accommodation, manufacturer-defendants would be incentivized to protract litigation with
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19 ⁴ *Outlaw* further noted that, unlike in *Lowery*, there was significant nonmonetary relief made
 20 available to class members. *See* 2023 WL 6522383, at *7. While the direct benefits to the class are
 21 obtained through claims, Plaintiffs achieved nonmonetary success with this lawsuit in the form of
 22 the Court's order granting contested class certification which provided direct notice to the Class
 23 Members of the claims in this litigation, including the alleged defect in their HFL units, and was a
 24 key factor driving Honda to ultimately agree to the substantial payments made available to
 25 Settlement Class Members under the Settlement. *See generally Bateman v. Am. Multi-Cinema, Inc.*,
 26 623 F.3d 708, 723 (9th Cir. 2010) ("certification of a class . . . preserve[s], if not amplif[ies], the
 27 deterrent effect of FACTA[], [federal statute concerning protection of consumers' credit
 transactions].") While Honda has never acknowledged the defect, with the knowledge of the defect
 having been publicized through this class action and settlement, class members "will no longer be
 deceived." *Evans v. DSW, Inc.*, No. 216CV03791JGBSPX, 2018 WL 6920674, at *11-12 (C.D. Cal.
 Aug. 17, 2018) (case that resulted in defendant no longer engaging in false advertising conferred
 significant public benefit).

1 the threat to plaintiffs and their counsel that each additional hour of work required to vindicate their
2 rights would never be compensated.

3 Third, *Lowery* and the decisions upon which it relies are inapposite because they involved
4 the application of the higher standard of scrutiny for settlements reached prior to class certification
5 (unlike in this case). Fourth, neither *Lowery* nor any of the decisions upon which it relied applied
6 California law. Finally, *Lowery* conflicts not only with California law but also with previous Ninth
7 Circuit precedent holding that attorney's fee awards should be based on the entire amount of the
8 settlement fund. *See Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997);
9 *see also Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 283-88 (6th Cir. 2016) (noting
10 *Williams* holding accords with rule of U.S. Supreme Court); *Gen. Const. Co. v. Castro*, 401 F.3d
11 963, 975 (9th Cir. 2005) (three-judge panel is bound by opinion of prior panel).
12

13 **2. Plaintiffs Qualify for an Award**

14 "Because plaintiffs obtained a favorable settlement recovery for class members in the form
15 of cash reimbursement, up to and including full reimbursement (depending on vehicle mileage),
16 plaintiffs are the prevailing party under the CLRA fee-shifting statute." *Parkinson*, 796 F. Supp. 2d
17 at 1171 (citing Cal. Civ. Code § 1780(e)). Similarly, plaintiffs are the successful party under
18 California's private attorney general statute. Cal. Civ. P. Code § 1021.5. Plaintiffs qualify for an
19 award of fees under this statute because a significant pecuniary benefit, including up-to-full
20 reimbursement, has been conferred on a large class of persons, namely, owners of Acura's 2004-
21 2008 TL, 2005-2008 MDX, or 2007-2009 RDX models who undertook an HFL unit repair or
22 disconnection. The necessity and financial burden of private enforcement are such that the award is
23 appropriate, and a common practice in class settlements, because an individual plaintiff seeking to
24 vindicate a repair could not be expected to litigate against Honda's demonstrably robust and
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1 resourceful defenses. In accordance with the interest of justice, the fee award should not be paid out
2 of class members' recovery.

3 **3. The Lodestar Method**

4 “[C]ourts have an independent obligation to ensure that the award, like the settlement itself, is
5 reasonable, even if the parties have already agreed to an amount.” *Rojas v. Bosch Solar Energy Corp.*,
6 No. 18-CV-05841-BLF, 2023 WL 3473515, at *1 (N.D. Cal. Apr. 6, 2023) (quoting *In re Bluetooth*
7 *Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011)). “The Ninth Circuit has approved
8 two different methods for calculating a reasonable attorneys’ fee depending on the circumstances: the
9 lodestar method or the percentage-of-recovery method.” *In re Apple Inc. Device Performance Litig.*,
10 No. 5:18-md-02827-EJD, 2021 WL 1022866, at *1 (N.D. Cal. March 17, 2021) (citation omitted).
11 “For claims-made settlements,” as here, the lodestar method is appropriate.” *Id.* (citation and internal
12 quotation marks omitted). Indeed, “[u]nder California law, [t]he primary method for establishing the
13 amount of reasonable attorney fees is the lodestar method.” *Walsh v. Kindred Healthcare*, No. C 11-
14 00050 JSW, 2013 WL 6623224, at *1 (N.D. Cal. Dec. 16, 2013).
15 Courts may then apply a “percentage of the fund” analysis as a cross-check to confirm the
16 reasonableness of the fee award. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 944
17 (9th Cir. 2011) (“[W]e have also encouraged courts to guard against an unreasonable result by cross-
18 checking their calculations against a second method [T]he percentage-of-recovery method can .
19 . . be used to assure that counsel's fee does not dwarf class recovery.”) (internal quotation marks and
20 citations omitted).
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24 **4. Expenses and Service Awards**

25 As to litigation expenses and costs, Class Counsel are typically entitled to reimbursement of
26 all reasonable out-of-pocket expenses and costs incurred in prosecution of the claims and in
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1 obtaining a settlement. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *Vincent v. Hughes*
2 *Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977).

3 Regarding service awards, “[i]n the Ninth Circuit, courts routinely approve service award
4 payments to class representatives for their assistance to a plaintiff class.” *In re Wirsbo Non-F1807*
5 *YBFs*, No. 208CV1223NDFMLC, 2015 WL 13665077, at *6 (D. Nev. Oct. 26, 2015) (citing
6 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)). “Courts may consider
7 the following criteria in determining whether to provide incentive awards: (1) the risk to the class
8 representative in commencing suit, both financial and otherwise; (2) the notoriety and personal
9 difficulties encountered by the class representative; (3) the amount of time and effort spent by the
10 class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof)
11 enjoyed by the class representative as a result of the litigation.” *Hubbard v. Henkel Corp.*, No. 19-
12 CV-04346-JST, 2022 WL 22234699, at *5 (N.D. Cal. July 25, 2022) (citation and internal quotation
13 marks omitted). “[S]everal courts in this district have found that incentive payments of \$5,000 are
14 presumptively reasonable.” *Id.* However, larger awards can be appropriate. *See, e.g., Black v. T-*
15 *Mobile USA, Inc.*, No. 17-cv-04151-HSG, 2019 WL 3323087 at *7, 2019 U.S. Dist. LEXIS 123676
16 at *21 (N.D. Cal. July 24, 2019) (granting \$10,000 service award); *Rabin v.*
17 *PricewaterhouseCoopers LLP*, No. 16-cv-02276-JST, 2021 WL 837626 at *9, 2021 U.S. Dist.
18 LEXIS 41285 at *31 (N.D. Cal. Feb. 3, 2021) (granting \$20,000 service awards).⁵

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22 ⁵ Further, as a matter of public policy, representative service awards are necessary to encourage
23 consumers to take on the reputational risk to formally challenge unfair business practices. *See, e.g.,*
24 *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (upholding award of service
25 awards to class representatives as they “compensate class representatives for work done on behalf of
26 the class, to make up for financial or reputational risk undertaken in bringing the action, and,
27 sometimes, to recognize their willingness to act as a private attorney general”); *Wehlage v. Evergreen*
at Arvin LLC, No. 4:10-CV-05839-CW, 2012 WL 4755371, at *5 (N.D. Cal. Oct. 4, 2012) (finding
service award justified for plaintiffs “lending their names to this case, and thus subjecting themselves
to public attention”); *Miletak v. Allstate Ins. Co.*, No. C 06-03778 JW, 2012 WL 12924933, at *2

B. The Fee Award

“For claims-made settlements, like the one in this case, the lodestar method is appropriate.” *Norton v. LVNV Funding, LLC*, No. 18-CV-05051-DMR, 2021 WL 3129568, at *11 (N.D. Cal. July 23, 2021). Under the lodestar method, the district court “multiplies the number of hours the prevailing party reasonably spent on litigation by a reasonable hourly rate to determine a presumptively reasonable fee award.” *Kim*, 8 F.4th at 1180. The court can then adjust the lodestar amount “by an appropriate positive or negative multiplier” to account for factors such as “the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.” *Id.* at 1180-81 (quoting *In re Bluetooth*, 654 F.3d at 941-42). Here, consideration of Class Counsel’s lodestar strongly supports the reasonableness of the requested fee award. Class Counsel seeks an attorneys’ fee award of \$10,900,000, whereas Class Counsel’s total lodestar in this case as of the day of this motion is \$8,759,878—reflecting 11,535.1 hours of work on this matter. The fee produced by the lodestar requires a reasonable multiplier of 1.24. Further, both the hourly rates and the numbers of hours expended on this complex, hard-fought case, as well as the out-of-pocket cost Class Counsel incurred while prosecuting this action, are reasonable.

1. Class Counsel’s hourly rates are reasonable and have been previously approved by this court and courts across the country

The accompanying declarations of Class Counsel set forth the hours of work and billing rates used to calculate the lodestar. *See* Seeger Decl., Ex A; Cecchi Decl., Ex A; Berman Decl., Ex A;

(N.D. Cal. July 12, 2012) (same); *In re CenturyLink Sales Pracs. & Sec. Litig.*, No. CV 17-2832, 2020 WL 7133805, at *13 (D. Minn. Dec. 4, 2020) (awarding service award because “Class Representatives participated and willingly took on the responsibility of prosecuting the case and publicly lending their names to this lawsuit, opening themselves up to scrutiny and attention from both the public and media”).

1 Shah Decl., Ex A; Steiner Decl., Ex A. “A reasonable hourly rate is that prevailing in the community
2 for similar work performed by attorneys of comparable skill, experience, and reputation.”
3 *Sacramento Area Elec. Workers Health & Welfare Tr. v. FAMCO*, No. 17-CV-03823-BLF, 2019
4 WL 13203780, at *10 (N.D. Cal. Nov. 20, 2019) (quoting *CEM Builders*, 2018 WL 1664691, at *10.
5 “The relevant community is the forum in which the district court sits.” *Id.* (quoting *CEM Builders*,
6 2018 WL 1664691, at *10) (internal quotation marks omitted). “To determine the prevailing market
7 rate, courts may rely on attorney affidavits as well as ‘decisions by other courts awarding similar
8 rates for work in the same geographical area by attorneys with comparable levels of experience.’”
9 *Id.* (citation omitted).⁶

11 Here, as attested to in Class Counsels’ declarations, Class Counsels’ rates are the prevailing
12 rates in the appropriate legal markets and are reasonable. The billing rates vary based on the
13 attorneys’ level of experience. Partners’ and Counsels’ rates range from \$700 to \$1,395. The billing
14 rates for non-partner and non-counsel attorneys, including associates, litigation assistants, and
15 document analysts range from \$180, with most under \$450. *See* Seeger Decl., Ex A; Cecchi Decl.,
16 Ex A; Berman Decl., Ex A; Shah Decl., Ex A; Steiner Decl., Ex A. These rates are reasonable in
17 light of prevailing market rates in this district for attorneys of comparable skill and reputation, and
18 given the complexity and novelty of the issues presented by this case. *See, e.g., Rollins v. Dignity*
19 *Health*, No. 13-CV-01450-JST, 2022 WL 20184568, at *6 (N.D. Cal. July 15, 2022) (approving
20 rates ranging from \$625 to \$1,060 for partners and counsels, and \$215-\$625 for non-partner and
21 non-counsel attorneys, including associates, litigation assistants, and document analysts); *Wit v.*
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25 ⁶ As another court in this district noted with respect to a similar Song-Beverly Act suit, “the prevailing
26 rates charged in the San Francisco legal market are among the highest in the state.” *Bratton v. FCA*
27 *US LLC*, No. 17-cv-01458-JCS, at *5 (N.D. Cal. Oct. 22, 2018) (noting that the “relevant forum” for
consideration is the San Francisco Bay Area).

1 *United Behavioral Health*, No. 14-cv-02346-JCS, 2022 WL 45057, at *7 (N.D. Cal. Jan. 5, 2022)
2 (approving rates ranging from \$625 to \$1,145 for partners and counsel, \$425 to \$650 for associates,
3 \$300-\$370 for paralegals); *Schneider v. Chipotle Mexican Grill, Inc.*, 336 F.R.D. 588, 600-01 (N.D.
4 Cal. 2020) (finding that rates between \$425 and \$695 for associates, and \$830 and \$1,275 for
5 partners, are “in line with prevailing rates in this district for personnel of comparable experience,
6 skill, and reputation.”); *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 U.S. Dist. LEXIS
7 213045, 2018 WL 6619983, at *14 (N.D. Cal. Dec. 18, 2018) (approving rates ranging from \$650
8 to \$1,250 for partners or senior counsel, and \$400 to \$650 for associates); *Carlotti v. ASUS Computer*
9 *Int'l*, No. 18-cv-03369-DMR, 2020 WL 3414653, at *5 (N.D. Cal. June 22, 2020) (approving hourly
10 rates ranging from \$950 to \$1,025 for partners representing consumers in class action settlement and
11 citing cases approving these rates); *In re Wells Fargo & Co. Shareholder Derivative Litig.*, 445 F.
12 Supp. 3d 508, 527 & n.10 (N.D. Cal. 2020) (approving hourly rates for full-time staff (non-contract)
13 attorneys ranging from \$560 to \$1,075 for partners or “of counsel” attorneys, \$250 to \$660 for
14 associates, and \$365 to \$420 for staff or project attorneys); *Fitzhenry-Russell v. Coca-Cola Co.*, Case
15 No. 17-cv-603-EJD, Docket No. 95 at 17 (N.D. Cal. Oct. 3, 2019) (finding that GSLLP’s rates of
16 between \$450 and \$1,025 per hour are “reasonable and commensurate with those charged by
17 attorneys with similar experience who appear in this Court”); *In re Volkswagen “Clean Diesel”*
18 *Mktg., Sales Practices, and Prod. Liab. Litig.*, MDL No. 2672 CRB (JSC), 2017 WL 1047834, at *5
19 (N.D. Cal. Mar. 17, 2017) (approving rates ranging from \$275 to \$1,600 for partners, \$150 to \$790
20 for associates, and \$80 to \$490 for paralegals).

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24 In sum, Class Counsels' skill and experience justify the requested rates. Class Counsel
25 practice with a focus on national complex litigation, including representation of consumers in
26 consumer rights class actions, and are held in high regard by the legal community. *See* Seeger Decl.

1 ¶¶ 3-5, 9-19; Cecchi Decl. ¶¶ 25-31; Berman Decl. ¶¶ 3, 6-10; Shah Decl. ¶¶ 3, 7-8; Steiner Decl. ¶¶
2 5-9.

3 Lastly, Class Counsel calculated their lodestar using their firms' current hourly rates. Relying
4 on Class Counsel's current rates is appropriate given the deferred and contingent nature of counsel's
5 compensation. "In the Ninth Circuit, it is appropriate to compensate deferred payment 'by applying
6 the attorneys' current rates to all hours billed during the course of the litigations.'" *Brasley v.*
7 *Fearless Farris Serv. Stations, Inc.*, No. 1:08-CV-00173-BLW, 2018 WL 6251356, at *6 (D. Idaho
8 Nov. 29, 2018) (quoting *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305
9 (9th Cir. 1994)) (citing *Welch*, 480 F.3d at 947). Using current rates, rather than historical rates, will
10 fairly compensate Class Counsel for the significant risk of nonpayment taken on in connection with
11 this matter.
12

13 **2. Class Counsel reasonably spent a significant amount of time litigating this complex**
14 **class action against an intransigent defendant.**

15 The number of hours Class Counsel devoted to litigating this case is also reasonable given
16 the length of the litigation, the complexity of the case, the intransigence of the defendant, and the
17 amount of relief recovered for the Settlement Class Members. Indeed, as discussed, Honda fought
18 for every inch of ground here and agreed to provide relief to the class only after Plaintiffs' counsel
19 withstood two motions to dismiss, a motion to transfer venue, a motion for spoliation and for
20 sanctions, four motions to strike their expert witnesses, and a motion for judgment on the pleadings;
21 and obtained class certification on a multi-state basis, successfully opposed Honda's petition for
22 immediate appellate review, completed an extended expert discovery process, fought through
23 dilatory discovery tactics, briefed summary judgment, and participated in multiple rounds of
24 mediation.
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1 As stated in their respective firms' declarations, Class Counsel have logged 11535.1 hours in
 2 uncompensated time in order to achieve the Settlement in this case, which multiplied by their
 3 respective current hourly rates equals \$8,759,878 in attorneys' fees billed to date. Cecchi Decl. ¶ 20.

4 This lodestar reflects the significant effort that Class Counsel put into litigating this case
 5 against a defendant that aggressively litigated its opposition to Plaintiffs' claims, the opinions of its
 6 experts, contested class certification, and otherwise fought at every juncture through to the settlement
 7 that the Court preliminary approved and, respectfully, Plaintiffs separately move to give its final
 8 approval to.⁷

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 10 Further, Class Counsel anticipate expending additional time and effort through final approval
 11 to respond to inquiries from Settlement Class Members, prepare final approval papers, review
 12 claims, advocate on behalf of the Settlement Class Members during the claims process, and prepare
 13 their fee application. Cecchi Decl. ¶ 20. These additional hours will certainly increase lodestar. *Id.*
 14 Thus, it is likely that by the time this matter is closed, the total lodestar will be approaching, if not
 15 exceeding, \$9 million.
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18 ⁷ This Court has held that time spent on settlement efforts and preparation of a fee application are
 19 recoverable. *See Guillory v. HSBC Bank, USA*, No. 16-CV-03868-MMC, 2018 WL 3417484, at *5
 20 (N.D. Cal. July 13, 2018) (time spent on settlement efforts is recoverable); *Perez v. Rash Curtis &*
 21 *Assocs.*, No. 4:16-CV-03396-YGR, 2020 WL 1904533, *20-22 (N.D. Cal. Apr. 17, 2020) (“the
 22 Court notes that it is appropriate for a court to consider future hours in a lodestar crosscheck.”);
 23 *Herrington v. Sonoma Cnty.*, 655 F. Supp. 1111, 1116 (N.D. Cal. 1987) (“Authority indicates that
 24 the time spent in preparing the fee application is recoverable.”) (citing cases), *aff'd in part, modified*
 25 *in part, on other grounds*, 883 F.2d 1024 (9th Cir. 1989); *Serrano v. Unruh*, 32 Cal. 3d 621, 631,
 26 652 P.2d 985 (1982) (“the time expended by attorneys in obtaining a reasonable fee is justifiably
 27 included in the attorneys' fee application, and in the court's fee award.”) (citing cases); *see also*
Davis v. City & Cnty. of San Francisco, 976 F.2d 1536, 1544 (9th Cir. 1992) (“This Court has
 repeatedly held that time spent by counsel in establishing the right to a fee award is compensable.”)
 (citing cases); *Aarons*, 2014 WL 4090564, at *15 (“an attorney fee award should ordinarily include
 compensation for all the hours reasonably spent, including those relating solely to the fee.”) (citation
 omitted); *Robertson v. Fleetwood Travel Trailers of California, Inc.*, 144 Cal. App. 4th 785, 817
 (2006) (awarding \$13,566 for preparing fee motion).

3. All Other Factors Support Approval of the Requested Fee

In *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002), the Ninth Circuit outlined a number of factors that courts may consider in determining the reasonableness of a fee award, including: (i) the results achieved; (ii) the risk of litigation; (iii) the skill required and the quality of work; (iv) the contingent nature of the fee and the financial burden carried by counsel; (v) reaction of the class; (vi) awards made in similar actions, and (vi) comparison with lodestar. *Id.* at 1048-50; *Hamilton v. Juul Labs, Inc.*, No. 20-CV-03710-EMC, 2021 WL 5331451, at *8 (N.D. Cal. Nov. 16, 2021) (same); *Joh v. Am. Income Life Ins. Co.*, No. 18-CV-06364-TSH, 2021 WL 66305, at *6 (N.D. Cal. Jan. 7, 2021). “Under both the percentage-of-recovery and lodestar multiplier methods, the fee can be adjusted either up or down based on [these] factors.” *Hamilton*, 2021 WL 5331451, at *8. As set forth below, all of these factors militate in favor of approving the requested fee.

a. The Results Achieved

Class Counsel achieved significant relief for Class Members. Indeed, the the Settlement essentially makes Class Members whole, putting them in the position they were in prior to encountering the defect in their HFL systems by providing compensation for its replacement or lack of use. In particular, the Settlement provides reimbursement payments to each Class Member for out of pocket payments for parts or labor up to \$500 and/or an HFL Disconnection Payment of \$350, if the Class Member had had paid for the replacement, or had the system disconnected, prior to the vehicle reaching 10 years or 120,000 miles. In short, Class Members have benefited and will benefit as a result of Class Counsel's work in this litigation. This factor supports Class Counsel's fee request.

b. Litigation Risk

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2 “The risk that further litigation might result in Plaintiffs not recovering at all, particularly a
3 case involving complicated legal issues, is a significant factor in the award of fees.” *In re Omnivision*
4 *Techs., Inc.*, 559 F. Supp. 2d 1036, 1046-47 (N.D. Cal. 2008) (citing *Vizcaino*, 290 F.3d at 1048).
5 Honda does not concede its liability here, and the case was complex and posed a significant risk of
6 non-payment to Class Members and, by extension, Class Counsel. Should Settlement Class Counsel
7 have been required prosecute these claims against Honda to conclusion, any recovery would come
8 years in the future and at far greater expense to the Class.
9

10 There are also potential monetary risks associated with litigation. Despite their strong claims,
11 Class Counsel recognizes there are always uncertainties in litigation. It is possible that a litigation
12 Class would receive less or nothing at all, despite the compelling merit of its claims, because of the
13 risks of litigation. Such monetary risks include that (1) any class recovery obtained at trial could be
14 reduced through offsets and (2) Honda could reasonably be expected to defend against the action,
15 including by challenging Plaintiffs’ Fourth Amended Complaint and their legal claims. One such
16 risk is recent Ninth Circuit precedent restricting claims for equitable restitution under the California
17 Legal Remedies Act (“CRLA”) and the Unfair Competition Law (“UCL”). In *Sonner v. Premier*
18 *Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020), the Ninth Circuit held that in order to plead a claim
19 for equitable restitution under the CLRA and UCL, a plaintiff must allege that they lack an adequate
20 remedy at law. Honda has filed a motion to dismiss this claim, which the Court has terminated
21 pending settlement approval. Additional hurdles facing Plaintiffs’ claims are motions of Honda to
22 strike the expert witness testimony of two of Plaintiffs’ experts, and Honda’s motion for summary
23 judgment, which the Court has also terminated pending approval of the settlement. *See Cecchi Decl.*
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¶¶ 14-15. Honda's counsel is also a formidable and respected law firm that sought dismissal of Plaintiffs' case at every step.

On all of the liability and damages issues, Plaintiffs would have had to prevail at these several further stages, and then again at trial, and again on appeal. At each stage, there would be very significant risks attendant to the continued prosecution of the action, as well as considerable delay. That Class Counsel faced and overcame these very significant risks during the course of the litigation, through their extensive efforts and skilled lawyering, strongly supports the requested fee.

Notwithstanding these risks, Class Counsel dedicated many thousands of hours of their attorneys' and other staff members' time to litigating this action as forcefully as possible for the Class, and incurred over \$1 million in litigation expenses in prosecuting the claims for the Class. These risks further support the reasonableness of the requested fee. *See Weeks v. Google LLC*, No. 5:18-CV-00801-NC, 2019 WL 8135563, at *3 (N.D. Cal. Dec. 13, 2019) ("Class Counsel took on substantial risk in connection with the litigation. The representation was carried out on a contingent basis and lasted nearly two years. Class Counsel was also opposed by skilled and respected counsel for Defendants, resulting in substantial and difficult litigation, discovery, and settlement negotiations. These factors each justify an upward departure from the 25% benchmark.") (citing *Wing v. Asarco Inc.*, 114 F.3d 986, 989 (9th Cir. 1997); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 261 (N.D. Cal. 2015); *Wannemacher v. Carrington Mortg. Servs., LLC*, No. SACV 12-2016 FMO (ANx), 2014 WL 12586117, at *9 (C.D. Cal. Dec. 22, 2014); *Larsen v. Trader Joe's Co.*, No. 11-CV-05188-WHO, 2014 WL 3404531, at *8 (N.D. Cal. July 11, 2014)).

c. The Skill Required and Quality of Work Performed

Courts also consider the skill required and quality of work performed in determining what fee to award. *See Heritage Bond*, 2005 WL 1594389, at *12 ("The experience of counsel is also a

1 factor in determining the appropriate fee award”). “The ‘prosecution and management of a complex
2 national class action requires unique legal skills and abilities.’” *Omnivision*, 559 F. Supp. 2d at 1047.

3 Here, Class Counsel prosecuted the case vigorously, provided high quality legal services, and
4 achieved an excellent result for the Class. Plaintiffs' Counsel are among the most experienced and
5 skilled practitioners in the class action field, as discussed in the firm biographies set forth in the
6 respective Class Counsels' Declarations. Plaintiffs' Counsel's reputation as experienced and
7 competent counsel in complex class action cases, willing and able to litigate the case to trial if
8 necessary, facilitated their ability to deliver this recovery for the Class. The quality and vigor of
9 opposing counsel are also considered in evaluating the services rendered by Plaintiffs' Counsel. *See*,
10 *e.g.*, *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013). Here, Honda was
11 represented by very experienced attorneys practicing at the top of their fields from Shook, Hardy &
12 Bacon LLP, a well-respected national law firm. The attorneys were highly skilled and supported by
13 considerable financial resources. Nevertheless, Plaintiffs' Counsel were able to persuade Defendant
14 to settle the case on terms favorable to the Class.
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17 **d. Contingent Nature of Representation and Opportunity Cost**

18 Class Counsel brought this claim on a purely contingent basis, agreeing to advance all
19 necessary expenses, knowing that they would receive a fee only if there was a recovery. It is an
20 established practice to reward attorneys who assume representation on a contingent basis with an
21 enhanced fee to compensate them for the risk that they might be paid nothing at all. *In re Washington*
22 *Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994); *In re Nuvelo, Inc. Sec. Litig.*,
23 2011 WL 2650592, at *2 (N.D. Cal. July 6, 2011). “This practice encourages the legal profession to
24 assume such a risk and promotes competent representation for plaintiffs who could not otherwise
25 hire an attorney.” *Id.* Here, Class Counsel received no compensation during the more than over
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1 seven years of this litigation. Unlike defense counsel—who typically receive payment on a timely
 2 basis whether they win or lose, Class Counsel sustained the entire risk that they would have to fund
 3 the expenses of this action and that, unless Plaintiffs' Counsel succeeded, they would not be entitled
 4 to any compensation whatsoever. Accordingly, the contingent nature of the representation, and the
 5 burden carried by Plaintiffs' Counsel, support the requested fee.

6 **e. Reaction of the Class**

7 Notice of the Settlement was distributed to all Class members. *See* Declaration of Gina
 8 Intrepido Bowden Regarding Settlement Notice Plan Implementation ¶¶ 7-23, 30.⁸ Only five
 9 objections have been filed with the Court to date. ECF Nos. 438-442. While the time for the
 10 submission of objections ends on April 18, 2024, this small number of objectors speaks loadly abut
 11 the results obtained for the Class. Moreover, only one objection criticizes the attorney's fee, but only
 12 in general terms and with an argument that not many Class Members will benefit from the relief. *See*
 13 ECF No. 439. This ignores that there are over 171,000 Class Vehicles whose owners may qualify
 14 for the Settlement benefits. At any rate, such a low amount of objections supports the requested fee.
 15 *See Congdon v. Uber Techs., Inc.*, No. 16-CV-02499-YGR, 2019 WL 2327922, at *3 (N.D. Cal.
 16 May 31, 2019) (where only four class members out of 475,000 objected to proposed fee, “[t]he Court
 17 considers this a strong, positive response from the class, supporting Class Counsel's requested fees”).
 18 Moreover. As of this date, only 10 class members have sought to opt-out of the Settlement.
 19 Declaration of Steve Felix ¶ 12.⁹ In a Class potentially encompassing hundreds of thousands of
 20 owners, this is a minuscule number. “Such a low opt-out rate suggests the support of Class Members
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 24

25 ⁸ This declaration was filed in support of Plaintiffs' Motion for Final Approval of the Class
 26 Settlement.

27 ⁹ The Declaration of Steve Felix has been submitted in support of Plaintiffs' Motion for Final
 28 Approval of Class Settlement and is Exhibit 2 to the Declaration of Christopher Seeger.

1 and [further] counsels in favor of approval.” *O'Connor v. Uber Techs., Inc.*, 2019 WL 4394401, at
 2 *6 (N.D. Cal. Sept. 13, 2019), *aff'd*, 2019 WL 7602362 (9th Cir. Dec. 20, 2019) (considering an opt-
 3 out rate of “less than even .1%”) (citing *Nat'l Coal. of Associations of 7-Eleven Franchisees v.*
 4 *Southland Corp.*, 210 F.3d 384 (9th Cir. 2000)) (finding that a 0.6% opt-out rate suggests “that the
 5 settlement was a favorable one”). This factor supports an award of the requested fees.

7 **4. The Circumstances Justify a Modest Lodestar Multiplier.**

8 The district court has discretion to adjust the lodestar upward or downward using a multiplier
 9 that reflects a host of reasonableness factors, including “the quality of the representation, the novelty
 10 and complexity of the issues, the results obtained, and the contingent risk presented.” ” *Polee v.*
 11 *Cent. Contra Costa Transit Auth.*, 516 F. Supp. 3d 993, 1002–03 (N.D. Cal. 2021).-. The purpose
 12 of a multiplier is “to compensate for the risk of loss generally in contingency cases,” because a
 13 “lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair
 14 market value of his work if he is paid only for the second half of these functions.” *Ketchum v. Moses*,
 15 24 Cal. 4th 1122, 1133 (2001).

17 In the Ninth Circuit, lodestar multipliers ranging from one to four are frequently awarded in
 18 class actions such as this one. *See Vizcaino*, 290 F.3d at 1051 n.6 (showing most multipliers are in
 19 the 1.5 to 3.0 range); *Mergens v. Sloan Valve Co.*, No. CV1605255SJOSKX, 2017 WL 9486153, at
 20 *12 (C.D. Cal. Sept. 18, 2017) (approving 1.71 multiplier in claims-made toilet repair reimbursement
 21 settlement); *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1010 (N.D. Cal. 2015)
 22 (“the precise multiplier (1.7) is well within the range approved in the Ninth Circuit in other successful
 23 class actions.”) (citing cases); *Hopkins v. Stryker Sales Corp.*, 11CV2786-LHK, 2013 WL 496358,
 24 at *4 (N.D. Cal. Feb. 6, 2013) (“Multipliers of 1 to 4 are commonly found to be appropriate in
 25 complex class action cases.”); *Parkinson v. Hyundai Motor Am.*, 796 F.Supp.2d 1160, 1170 (C.D.
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1 Cal. 2010) (“Where appropriate, multipliers may range from 1.2 to 4 or even higher.”); *Van Vranken*
2 *v. Atl. Richfield Co.*, 901 F. Supp. 294, 298-99 (N.D. Cal. 1995) (holding that a multiplier of 3.6 was
3 “well within the acceptable range for fee awards in complicated class action litigation” and that
4 “[m]ultipliers in the 3-4 range are common”); *see also Vaughn v. American Honda Motor Co.*, 627
5 F. Supp.2d 738, 751 (E.D. Tex. 2007) (approving 2.26 multiplier to lodestar due to contingent and
6 complexity of litigating defect action against automobile defendant); *O’Keefe v. Mercedes-Benz USA*
7 *LLC*, 214 F.R.D. 266, 311 (E.D. Pa. 2003) (approving multiplier of 2.95 due to uncertainty of
8 undertaking automobile case involving allegation of “fraudulent concealment” of alleged product
9 defect); *In re General Motors Corp. Pickup Fuel Tank Prods. Liability Litig.*, 1994 WL 30301, at *4
10 (E.D. Pa. Feb. 2, 1994) (approving multiplier of 3 to lodestar due to difficulty of proving merits of
11 case and that “reasonableness is further supported by the fact that the multiplier will continue to be
12 reduced by additional work done by plaintiffs’ counsel”). Under California law, multipliers of 2 to
13 4 or even higher are also typical. *See Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D.
14 Cal. 2016) (applying California law and finding multiplier of 3.07 “well within the range of
15 reasonable multipliers”); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001);
16 *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 (2008) (affirming 2.5 multiplier).

19 Here, taking into account the base lodestar of \$8,759.878, the requested attorney’s fee reflects
20 a multiplier of 1.24, well within the range for reasonable multipliers. The multiplier will also
21 decrease as Class Counsel continue to devote additional time toward final settlement approval,
22 settlement administration, and class member inquiries in the coming months. Therefore, the lodestar
23 cross-check confirms the reasonableness of awarding the 25% fee. *See Laffitte v. Robert Half Int’l*
24 *Inc.*, 1 Cal.5th 480, 496 (2016) (“If the implied multiplier is reasonable, then the cross-check
25 confirms the reasonableness of the percentage-based fee”).
26

1 The results here are a testament to Class Counsel's high degree of skill and experience:
 2 another justification for the requested 1.24 multiplier. The skills and experience of Class Counsel
 3 were necessary here because of both the complexity of the issues in this case, and the substantial
 4 risks and burdens that Class Counsel undertook. Taking this case on a contingency basis meant that
 5 Class Counsel was not guaranteed *any* payment, despite all of their efforts. And the risk of failure
 6 was significant: the U.S. Supreme Court's decisions in cases like *Wal-Mart Stores, Inc. v. Dukes*,
 7 564 U.S. 338 (2011), *Comcast Corp. v. Behrend*, 469 U.S. 27 (2013), and the Ninth Circuit's
 8 decisions in *Sonner* and *Floyd v. Am. Honda Motor Co.*, 966 F.3d 1027 (9th Cir. 2020) (requiring
 9 100 named plaintiffs in order to bring claim under Magnuson Moss Warranty Act), have increased
 10 the effort and expense required to succeed in class actions such as this one, because defendants are
 11 more likely to challenge certification and less likely to settle.¹⁰ Attorneys must therefore engage in
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 14 _____
 15 ¹⁰ See, e.g., Sean Farhang, SUPREME COURT OVERSIGHT OF THE FEDERAL RULES: A PRINCIPAL-
 16 AGENT PROBLEM?, 72 DePaul L. Rev. 363, 394 n.38 (2023) (“*Wal-Mart* is widely regarded as making
 17 commonality more difficult to satisfy, and *Comcast* is typically seen as taking a restrictive approach
 18 to predominance.”); Elena Kamenir, SEEKING ANTITRUST CLASS CERTIFICATION: THE ROLE OF
 19 INDIVIDUAL DAMAGE CALCULATIONS IN MEETING CLASS ACTION PREDOMINANCE REQUIREMENTS,
 20 23 Geo. Mason L. Rev. 199, 201–02 (2015) (“If there is ultimately a prevailing interpretation of
 21 *Comcast* among the courts, therefore, it can potentially have far-reaching consequences beyond
 22 resolving issues regarding predominance and class certification. For example, an interpretation
 23 requiring proof of common damages for certification can affect the plaintiff class's ability to access
 24 the courts, thereby decreasing private . . . enforcement and diminishing the role of Rule 23(b)(3)
 25 class action suits in market regulation. An interpretation requiring a matching of theory of liability
 26 with theory of damages at the certification stage will have important tactical implications regarding
 27 expert testimony, as well.”); Spencer, A. Benjamin, CLASS ACTIONS, HEIGHTENED COMMONALITY,
 AND DECLINING ACCESS TO JUSTICE, 93 B.U.L. Rev. 441, 442 (Mar. 2013) (“an unfortunate
 consequence of [] *Dukes*...will be the enlivening of challenges to class certifications that would
 otherwise never have been imagined.”); Robert G. Bone, THE MISGUIDED SEARCH FOR CLASS UNITY,
 82 Geo. Wash. L. Rev. 651, 698 (2014) (noting “tightening of certification requirements over the
 past fifteen years”); Lee F. Berger, Sophia A. Vandergrift, THE ANTITRUST DIVISION'S STAY
 PRACTICE IN CIVIL LITIGATION PARALLELING CRIMINAL INVESTIGATIONS IS GOOD POLICY, at 86, 89
 (Antitrust, Fall 2013) (noting “more rigorous standards now applied to class certification under
Comcast and *Walmart*, which heighten the requirements for showing class-wide impact and damages
 through expert analysis”) (footnote omitted).

1 more pre-complaint work and extensive fact discovery in the litigation. *See* Lamm, Katherine E.,
2 WORK IN PROGRESS: CIVIL RIGHTS CLASS ACTIONS AFTER WAL-MART V. DUKES, 50 HARV. C.R.-
3 C.L.L. REV. 1534, 165-67 (2015) (“*Dukes* subjects plaintiffs to heightened scrutiny at class
4 certification consistent with a broader trend of forcing litigants to bring more to the table in order to
5 get to trial, including an increased burden of pleading and procedural hurdles throughout the pretrial
6 process”). Class Counsel should be compensated accordingly. *Chemical Bank v. City of Seattle*, 19
7 F.3d 1291, 1299-1301 (9th Cir. 1994) (“attorneys whose compensation depends on their winning the
8 case, must make up in compensation in the cases they win for the lack of compensation in the cases
9 they lose.”).

10
11 Finally, the lodestar multiplier is necessary to compensate Class Counsel for the additional
12 uncompensated work they will continue to do on this case. Not only must Class Counsel brief and
13 argue a final approval motion, addressing any class member concerns, but they have been, and will
14 undoubtedly continue to communicate with Class Members about their individual recoveries.

15
16 **5. A “percentage of fund” cross-check confirms the Reasonableness of Class Counsel’s
fee request**

17 The amount of Attorneys’ Fees and Costs also passes muster under a percentage cross-check
18 against the “constructive fund” of relief made available to the Settlement Class. *See Brommfield v.*
19 *Craft Brew All., Inc.*, No. 17-cv-01027-BLF, 2020 WL 1972505, at 816 (N.D. Cal. Feb. 5, 2020)
20 (“The constructive fund to conduct this cross-check may include settlement administration costs,
21 litigation expenses, and the allotment for attorneys’ fees in its valuation of a constructive fund for its
22 percentage of recovery cross-check analysis because this is the ‘total amount defendants were willing
23 to spend to settle the case.’”) (quoting *In re Bluetooth*, 654 F.3d at 945). Here, the “constructive
24 fund” is approximated to be upwards of \$33 million, including the cash benefits available to the
25 Settlement Class, the full amount of notice and administrative costs, and the full amount of the
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1 attorneys' fees and costs. Cecchi Decl. ¶¶ 11-13. Thus, the requested \$10,900,000 for attorneys'
2 fees accounts for less than one-third the total constructive value of the Settlement, which is within
3 the range of reasonableness. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457 (9th Cir.
4 2000) (affirming fee award of 33 1/3% of fund); *In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373,
5 379 (9th Cir. 1995) (awarding attorneys' fees equal to 33% of settlement fund); *McPhail v. First*
6 *Command Fin. Planning, Inc.*, No. 05cv179-IEG-JMA, 2009 WL 839841, at *7 (S.D. Cal. Mar. 30,
7 2009) (awarding attorneys' fees of 30% for first \$10 million of the settlement fund and 25% for the
8 remaining \$2 million.) “[I]n most common fund cases the award exceeds [the 25%] benchmark.”
9 *Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009)
10 (citing *Activision*, 723 F. Supp. at 1377-78 (“nearly all common fund awards range around 30%”).
11 And courts in similar consumer class actions have approved the allocation of 30% of funds to
12 attorney fees. *See e.g., Weeks*, 2019 WL 8135563, at *3 (holding that “[t]he 30% award [in a
13 consumer protection case] is also on par with similar cases”) (citing *Vizcaino*, 290 F.3d at 1047; *In*
14 *re Lenovo Adware Litig.*, No. 15-MD-02624-HSG, 2019 WL 1791420, at *8 (N.D. Cal. Apr. 24,
15 2019) (awarding 30%); *Hendricks v. Starkist Co.*, No. 13-CV-00729-HSG, 2016 WL 5462423, at
16 *12 (N.D. Cal. Sept. 29, 2016) (finding award of 30% reasonable in consumer fraud case), *aff'd*, 754
17 F. App'x 510 (9th Cir. 2018)).

20 C. Class Counsel’s Request for Reimbursement of Expenses is also Reasonable

21 “Attorneys may recover their reasonable expenses that would typically be billed to paying
22 clients in non-contingency matters.” *In re Omnivision Techs.*, 559 F. Supp. 2d at 1048; *see also*
23 *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *22 (N.D. Cal. Feb. 11, 2016) (“courts throughout the
24 Ninth Circuit regularly award litigation costs and expenses—including photocopying, printing,
25 postage, court costs, research on online databases, experts and consultants, and reasonable travel
26

1 expenses.”). Here, Class Counsel seek reimbursement of \$12,048.11 in out-of-pocket costs incurred
2 during this litigation. That amount is more than reasonable given the significant legal work
3 performed in this case, including taking and defending the depositions of over 13 fact witnesses,
4 including those of Plaintiffs (some of whom appeared more than once), taking and defending the
5 depositions of nine (9) experts, responding to numerous motions filed by Honda, moving for class
6 certification and opposing Honda’s appeal of the class certification decision. This request is also
7 adequately documented. *See* Seeger Decl., Ex C; Cecchi Decl., Ex C; Berman Decl., Ex C; Shah
8 Decl., Ex C; Steiner Decl., Ex C. Lastly, this request does not exceed the amount stated in the class
9 notice. For these reasons, Class Counsel should recover these expenses.
10

11 **D. Service Awards**

12 Plaintiffs request that the Court award \$7,500 in incentive fees to the Class Representatives.
13 “Incentive awards are payments to class representatives for their service to the class in bringing the
14 lawsuit.” *Radcliffe v. Experian Info. Sols., Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013). Service awards
15 serve a dual purpose: they advance public policy by encouraging individuals to spearhead efforts to
16 protect the rights of a class of similarly aggrieved individuals, and they compensate those individuals
17 for their time, effort, and inconvenience. *See, e.g., Van Vranken v. Atl. Richfield Co.*, 901 F. Supp.
18 294, 299 (N.D. Cal. 1995) (awarding named plaintiff \$50,000 for “participat[ing] in 49 telephone
19 conferences and five meetings with Class Counsel, attend[ing] three pre-trial hearings, ha[ving] his
20 deposition taken twice, and testif[ying] at trial”). “It is well-established in this circuit that named
21 plaintiffs in a class action are eligible for reasonable incentive payments, also known as service
22 awards.” *Wren v. RGIS Inventory Specialists*, No. 06-cv-05778 JCS, 2011 WL 1230826, at *31 (N.D.
23 Cal. Apr. 1, 2011), *supplemented*, No. 06-cv-05778 JCS, 2011 WL 1838562 (N.D. Cal. May 13,
24 2011). An incentive award of \$5,000 is presumptively reasonable, and an award of \$25,000 or even
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1 \$10,000 is considered “quite high.” *See Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 335 (N.D.
2 Cal. 2014) (*citing Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2012 WL 381202, at *7 (N.D.
3 Cal. Feb. 6, 2012)). Nonetheless, a higher award may be appropriate where class representatives
4 expend significant time and effort on the litigation and face the risk of retaliation or other personal
5 risks; where the class overall has greatly benefitted from the class representatives' efforts; and where
6 the incentive awards represent an insignificant percentage of the overall recovery. *Wren*, 2011 WL
7 1230826, at *32.
8

9 In this case, Plaintiffs have demonstrated that Plaintiffs Lindsay and Jeff Aberin, Don
10 Awtrey, Charles Burgess, John Kelly, and Joy Matza are each entitled to an incentive award of
11 \$7,500. These Class Representatives contributed substantially to the prosecution of this case. Cecchi
12 Decl., ¶ 32. Foremost, upon becoming involved, they each made a decision to act as advocates on
13 behalf of hundreds of their peers, and taking the risk of the litigation solely on themselves. Each
14 made their vehicles available for day-long inspections and were deposed, some on more than one
15 day, assisted in the production of documents and in responding to interrogatories, and otherwise
16 remained engaged in prosecuting their claims on behalf of the class they sought to represent. *See id.*
17

18 **III. Conclusion**

19 For all of these reasons, Plaintiffs and Class Counsel respectfully request that the Court
20 approve an award of \$11,937,458.66 to Class Counsel for attorneys' fees and expenses, and approve
21 service awards for Class Representatives Lindsay and Jeff Aberin, Don Awtrey, Charles Burgess,
22 John Kelly, and Joy Matza in the amount of \$7,500 each.
23

24 Dated: April 4, 2024

Respectfully submitted,

25
26 By: /s/ Christopher A. Seeger
Christopher A. Seeger (admitted *pro hac vice*)
27 SEEGER WEISS LLP

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Co-Lead Class and Settlement Class Counsel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

Aberin et al. v. American Honda Motor Co., Inc.

Case No. 4:16-cv-04384-JST

**DECLARATION OF JAMES E. CECCHI
IN SUPPORT OF PLAINTIFFS'
MOTION FOR APPROVAL OF
ATTORNEYS' FEES, COSTS AND
CLASS REPRESENTATIVES' SERVICE
AWARDS**

DECLARATION OF JAMES E. CECCHI IN SUPPORT OF PLAINTIFFS'
MOTION FOR APPROVAL OF ATTORNEYS' FEES, COSTS AND CLASS
REPRESENTATIVES' SERVICE AWARDS
CASE No. 4:16-cv-04384-JST

1 I, JAMES E. CECCHI, declare:

2 1. I am an attorney licensed to practice in New Jersey and am a shareholder of the law
3 firm of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, interim co-Class Counsel for Plaintiffs
4 in this action. I have been admitted pro hac vice in this matter. Our firm, along with the law firm
5 of Seeger Weiss LLP, were retained by the class representatives in this matter. I have personal
6 knowledge of the information stated below based on my knowledge of this case and review of the
7 file and would be competent to testify thereto. I submit this declaration in support of Plaintiffs'
8 motion for attorney's fees, costs, and class representative service awards.
9

10 2. This action and the Settlement involve owners and lessees of certain Acura
11 automobiles: model years 2004-2008 TL, 2005-2008 MDX, and 2007-2009 RDX, purchased in
12 the states of California, Kansas, New York, and Washington. Plaintiffs claim that the Defendant
13 American Honda Company, Inc. ("Honda" or "AHM") failed to disclose a design defect in the
14 "hands-free" calling system, HandsFreeLink™ ("HFL"), that causes it to fail to switch off when
15 not in use and continue to operate as if it were in use, even when the vehicle was off and the key
16 removed. This design defect in the HFL system causes excessive parasitic electrical drain, which
17 results in frequent battery replacements and, once the warranty had lapsed, class members either
18 hundreds of dollars to replace the HFL unit when the defect is triggered (as Honda's Service
19 Bulletins recommend) or disconnecting the HFL unit and losing use of the HFL feature. The defect
20 in the HFL system also creates a safety hazard, as a compromised vehicle battery may fail to start
21 at any time, including if the owner is far from home or experiencing an emergency, or can cause a
22 vehicle to lose power, including the use of headlights, during operation.
23

24 3. Plaintiffs assert that the alleged defect caused them to suffer out-of-pocket losses
25 Plaintiffs assert that the alleged defect caused them to suffer out-of-pocket losses claims under
26

27
DECLARATION OF JAMES E. CECCHI IN SUPPORT OF PLAINTIFFS'
MOTION FOR APPROVAL OF ATTORNEYS' FEES, COSTS AND CLASS
REPRESENTATIVES' SERVICE AWARDS

1 the laws of California, Kansas, New York, and Washington.

2 4. The case has lasted nearly eight years and has been vigorously defended by
3 defendant as was its right. As a consequence, Class Counsel has invested a significant quantum
4 of effort prosecuting the case to this point. By way of example, Class Counsel incurred thousands
5 of hours of attorney time responding to Honda's numerous efforts to dismiss or narrow this case,
6 investigating the facts and legal claims against Honda, as well as communicating with and vetting the
7 claims of the Plaintiffs. Class Counsel researched and authored five complaints (ECF Nos. 1, 29, 98,
8 148, 403), and opposed a motion to transfer venue (ECF Nos. 30-34), two motions for spoliation of
9 evidence and sanctions (ECF Nos. 105, 116-17), a motion for judgment on the pleadings (ECF Nos. 355,
10 365), a motion for summary judgment (ECF Nos. 357-58, 366), six motions to strike Plaintiffs' expert
11 witnesses (ECF Nos. 264-68, 359-60), and three motions to dismiss by Honda (ECF Nos. 42-44, 105,
12 407). Class counsel also successfully moved for class certification (ECF Nos. 259, 260, 275-79, 281,
13 291), and successfully opposed Honda's Rule 23(f) petition for permission to appeal the Court's class
14 certification approval decision, ECF No. 302; Dkt. No. 21-80033 (9th Cir.). Throughout this process,
15 Class Counsel participated in regular court conferences regarding the efficient and fair management of
16 this litigation, ensuring that the interests of the Class were vigorously represented.

17 5. Class Counsel also engaged in significant discovery to ensure that they fully
18 understood all the strengths, weaknesses, and risks associated with Class Members' claims before
19 engaging in settlement negotiations. Class Counsel drafted and served multiple sets of written
20 discovery and subpoenas. Class Counsel also drafted and served responses to multiple sets of
21 written discovery propounded by Honda. Class Counsel further took depositions of Honda's
22 experts, its employees and of Honda itself and defended Honda's depositions of Plaintiffs' experts
23 and Plaintiffs (some of whom were deposed on two occasions). The fulsome exchange of
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1 discovery between the parties also resulted in a substantial number of discovery disputes that Class
2 Counsel navigated to ensure Class Members' interests were represented to the fullest extent
3 possible.

4 6. As set forth below, I (and my firm) have extensive experience in consumer class
5 action litigation. Christopher Seeger and I have been appointed as lead counsel in similar class
6 actions. In settling this case, we considered the risk of litigation, as well as the costs and
7 consequences of delay had this matter not been resolved by way of settlement. Furthermore,
8 settlement negotiations were extensive and conducted at arm's length.

9 7. I participated in the extensive settlement negotiations in this matter at two key
10 junctures. Before undertaking the time and expense of expert discovery in advance of class
11 briefing, and the subsequent costs of class briefing and responding to Defendant's *Daubert*
12 challenges, Plaintiffs undertook to resolve their claims with Defendant through mediation before
13 Ellen Relkin on February 11, 2020. ECF Nos 229, 291. The mediation were unsuccessful but
14 Plaintiffs' motion for class certification, and opposition to Defendant's challenges to their experts,
15 were eventually successful.

16 8. While the litigation of the class claims proceeded, I conducted private discussions
17 and investigation, and independent verification of the facts in this matter. In addition, the parties
18 mediated the case with Hon Daniel J. Buckley (ret.), a well-respected, neutral mediator who is
19 experienced in mediating claims of the kind at issue in this action, on September 22, 2022 and
20 October 12, 2022. I participated personally in these mediation sessions.

21 9. The negotiations in this matter were at arm's length and the defendant Honda's
22 position was zealously represented. I thoroughly vetted and discussed the merits and procedural
23 obstacles, including the human and financial costs of protracted litigation on the demographic that
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1 makes up the class. We considered various potential outcomes, and determined that the settlement
2 obtained is the very best outcome we could achieve for the class under the circumstances. The
3 issues of incentive awards, costs of administration and attorneys' fees were all negotiated after,
4 separate and apart from the remedies we accomplished on behalf of the class. I believe this
5 settlement is an excellent result, fair and reasonable, and should be approved.

6 10. As presented in Plaintiffs' motion for preliminary approval, and the supporting
7 Declaration of Christopher A. Seeger, which I incorporate here by reference, the cash benefits
8 available to individual members of the Settlement Class may exceed those that would have been
9 available at trial, but without the attendant risks of trial and subsequent appeals. ECF No. 429-1 at
10 ¶¶ 8-9.

11 11. Moreover, when viewed as a whole, the Settlement is worth approximately \$33
12 million, which includes the value of cash benefits made available to the Settlement Class, the costs
13 of notice paid for by Honda, the value of the administration of the Settlement, and the attorneys'
14 fees and costs incurred in reaching this settlement. First, the costs of notice, which included direct
15 mailing, a social media component and follow-up remainder emails, is estimated by the Notice
16 Administrator to be \$675,000. Bowden Decl. ¶ 28. Second, while Defendant served as the
17 Settlement Administrator, it is estimated by JND, which routinely handles such responsibilities,
18 that the cost of these services by a third party would be approximately \$575,000. *Id.* ¶ 29. Third,
19 as set forth below and, in more detail, in the accompanying declarations of my co-counsel here,
20 the attorneys' fees and costs incurred are \$9,797,336.66.

21 12. Fourth, the value of the cash benefits available to the Class is estimated, based in
22 part on an analysis requested by Class Counsel of Richard Eichmann of NERA to update Honda's
23 own projection of the "CRAZY" demand for replacement HFL units undertaken in 2013 (ECF No.
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1 259 at 10-12, Exhibit “X”). Attached as Exhibit “H” is a copy of the Report of Richard J.
2 Eichmann. However, an analysis such as Honda’s is grounded on tallies of HFL units and does
3 not directly measure the number of disconnections nor consider that the Settlement provides an
4 HFL Disconnection Payment of \$350 simply with proof of an “indication that the vehicle suffered
5 from excessive parasitic drain from the HFL Unit that was not replaced” whether or not it was
6 actually disconnected. Settlement Agreement § 2.30. That is, such an analysis is underinclusive.

7
8 13. NERA estimates that 27.2% of Class Vehicles will have an HFL unit replaced or
9 disconnected in the ten (10) year period provided for in the Settlement. Of this total, 38,364
10 vehicles are estimated to have replacement HFL units and 8,413 are estimated to have their HFL
11 units disconnected. Using the cash benefits available through the Settlement, this amounts to
12 upwards of \$19 million of potential HFL Replacement Reimbursements and nearly \$3 million in
13 HFL Disconnection Payments.

14
15 14. Although Plaintiffs remain confident in their position heading into a class trial,
16 Class Counsel acknowledges their claims could face difficulties at trial, and there are substantial
17 risks that the continued litigation would not yield a better result than this Settlement, which are set
18 out at greater length here and in the accompanying Memorandum of Points and Authorities.

19
20 15. First, Plaintiffs faced obstacles in having their allegations survive Honda’s motion
21 for judgment on the pleadings. One such hurdle is recent Ninth Circuit precedent restricting claims
22 for equitable restitution under the California Legal Remedies Act (“CRLA”) and the Unfair
23 Competition Law (“UCL”). In *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020),
24 the Ninth Circuit held that in order to plead a claim for equitable restitution under the CLRA and
25 UCL, a plaintiff must allege that they lack an adequate remedy at law. In this Court’s recent
26 decision granting in part Honda’s motion for judgment on the pleadings, the Court in relevant part

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1 rejected Plaintiffs' claims for restitution under the CLRA and UCL, for failure to plead an
2 inadequate remedy at law, based on *Sonner*. See *Lou v. Am. Honda Motor Co., Inc.*, No. 16-CV-
3 04384-JST, 2022 WL 18539358, at *2 (N.D. Cal. Aug. 26, 2022). The Court granted the Plaintiffs'
4 request for leave to amend those claims to add the allegation that they lack an adequate remedy at
5 law. *Id.* at *7. The Plaintiffs filed a Fourth Amended Complaint ("FAC") on September 9, 2022,
6 alleging that they lacked an adequate remedy at law for purposes of their California CLRA and
7 UCL claims. ECF No. 403 ¶ 717. In response, Honda filed a motion to dismiss the FAC, seeking
8 dismissal of the California CLRA and UCL claims on various grounds, including the ground that
9 under *Sonner* the Plaintiffs had failed to plead the lack of an adequate remedy at law. ECF No.
10 407. While the Plaintiffs filed an unopposed motion for preliminary approval of a settlement
11 between the parties, ECF No. 429, and in light of the class action settlement the Court has
12 terminated as moot Honda's pending motion to dismiss the California CLRA and UCL claims,
13 ECF No. 428, the fact remains that absent approval of the settlement the Plaintiffs' California
14 CLRA and UCL claims faced an uncertain future.

15
16
17 16. Further, additional hurdles facing Plaintiffs' claims absent the settlement approval
18 are motions of Honda to strike the expert witness testimony of Plaintiffs' experts Nidhi Agrawal
19 and David Gilbert, ECF Nos. 359, 360, and Honda's motion for summary judgment, ECF No. 357,
20 366, all of which the Court terminated, ECF No. 428, pending approval of the settlement.

21 17. Lastly, absent approval of a settlement, and assuming their success on the pending
22 motions of Honda, Plaintiffs' success at trial and on any future appeals to the Ninth Circuit by
23 Honda is not guaranteed.

24 18. With regard to attorneys' fees, costs and service awards, the Settlement Agreement
25 (§§ 5.3-5.5) provides verbatim:
26

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1 AHM agrees to pay reasonable attorneys fees and expense reimbursement to Class
2 Counsel and reasonable service awards to the Named Plaintiffs, as approved by the
3 Court, and as consistent with the provisions of this Settlement Agreement. The
4 Parties have not yet agreed on reasonable amounts for attorneys fees and
5 reimbursable litigation expenses to be paid to Class Counsel (the Class Counsel
6 Fees and Expenses Award”). The Parties also have not yet agreed on appropriate
7 amounts for Service Awards for the Named Plaintiffs. The Parties continue to
8 negotiate to reach agreement on Class Counsel Fees and Expenses Award as well
9 as agreement on the amounts of the Service Awards. If the Parties are unable to
10 reach agreement, the Parties will attempt to narrow the dispute(s) as much as
11 possible and Plaintiffs will apply to the Court for: (1) an order awarding the Class
12 Counsel Fees and Expenses; and (2) for an order awarding Service Awards, either
13 or both of which AHM may oppose.

14 Class Counsel will apply to the Court for the total amount of Class Counsel Fees
15 and Expenses Award and Service Awards concurrently with the submission of their
16 motion in support of the Final Order and Judgment. In no event, unless there is a
17 contrary agreement by the Parties, will AHM pay Class Counsel Fees and Expenses
18 or Service Awards approved by the Court (a) prior to the Effective Date; and/or (b)
19 prior to the date that the order(s) awarding the Class Counsel Fees and Expenses
20 and/or Service Awards become Final, whichever is later.

21 The Class Counsel Fees and Expenses Award and Service Awards will be paid
22 separate and apart from any relief provided to the Settlement Class pursuant to this
23 Settlement Agreement. Within forty-five (45) days after the Effective Date,
24 provided that the order(s) awarding Class Counsel Fees and Expenses and/or
25 Service Awards have become Final, and provided that Class Counsel has provided
26 AHM with requisite W-9s and completed wire transfer forms and the relevant trust
27 account information, AHM shall pay, by wire transfer, Class Counsel Fees and
Expenses and Service Awards.

19 19. The declarations and exhibits filed along with this fee application are being
20 submitted by the Plaintiffs’ law firms of Carella, Byrne, Cecchi, Brody & Agnello, P.C. (Exhibits
21 A-C), Seeger Weiss LLP (Exhibit D), Hagens, Berman, Sobol Shapiro LLP (Exhibit E), Shepard,
22 Finkelman, Miller & Shah, LLP (Exhibit F), and the Terrell Marshall Law Group PLLC (Exhibit
23 G).

24 20. Class Counsel seeks approval of attorneys’ fees and costs for their work and the
25 work of their co-counsel in the amount of \$9,797,336.66, which includes 8,759,878.00 in fees
26

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1 (based on 11,535.1 hours) and \$1,037,458.66 in costs. As set forth in our accompanying
2 Memorandum, this amount has been arrived at through a variety of metrics, including utilizing our
3 accumulated lodestar achieving the result we have. As is normal, our lodestar and fee request does
4 not include the substantial time that will be incurred in the future, including further response and
5 assistance to Settlement Class members, attending the final approval hearings, and any additional
6 work that follows from that hearing. This fact is often overlooked but based on prior experiences,
7 particularly in auto defect cases, this work can amount to hundreds of thousands of dollars of
8 attorney time.
9

10 21. The time and expense information provided in the charts annexed to this declaration
11 is taken from time and expense records and documentation prepared and maintained by our firm.
12 I reviewed the firm's time and expense records and documentation when preparing this
13 declaration. I confirmed the accuracy of the records, as well as the necessity for, and
14 reasonableness of, the time and expenses committed to this litigation. As a result of this review, I
15 believe the time reflected in the firm's lodestar calculation and the expenses for which payment is
16 sought are reasonable and were necessary for the effective and efficient prosecution and resolution
17 of the Action. In addition, I believe that the expenses are all of a type that would normally be
18 charged to a fee-paying client in the private legal marketplace.
19

20 22. The lodestar amount of \$1,766,717.50 was calculated using the firm's current
21 rates (or, in the case of individuals who no longer work at our firm, using their rate as of the date
22 they last worked for the firm). A breakdown of the time by timekeeper is provided in Exhibit A
23 and by task is provided in Exhibit B.
24

25 23. Our firm also seeks an award of expenses of \$435,720.74 in connection with the
26 prosecution and resolution of the Action. The expenses pertaining to the Action are reflected in
27

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1 the books and records of our firm. These books and records are prepared from receipts, check
 2 records, expense vouchers, and other documents and are an accurate record of the expenses. The
 3 expenses incurred by our firm are summarized by category in Exhibit C.

4 24. Our firm's rates have been approved by courts around the country, including in
 5 2023 in *In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio); 2020 in *In re:*
 6 *Mercedes-Benz Emissions Litigation*, No. 16-881 (D.N.J.); in 2019 in *In re Volkswagen Timing*
 7 *Chain Product Liability Litigation*, No. 16-2765 (D.N.J.); in 2016 in *In re: Volkswagen "Clean*
 8 *Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.);
 9 and *In Re: Vytarin/Zetia Marketing, Sales Practices and Products Liability Litigation*, MDL No.
 10 1938 (D.N.J.). Also, unlike many plaintiffs' firms, Carella, Byrne also represents clients on an
 11 hourly basis at rates comparable to those reflected for Carella, Byrne in this fee petition. In
 12 particular, I was retained this week in a patent infringement case at the same hourly rate I requested
 13 here. In addition, the approved rate for senior attorney's in the Opioid litigation is higher than the
 14 rate reflected in my petition here.
 15
 16

17 **EXPERIENCE AND QUALIFICATIONS OF CARELLA BYRNE TIME**

18 **KEEPERS**

19 25. The experience and qualifications of each Carella Byrne timekeeper is summarized
 20 below.

21 26. I graduated from Colgate University in 1989 with honors, majoring in History and
 22 Political Science. I was Executive Editor of the Colgate News. In 1989, I graduated from Fordham
 23 University School of Law, where I was a member of the International Law Journal. Following law
 24 school, I served as a law clerk to the Honorable Nicholas H. Politan in the United States District
 25 Court, District of New Jersey from 1989-1991. I then served in the United States Department of
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1 Justice as an Assistant U.S. Attorney for the District of New Jersey, from 1991 until 1994. In that
2 capacity, I participated in numerous significant criminal prosecutions involving money laundering,
3 narcotics smuggling and violations of federal firearms laws.

4 27. Since 1994, I have been employed by Carella, Byrne, Cecchi, Brody & Agnello,
5 which is one of the leading consumer class action law firms in the New Jersey – New York
6 metropolitan area, as well as in the United States. I am a partner in the firm’s litigation department
7 and a member of my firm’s executive committee. I specialize in complex federal class actions,
8 and have extensive experience litigating and resolving complex class actions both in the Multi-
9 District Litigation context as well as otherwise. My firm’s class action practice was founded and
10 is led by me, and we have prosecuted some of the nation’s most complex and important consumer
11 class actions effecting consumer rights in the last ten years.¹ I have played a prominent role in
12 litigating and successfully resolving a variety of these class actions against some of the largest
13 corporations in the country, resulting in over \$100 million recovered for consumers. In cases
14 involving automobile manufacturers, I was the primary attorney at my firm involved in
15
16

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18 ¹ See, e.g., *In re Valeant Pharms. Int’l, Inc. Third-Party Payor Litig.*, No. 16-3087, 2022
19 WL 525807, at *5 (D.N.J. Feb. 22, 2022) (finding that Carella Byrne as “Lead Counsel has
20 extensive experience and expertise in litigating complex class actions”) (citing cases); *In re*
21 *Mercedes-Benz Emissions Litig.*, No. 16-881, 2021 WL 7833193, at *9 (D.N.J. Aug. 2, 2021)
22 (characterizing Carella Byrne and two other firms as “qualified and experienced in complex class
23 litigation and who have resources, zeal, and a successful record in class cases”); *Sapir v.*
24 *Averback*, No. 14-07331, 2015 WL 858283, at *3 (D.N.J. Feb. 26, 2015) (“Carella Byrne,
25 Cecchi, Olstein, Brody & Agnello, P.C., is a well-respected law firm, and its attorneys have
26 experience litigating complex commercial actions.”); *Thomas v. Gerber Prod. Co.*, No. 12-1098,
27 2012 WL 1606627, at *2 (D.N.J. May 8, 2012) (“[I]t is clear that Carella Byrne has sufficiently
demonstrated its qualifications as experienced litigators in the area of class action and complex
litigation,” and “has extensive experience in class action litigation dealing with consumer
fraud[.]”); *Waudby v. Verizon Wireless Servs., LLC*, 248 F.R.D. 173, 176 (D.N.J. 2008) (“Carella
Byrne has extensive class action experience in class actions involving cases” and “are proven,
high-powered litigators involved in some of the most complex class-action lawsuits in the
country[.]”).

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1 successfully resolving class actions, including: *Volkswagen “Clean Diesel” Marketing, Sales*
2 *Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.), in which I was appointed
3 to the Steering Committee and as Settlement Class Counsel on behalf of diesel vehicle owners who
4 alleged they were defrauded by Volkswagen’s representations of its diesel vehicles as being
5 environmentally friendly, when in reality VW had installed defeat devices designed to evade
6 governmental emissions test procedures; the settlement was in excess of \$15,000,000,000 for
7 consumer fraud and warranty claims. In *In re: Takata Airbag Products Liability Litigation*, MDL
8 No. 2599 (S.D. Fla.), I was appointed to Steering Committee and as Settlement Class Counsel; the
9 settlement in excess of \$1,500,000,000 for consumer fraud and warranty claims arising from use
10 of defective and dangerous airbags. In *In re: Mercedes-Benz Emissions Litigation*, No. 16-cv-881
11 (D.N.J.), I was appointed as interim co-lead counsel for the plaintiffs and the proposed class in
12 another case arising out of the alleged use of a defeat device to evade U.S. emissions regulations;
13 the settlement value was in excess of \$700,000,000. In *In re: Mercedes-Benz Tele-Aid Contract*
14 *Litigation*, MDL No. 1914, I was appointed co-lead counsel in a case involving a \$40,000,000
15 settlement of consumer fraud claims arising from Mercedes’ failure to notify “Tele-Aid”
16 customers of mandated change from analog to digital system, and its charging customers to replace
17 a system Mercedes knew would be obsolete.

20 28. I am also currently co-lead interim counsel in a number of pending automobile
21 defect cases, including: *Tijerina v. Volkswagen Group of Am. In*, No. 21-18755 (D.N.J.); *Rose v.*
22 *Ferrari North America, Inc.*, No. 21-20772 (D.N.J.); *Cohen v. Subaru Corp.*, No. 20-8442
23 (D.N.J.); *Flynn-Murphy v. Jaguar Land Rover Automotive, PLC*, No. 20-14464 (D.N.J.). ADD
24 ARC MDL,

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1 29. I have also been involved as class counsel in numerous other non-automobile
2 related class actions that either resulted in court-approved settlements on behalf of consumers or
3 are still ongoing.²

4 30. James O'Brien joined Carella Byrne as counsel in 2017 after almost three decades
5 of practice in both the public and private sectors, and after 16 years at Seeger Weiss LLP. He
6 graduated from the New England School of Law in 1988, where he served as a symposium editor
7 on the law review. Thereafter, Mr. O'Brien served as law clerk with the U.S. Department of Labor,
8 Office of Administrative Law Judges, in Washington, D.C. He then entered the U.S. Department
9 of Justice through the Attorney General's Honors Program. He served for eleven years as a Special
10 Assistant U.S. Attorney in the Civil Division of the U.S. Attorney's Office, Southern District of
11 New York, where he was nominated three times for the Executive Office for United States'

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13
14
15 ² See *In re: American Medical Collection Agency, Inc. Customer Data Security Breach*
16 *Litig.*, MDL No. 2904 (D.N.J.) (appointed sole lead counsel in national multi-district data breach
17 litigation); *In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio) (appointed
18 to plaintiffs' executive committee relating to marketing of opioid drugs; *In Re: Vytorin/Zetia*
19 *Marketing, Sales Practices and Products Liab. Litig.*, MDL No. 1938 (D.N.J.) *In re Schering-*
20 *Plough/Enhance Sec. Litig.*, Civil Action No.: 08-cv-397 (D.N.J.); *In re Merck & Co., Inc.*
21 *Vytorin/Zetia Sec. Litig.*, Civil Action No.: 08-cv-2177 (D.N.J.) (consumer and securities fraud
22 claims arising from marketing and sale of anti-cholesterol drugs Vytorin and Zetia) (appointed co-
23 lead counsel in consumer cases which settled for \$41,500,000 and liaison counsel in securities
24 cases which collectively settled for \$688,000,000.); *In re: Liquid Aluminum Sulfate Antitrust Litig.*,
25 MDL No. 2687 (D.N.J.) (appointed as lead counsel and secured settlement of greater than
26 \$100,000,000.); *In Re Effexor XR Antitrust Litig.*, Civil Action No. 11-cv-5661 (D.N.J.) (claims
27 on behalf of indirect purchasers of brand-name drug alleging that manufacturer obtained patent by
fraud and enforced patent by sham litigation to maintain illegal monopoly of brand-name drug;
appointed as chair of plaintiffs' indirect purchaser executive committee.); *Davis Landscape v.*
Hertz Equipment Rental, Civil Action No. 06-cv-3830 (D.N.J.) (co-lead counsel in settlement
valued at over \$50,000,000 on behalf of contested nationwide class asserting claims that HERTZ'
loss/damage waiver charges violated the New Jersey Consumer Fraud Act because it provides no
benefit to customers); *In Re: Merck & Co., Inc., Securities, Derivative & "ERISA" Litig.*, MDL
No. 1658 (D.N.J.) (securities fraud claims arising from Merck's failure to disclose problems with
commercial viability of anti-pain drug Vioxx which settled for more than \$1,000,000,000.)

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1 Attorneys' Director's Award for Superior Performance as a Special Assistant United States
2 Attorney, and twice for the U.S. Attorney General's John Marshal Award for Participation in
3 Litigation. He co-authored *Administrative Housekeeping and Ethical Matters in Mass Tort MDLs*
4 *and Class Actions*, published in the Sedona Conference Journal in 2012, and wrote a chapter for
5 *MDL Standards and Best Practices* published by the Duke Law Center for Judicial Studies in
6 2014. He also co-authored an amicus brief that was filed in a class action case before the U.S.
7 Supreme Court, *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012). See Brief of
8 Pharmaceutical Representatives as Amici Curiae in Support of Petitioners, *Christopher v.*
9 *Smithkline Beecham Corp.*, No. 11-204, 2012 WL 416749 (U.S. filed Feb. 6, 2012). At Carella
10 Byrne, Mr. O'Brien works on a diverse range of class action and appellate cases. Mr. O'Brien was
11 brought into this case at the class certification stage and assisted in all aspects of that motion as
12 well as in researching and drafting all subsequent briefs, motions and pleadings filed by the
13 Plaintiffs.

14
15
16 31. Lindsey Taylor was a former partner at Carella Byrne until 2023. Mr. Taylor had
17 practiced law at Carella Byrne for 21 years, focusing on class actions. Mr. Taylor performed work
18 for this case since its inception, including pleadings, discovery-related motions, motions to
19 dismiss, summary judgment, and expert discovery.

20 **EFFORTS OF CLASS REPRESENTATIVES**

21 32. Class Representatives Lindsay and Jeff Aberin, Don Awtrey, Charles Burgess, John
22 Kelly, and Joy Matza made significant contributions to the prosecution of this case by devoting
23 their time, effort, and reputation to this matter. They each made a decision to act as advocates on
24 behalf of tens of thousands of their peers, and taking the risk of litigation solely upon themselves,
25 even as the litigation continued for years. Each made their vehicles available for day-long
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1 inspections and were deposed, some on more than one day, assisted in the production of documents
2 and in responding to interrogatories, and otherwise remained engaged in prosecuting their claims
3 on behalf of the class they sought to represent.

4 I declare under penalty of perjury under the laws of the United States that the foregoing is
5 true and correct. Executed this 4th day of April, 2024.

6
7 Dated: April 4, 2024

Respectfully submitted,

8
9 By: /s/ James E. Cecchi
10 James E. Cecchi (admitted *pro hac vice*)
11 CARELLA, BYRNE, CECCHI, OLSTEIN,
12 BRODY & AGNELLO, P.C.
13 5 Becker Farm Road
14 Roseland, NJ 07068
15 Telephone: (973) 994-1700
16 Facsimile: (973) 994-1744
17 Email: jcecchi@carellabyrne.com
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Exhibit A

EXHIBIT A*Aberin v. American Honda Motor Co.,
Case No. 4:16-cv-04384- JST*

<u>NAME</u>	<u>TITLE</u>	<u>HOURS</u>	<u>RATE</u>	<u>LODESTAR</u>
Cecchi, James	Partner	479.8	\$ 1,100.00	\$ 527,780.00
Bartlett, Caroline	Partner	6.6	\$ 950.00	\$ 6,270.00
Ecklund, Donald	Partner	1.4	\$ 950.00	\$ 1,330.00
Cooper, Kevin	Partner	0.5	\$ 750.00	\$ 375.00
Taylor, Lindsey	Partner	250.6	\$ 950.00	\$ 238,070.00
Bower, Zach	Partner	4.5	\$ 900.00	\$ 4,050.00
O'Brien, James	Of Counsel	1020.6	\$ 950.00	\$ 969,570.00
O'Toole, Brian	Associate	9.9	\$ 750.00	\$ 7,425.00
Steele, Jordan	Associate	14	\$ 700.00	\$ 9,800.00
Falduto, Jeff	Paralegal	6.8	\$ 225.00	\$ 1,530.00
Caraballo, Luis	Paralegal	0.2	\$ 225.00	\$ 45.00
Rago, Mary Ellen	Paralegal	1.6	\$ 225.00	\$ 360.00
Santos, Sonia	Paralegal	0.5	\$ 225.00	\$ 112.50
Total:		1,797.00		\$ 1,766,717.50

Exhibit B

EXHIBIT B

*Aberin, et al. v. American Honda Motor Co.,
Case No. 4:16-cv-04384- JST*

<u>TASK</u>	<u>HOURS</u>	<u>LODESTAR</u>
Administrative	6.60	\$ 1,485.00
Appeals	0.40	\$ 380.00
Attorney Communications	144.20	\$ 142,265.00
Attorney Meetings/ Litigation Strategy	81.80	\$ 79,320.00
Case Management	31.30	\$ 30,165.00
Client Communications	3.40	\$ 2,620.00
Court Appearances	2.00	\$ 2,200.00
Depositions	3.20	\$ 3,040.00
Discovery	62.30	\$ 60,510.00
Investigation/ Factual Research	57.30	\$ 63,030.00
Legal Research	350.00	\$ 329,700.00
Pleadings/ Motions/ Briefs	906.60	\$ 894,602.50
Settlement/ Mediation	124.40	\$ 132,150.00
Status Conference	8.50	\$ 9,350.00
Trial Preparation	15.00	\$ 15,900.00
<i>TOTAL:</i>	1,797.00	\$ 1,766,717.50

Exhibit C

EXHIBIT C

*Aberin, et al. v. American Honda Motor Co.,
Case No. 4:16-cv-04384- JST*

<i>CATEGORY</i>	<i>AMOUNT</i>
Court Filing Fee	\$ 460.00
FedEx	\$ 28.44
Litigation Fund	\$ 435,000.00
PACER/Court documents	\$ 232.30
<i>Total:</i>	<i>\$ 435,720.74</i>

Exhibit D

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION

5 *Aberin et al. v. American Honda Motor Co., Inc.*

Case No. 4:16-cv-04384-JST

6 **DECLARATION OF CHRISTOPHER**
7 **A. SEEGER IN SUPPORT OF**
8 **PLAINTIFFS' MOTION FOR**
9 **APPROVAL OF ATTORNEYS'**
10 **FEES, COSTS AND CLASS**
11 **REPRESENTATIVES' SERVICE**
12 **AWARDS**

13 I, Christopher A, Seeger, declare:

14 1. I am a founding partner of Seeger Weiss LLP which has been appointed to serve as
15 Class Counsel along with Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., I have personal
16 knowledge of the information stated below based on my knowledge of this case and review of the
17 file and would be competent to testify thereto. I submit this declaration in support of Plaintiffs'
18 motion for attorney's fees, costs, and class representative service awards.

19 2. James Cecchi sets forth the wider work undertaken on behalf of Plaintiffs, the Class
20 Members, and the Settlement Class Members in his Declaration in support of Plaintiffs' Motion
21 for Approval of Attorneys' Fees, Costs, and Class Representatives' Service Awards. This
22 Declaration will describe the work undertaken and expenses incurred by my firm as part of these
23 efforts alongside Settlement Class Counsel.

24 3. Since its founding in 1999, Seeger Weiss has led many of the most complex and
25 high-profile cases in the country: the National Prescription Opiate Litigation; the "Dieselgate"
26

1 scandal; representation of veterans who used 3M earplugs; the sprawling multistate litigation on
2 behalf of survivors of child sexual abuse; and the history-making National Football League
3 Players' Concussion Injury Litigation. With the resources and dedication to take on the world's
4 largest corporations, the firm has faced down the likes of Merck, Volkswagen, 3M, Syngenta, and
5 the NFL—and secured justice for our clients. Working in a broad array of practice areas, the firm
6 has a reputation for sticking with a case from beginning to end.

7
8 4. My firm has gone on to helm numerous record-breaking litigations, yielding the
9 largest consumer auto-industry class action settlement in U.S. history on behalf of drivers who
10 bought Volkswagen's so-called "Clean Diesel" cars in Volkswagen "Clean Diesel" Marketing,
11 Sales Practices, & Products Liability Litigation; the largest agricultural settlement in U.S. history
12 on behalf of farmers sold Syngenta GMO seeds in Syngenta AG MIR162 Corn Litigation; and a
13 historic \$1 billion-plus uncapped settlement on behalf of retired players and their families in
14 National Football League Players' Concussion Injury Litigation.

15
16 5. In the work undertaken by my firm in this case, we provided the same level of
17 commitment and quality of engagement as these earlier successes.

18 6. The time and expense information provided in the charts annexed to this declaration
19 is taken from time and expense records and documentation prepared and maintained by our firm.
20 I reviewed the firm's time and expense records and documentation when preparing this
21 declaration. I confirmed the accuracy of the records, as well as the necessity for, and
22 reasonableness of, the time and expenses committed to this litigation. As a result of this review, I
23 believe the time reflected in the firm's lodestar calculation and the expenses for which payment is
24 sought are reasonable and were necessary for the effective and efficient prosecution and resolution
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26

1 of the Action. In addition, I believe that the expenses are all of a type that would normally be
2 charged to a fee-paying client in the private legal marketplace.

3 7. The lodestar amount of \$5,476,225.50 was calculated using the firm's current rates
4 (or, in the case of individuals who no longer work at our firm, using their rate as of the date they
5 last worked for the firm). A breakdown of the time by timekeeper is provided in Exhibit A and
6 by task is provided in Exhibit B.

7
8 8. I provide here highlights of the experience of the attorneys who made substantial
9 contributions to this litigation and whose work is reflected in my firm's lodestar.

10 9. I am a founding partner of Seeger Weiss and widely recognized as a highly
11 innovative and accomplished plaintiff attorney. Chiefly known for multidistrict mass torts and
12 class actions involving drug injury, toxic injury and personal injury, my versatile practice also
13 includes product liability, property damage, antitrust, third-party payer litigation, as well as
14 consumer, insurance, and securities fraud.

15
16 10. I have led some of the most complex, groundbreaking, and high-profile litigations
17 in the U.S. representing plaintiffs and achieving landmark settlements in cases including the 3M
18 Combat Arms Earplug Litigation, National Prescription Opiate Litigation, NFL Players'
19 Concussion Litigation, Volkswagen "Clean Diesel" Litigation, Vioxx Litigation, and Syngenta
20 AG MIR 162 Corn Litigation.

21 11. Currently, I serve as co-lead counsel in the *3M Combat Arms Earplug Litigation*,
22 *Philips Recalled CPAP, Bi-Level Pap, and Mechanical Ventilator Litigation*, *Social Media*
23 *Adolescent Addiction/Personal Injury Litigation*, and *Proton-Pump Inhibitor Litigation*. I have
24 also appointed to the plaintiffs' executive committees in the *National Prescription Opiate*
25 *Litigation* and *East Palestine Train Derailment Litigation*.
26

1 12. Dion Kekatos has been a partner in the firm since 2004. Dion is a highly skilled and
2 experienced civil litigation attorney, particularly in appellate matters. His practice handles
3 complex and class action litigation in both state and federal courts, with a focus on ERISA, civil
4 RICO, consumer fraud, environmental, antitrust, and mass tort matters. In particular, he possesses
5 knowledge in class certification motion practice.
6

7 13. Scott George is a partner with the firm, which he joined in 2005 to further his work
8 as a class action litigator and trial lawyer. He has had numerous leadership appointments in
9 consumer class actions in both federal and state court and been an instrumental member of national
10 litigation teams in such varied cases as the *NFL Players' Concussion Injury Litigation*,
11 *Volkswagen Clean Diesel Litigation* and *Chinese-Manufactured Drywall Products Liability*
12 *Litigation*. Based on such experience and successes, Scott has been selected for inclusion on
13 Lawdragon's list of 500 Leading Plaintiff Consumer Lawyers for 2024.
14

15 14. Shauna Itri is a partner with the firm. For well over a decade Shauna has been
16 leading litigation teams in complex fraud cases in both state and federal courts. Shauna's
17 nationwide practice has focused on representing plaintiffs in various settings, including class
18 action securities and consumer matters; antitrust; and cases involving patient harm. Shauna also
19 has extensive experience representing whistleblowers in False Claims Act lawsuits, and tax and
20 securities whistleblowers with claims under the IRS and SEC whistleblower programs.
21

22 15. Carlos Rivera is an associate with the firm and a 2015 graduate of Rutgers
23 University School of Law. During his nine years of practice he has undertaken a wide range of
24 work representing the firms clients in consumer fraud and products liability cases.

25 16. Nigel Halliday is an associate with the firm and a 2019 graduate of Vanderbilt
26 University Law School where he was elected to the Order of the Coif. He joined the firm in 2020

1 after clerking in the Western District of Tennessee. During his four years with the firm, he has
2 been a key member of the firm's trial team.

3 17. Jim O'Brien was Of Counsel to the firm and, before his departure, his practice
4 focused on complex litigation, including false claims act cases, class actions, mass torts, and
5 multidistrict litigation. During his tenure with the firm, He authored several articles on various
6 legal topics, including co-authoring *Administrative Housekeeping and Ethical Matters in Mass*
7 *Tort MDLs and Class Actions*, published in the Sedona Conference Journal in 2012, and writing a
8 chapter for *MDL Standards and Best Practices* published by the Duke Law Center for Judicial
9 Studies in 2014.

10
11 18. Daniel Leathers was an Associate with the firm prior to his departure and a 2009
12 graduate of Case Western Reserve University Law School where is served as the Executive
13 Articles Editor for the Case Western Reserve Journal of International Law.

14
15 19. Kseniya Lezhnev was an Associate with the firm prior to her departure and a 2016
16 graduate of Benjamin N. Cardozo Law School where she was selected to participate in the
17 Cardozo Bet Tzedek Civil Litigation Clinic at Cardozo Law School, where she filed a class action
18 in the Eastern District of New York on behalf of thousands of low-income elderly and disabled
19 New Yorkers against the City of New York, resulting in restoration of lost benefits and a change
20 of rules by the Department of Finances.

21
22 20. The rates used to determine my firm's lodestar are those regularly charged by my
23 firm and have been recognized by Courts across the nation including, most recently, in the course
24 of responding to 3M's efforts to use bankruptcy proceedings to deny full recovery to the veterans
25 in the *3M Earplugs Products Liability Litigation*. See *In re: Aearo Tech. LLC*, 22-bk02890-JJGG,
26 Document No 2107 (Nov. 9, 2023 S.D.In).

EXHIBIT A***Aberin v. American Honda Motor Co.,
Case No. 4:16-cv-04384- JST***

<u>NAME</u>		<u>HOURS</u>	<u>RATE</u>	<u>LODESTAR</u>
Christopher A. Seeger	(P)	101.50	\$ 1,395.00	\$ 141,592.50
Dion Kekatos	(P)	136.40	\$ 1,275.00	\$ 173,910.00
Scott George	(P)	3,660.00	\$ 975.00	\$ 3,568,500.00
Shauna Itri	(P)	146.30	\$ 1,075.00	\$ 157,272.50
Jim O'Brien	(C)	42.40	\$ 775.00	\$ 32,860.00
Carlos Rivera	(A)	310.50	\$ 775.00	\$ 240,637.50
Daniel Leathers	(A)	242.70	\$ 600.00	\$ 145,620.00
Kseniya Lezhnev	(A)	348.60	\$ 495.00	\$ 172,557.00
Nigel Halliday	(A)	44.20	\$ 825.00	\$ 36,465.00
Jill Kuntz	(A)	84.30	\$ 525.00	\$ 44,257.50
Laura Muldowney	(A)	94.60	\$ 525.00	\$ 49,665.00
Michael Sheridan	(PL)	1,421.80	\$ 395.00	\$ 561,611.00
Caroline Choe	(PL)	463.90	\$ 215.00	\$ 99,738.50
Scott Siegel	(PL)	111.20	\$ 325.00	\$ 36,140.00
Leslie Kramer	(PL)	52.20	\$ 295.00	\$ 15,399.00
<i>Total:</i>		<i>7,260.60</i>		<i>\$ 5,476,225.50</i>

EXHIBIT B*Aberin, et al. v. American Honda Motor Co.,
Case No. 4:16-cv-04384- JST*

<u>TASK</u>	<u>HOURS</u>	<u>RATE</u>	<u>LODESTAR</u>
Investigation	1,343.40	\$ 525.00	\$ 705,285.00
Document Discovery	1,306.90	\$ 600.00	\$ 784,140.00
Deposition Discovery	578.10	\$ 450.00	\$ 260,145.00
Pleadings, Brief, Motions & Appeals	1,557.00	\$ 825.00	\$ 1,284,525.00
Meetings/Communications	697.20	\$ 875.00	\$ 610,050.00
Settlements	332.60	\$ 1,275.00	\$ 424,065.00
Litigation Strategy/Analysis	649.90	\$ 825.00	\$ 536,167.50
Class Certification	501.60	\$ 975.00	\$ 489,060.00
Court Appearances	122.00	\$ 1,072.00	\$ 142,987.50
Trial Preparation/Trial	171.90	\$ 1,395.00	\$ 239,800.50
Travel			\$ -
<i>Total:</i>	<i>7,260.60</i>		<i>\$ 5,476,225.50</i>

EXHIBIT C

<i>Aberin, et al. v. American Honda Motor Co., Case No. 4:16-cv-04384- JST</i>
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<i>CATEGORY</i>	<i>AMOUNT</i>
AirFare	\$ 23,913.65
Books	\$ 283.02
Black and White Printing	\$ 2,100.25
Copying charges	\$ 36.50
Document Reproduction - Outside Service	\$ 49.79
Color Copies	\$ 14.75
Computer Services	\$ 66.95
Court service fees	\$ 860.00
Deposition transcripts	\$ 18,089.05
Document Production	\$ 16.05
Messenger Charges	\$ 735.54
Filing Fees	\$ 230.00
Hotels	\$ 12,376.51
Litigation Fund	\$ 450,000.00
Meals	\$ 3,316.14
Miscellaneous	\$ 85.59
Meals - Attorney	\$ 571.21
Professional fees	\$ 6,595.61
Process server fees	\$ 9,744.79
Reimbursement of Expenses	\$ 57.44
Research	\$ 3,587.54
Software	\$ 298.55
Telephone	\$ 46.48
Travel & Lodging	\$ 185.47
Trial prep	\$ 6,963.03
Travel expenses	\$ 1,233.45
Taxi and local transportation	\$ 4,070.66
Transcript	\$ 4,763.95
Total:	\$ 550,291.97

Exhibit E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Aberin et al. v. American Honda Motor Co., Inc.

Case No. 4:16-cv-04384-JST

**DECLARATION OF STEVE W.
BERMAN IN SUPPORT OF
PLAINTIFFS’ MOTION FOR
APPROVAL OF ATTORNEYS’
FEES, COSTS AND CLASS
REPRESENTATIVES’ SERVICE
AWARDS**

I, STEVE W. BERMAN, declare:

1. I am the managing partner of Hagens Berman Sobol and Shapiro LLP which performed work in support of Plaintiffs and the eventually certified Classes at the direction of Seeger Weiss LLP and Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., interim co-Lead Class Counsel and Settlement Class Counsel. I have personal knowledge of the information stated below based on my knowledge of this case and review of the file and would be competent to testify thereto. I submit this declaration in support of Plaintiffs’ motion for attorney’s fees, costs, and class representative service awards.

2. James Cecchi sets forth the wider work undertaken on behalf of Plaintiffs, the Class Members, and the Settlement Class Members in his Declaration in support of Plaintiffs’ Motion for Approval of Attorneys’ Fees, Costs, and Class Representatives’ Service Awards. This Declaration will describe the work undertaken and expenses incurred by my firm as part of these efforts alongside Settlement Class Counsel.

1 3. Hagens Berman is one of the most successful plaintiffs-side law firms in the U.S.
2 and has achieved total settlements valued at more than \$320 billion, including more than \$20
3 billion associated with automotive class actions. The firm has been particularly motivated to
4 investigate and build the firm's proprietary cases involving automotive defects and emissions
5 cheating, often outpacing government agencies in uncovering systemic wrongdoing in the auto
6 industry. We relied on our specific expertise in our work involving this case.

7
8 4. The time and expense information provided in the charts annexed to this declaration
9 is taken from time and expense records and documentation prepared and maintained by our firm.
10 I reviewed the firm's time and expense records and documentation when preparing this
11 declaration. I confirmed the accuracy of the records, as well as the necessity for, and
12 reasonableness of, the time and expenses committed to this litigation. As a result of this review, I
13 believe the time reflected in the firm's lodestar calculation and the expenses for which payment is
14 sought are reasonable and were necessary for the effective and efficient prosecution and resolution
15 of the Action. In addition, I believe that the expenses are all of a type that would normally be
16 charged to a fee-paying client in the private legal marketplace.

17
18 5. The lodestar amount of **\$270,639** was calculated using the firm's historical rates
19 for 2016-2019. Hagens Berman began work on the case in 2016 and substantially completed its
20 assistance to Settlement Class Counsel in 2019. Hagens Berman attorneys helped draft different
21 versions of the amended complaint and responded to document production and interrogatory
22 requests on behalf of many of the Plaintiffs. Our attorneys also regularly spoke to prospective class
23 members and other members of the public regarding the case. Hagens Berman attorneys were also
24 active in drafting and negotiating various case management statements and discovery agreements
25 (e.g. ESI Protocol, Vehicle Inspection Protocol) and participating in strategic decision-making
26

1 regarding the case between 2016-2019. Hagens Berman counsel also appeared at multiple case
2 management conferences. A breakdown of the time by timekeeper is provided in Exhibit A and by
3 task is provided in Exhibit B.

4 6. I co-founded Hagens Berman in 1993 and since then have served as its managing
5 partner. My trial experience has earned me significant recognition and led The National Law
6 Journal to name me one of the 100 most powerful lawyers in the nation, and to repeatedly name
7 Hagens Berman one of the top 10 plaintiffs' firms in the country. I was also named an MVP of the
8 Year by Law360 in class-action litigation and received the 2017, 2021 and 2022 Trailblazer award.
9 Law360 also named me a Titan of the Plaintiffs Bar every eligible year.

10 7. Catherine Y.N. Gannon is a partner at Hagens Berman and has been practicing law
11 for more than 13 years. She has spent most of her career in class action litigation and her practice
12 focuses on complex class actions relating to securities, consumer protection, antitrust, and products
13 (including defective cars). Her professional recognitions include a "Rising Star" by Washington
14 State Super Lawyers (2016-2023), National Trial Lawyers Top 40 Under 40 in Washington State
15 (2022), and Best Lawyers in America in Consumer Protection Law (2024).

16 8. Christopher R. Pitoun is a partner at Hagens Berman and has 11 years of experience
17 representing individuals, municipalities, and small businesses in all forms of complex litigation.
18 His representative actions include *In Re: FCA US LLC Monostable Electronic Gearshift Litigation*,
19 No. 2:16-md-02744 (E.D. Mich.) and *BofA Countrywide Appraisal RICO*, No. 2:16-cv-04166
20 (C.D. Cal.).

21 9. Rachel Fitzpatrick is a partner at Hagens Berman and has 10 years of experience
22 litigating plaintiff-side class actions. Ms. Fitzpatrick is a member of the Hagens Berman Auto
23 Group, working on behalf of consumers against auto manufacturers involving vehicle defects.
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EXHIBIT A				
<i>Aberin v. American Honda Motor Co., Case No. 4:16-cv-04384- JST</i>				
<u>NAME</u>	<u>TITLE</u>	<u>HOURS</u>	<u>RATE</u>	<u>LODESTAR</u>
Steve Berman	Partner	12.50	\$ 950.00	\$ 11,875.00
Catherine Gannon	Associate*	438.30	\$ 400.00	\$ 175,320.00
		41.50	\$ 425.00	\$ 17,637.50
		0.40	\$ 450.00	\$ 180.00
Chris Pitoun	Associate*	65.90	\$ 473.00	\$ 31,170.70
		11.40	\$ 500.00	\$ 5,700.00
Rachel Fitzpatrick	Associate*	29.60	\$ 368.00	\$ 10,892.80
		1.20	\$ 400.00	\$ 480.00
		0.70	\$ 475.00	\$ 332.50
Robert Haegele	Paralegal	53.80	\$ 180.00	\$ 9,684.00
		11.40	\$ 200.00	\$ 2,280.00
		0.90	\$ 225.00	\$ 202.50
Jennifer Conte	Paralegal	1.00	\$ 236.00	\$ 236.00
		7.00	\$ 250.00	\$ 1,750.00
Nicolle Huerta	Paralegal	16.10	\$ 180.00	\$ 2,898.00
Total:		691.70		\$ 270,639.00

(*) individual is currently a partner but was an associate at the time work was performed

EXHIBIT B*Aberin, et al. v. American Honda Motor Co.,
Case No. 4:16-cv-04384- JST*

<u>TASK</u>	<u>HOURS</u>	<u>LODESTAR</u>
Investigation	7.50	\$ 2,925.00
Document Discovery	178.70	\$ 67,044.70
Pleadings, Brief, Motions & Appeals	170.80	\$ 66,141.70
Client and Public Communications	177.40	\$ 71,706.50
Attorney Communications	9.90	\$ 3,945.10
Meetings	8.80	\$ 3,606.90
Litigation Strategy/Analysis	103.20	\$ 40,835.10
Court Appearances	35.40	\$ 14,434.00
<i>Total:</i>	<i>691.70</i>	<i>\$ 270,639.00</i>

EXHIBIT C

*Aberin, et al. v. American Honda Motor Co.,
Case No. 4:16-cv-04384- JST*

<i>CATEGORY</i>	<i>AMOUNT</i>
Copying and Scanning Costs	\$ 2,265.94
Cost Fund Contributions	\$ 5,000.00
Travel Costs	\$ 256.15
Courier/Process Server	\$ 419.89
Fed Ex charges	\$ 705.54
Filing Fees	\$ 1,760.63
PACER/Court documents	\$ 460.18
<i>Total:</i>	<i>\$10,868.33</i>

Exhibit **F**

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Aberin, et al. v. American Honda Motor Co., Inc.

Case No. 4:16-cv-04384-JST

**DECLARATION OF JAMES C.
SHAH IN SUPPORT OF
PLAINTIFFS' MOTION FOR
APPROVAL OF ATTORNEYS'
FEES, COSTS AND CLASS
REPRESENTATIVES' SERVICE
AWARDS**

I, James C. Shah, declare:

1. I am a named partner with Miller Shah LLP (“Miller Shah” or the “Firm”), which performed work in support of Plaintiffs and the Classes that were eventually certified at the direction of Seeger Weiss LLP and Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., interim Co-Lead Class Counsel and Settlement Class Counsel. I have personal knowledge of the information stated below based on my knowledge of this Action and review of the file and would be competent to testify thereto. I submit this Declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative Service Awards.

2. James Cecchi sets forth the wider work undertaken on behalf of Plaintiffs, Class Members, and the Settlement Class Members in his Declaration in support of Plaintiffs’ Motion for Approval of Attorneys’ Fees, Costs, and Class Representatives’ Service Awards. This Declaration will describe the work undertaken and expenses incurred by Miller Shah as part of these efforts alongside Settlement Class Counsel.

3. Miller Shah has a lengthy history of representing consumers, employees, businesses and other clients in class actions and other commercial litigation. A representative sample of the Firm’s consumer cases includes the following:

1 • Co-Lead Counsel: *In re: Caterpillar, Inc. C13 and C15 Engine Products*
2 *Liability Litigation*, MDL No. 2540 (D.N.J.) (Hon. Chief Judge Jerome B. Simandle)
3 (\$60 million common fund settlement of claims involving defective diesel emissions
4 control technology);

5 • Co-Lead Counsel: *Q+Food v. Mitsubishi Fuso Truck of America, Inc.* (D.N.J.),
6 3:14-cv-06046 (Hon. Douglas E. Arpert) (\$17.5 million common fund settlement of
7 claims involving defective diesel emissions control technology);

8 • Co-Lead Counsel: *In re: Ford Motor Co. Spark Plug and 3-Valve Engine*
9 *Products Liability Litigation* (N.D. Oh.), 1:12-md-02316 (Hon. Benita Y. Pearson)
10 (nationwide settlement of engine defect claims);

11 • Co-Lead Counsel: *In re Land Rover LR3 Tire Wear Products Liability Litig.*,
12 MDL No. 2008 (C.D. Cal.) (Hon. Andrew J. Guilford) (nationwide settlement of
13 alignment defect claims);

14 • Co-Lead Counsel: *In re: Michelin North America, Inc. PAX System Marketing*
15 *and Sales Practices Litigation*, MDL No. 1911 (D. Md.) (Hon. Robert W. Titus)
16 (nationwide settlement of vehicle defect claims);

17 • Co-Lead Counsel: *Chandran v. BMW of North America, LLC, et al.*, Case No.
18 2:08-CV-02619 (D.N.J.) (Hon. Katharine S. Hayden) (nationwide settlement of tire
19 defect claims);

20 • Plaintiffs' Steering Committee: *In re Whirlpool Corp. Front Loading Washer*
21 *Products Liability Litigation*, MDL No. 2001 (N.D. Oh.) (Hon. Christopher A. Boyko)
22 (nationwide settlement of washing machine defect claims);

23 • Co-Lead Counsel: *Henderson, et al. v. Volvo Cars of N.A., LLC*, 2:09-cv-04146
24 (D.N.J.) (Hon. Claire C. Cecchi) (nationwide settlement of defective transmission
25 claims);

26 • Plaintiffs' Steering Committee: *In re: Dial Complete Marketing and Sales*
Practices Litigation, MDL 2263 (D.N.H.) (Hon. Steven J. McAuliffe);

• Co-Lead Counsel: *In re: LG Front Load Washing Machine Class Action Litig.*,
2:08-cv-00051 (D.N.J.) (Hon. Madeline Cox Arleo) (nationwide settlement of washing
machine defect claims);

• Plaintiffs' Steering Committee: *In re: MI Windows and Doors Inc. Products*
Liability Litigation, MDL 2333 (D.S.C.) (Hon. David C. Norton) (nationwide settlement
of window defect claims);

1 • Co-Lead Counsel: *D'Andrea v. K. Hovnanian, et al.*, L-734-06 (Sup. Ct. NJ)
2 (Hon. Jean B. McMaster) (\$21 million common fund settlement of claims involving
3 defective HVAC systems);

4 • Co-Lead Counsel: *Koertge, et al. v. LG Electronics USA, Inc.*, No. 2:12-cv-
5 6204 (D.N.J.) (Hon. Jose L. Linares) (nationwide settlement of stereo defect claims);

6 • Co-Lead Counsel: *Leiner v. Johnson & Johnson Consumer Companies, Inc.*,
7 15-cv-5876 (N.D. Ill.) (Hon. Elaine E. Bucklo) (nationwide settlement of false
8 advertising claims);

9 • Co-Lead Counsel: *Gay v. Tom's of Maine, Inc.*, 14-cv-60604 (S.D. Fl.) (Hon.
10 Chief Judge K. Michael Moore) (nationwide settlement of false advertising claims);

11 • Co-Lead Counsel: *Trewin v. Church & Dwight Co., Inc.*, 3:12-cv-01475
12 (D.N.J.) (Hon. Michael A. Shipp) (nationwide settlement of false advertising claims); and

13 • Lead Counsel: *Shorewest Realtors, Inc. v. Journal Sentinel, Inc.* (Milwaukee
14 Count Cir. Ct.) (Hon. Richard J. Sankovitz) (nationwide settlement of circulation
15 overstatement claims against newspaper).

16 4. In the work undertaken by Miller Shah in this Action, the Firm provided the same
17 level of commitment and quality of engagement as in these earlier successes.

18 5. The time and expense information provided in the charts annexed to this
19 Declaration is taken from time and expense records and documentation prepared and maintained
20 by Miller Shah, which I reviewed in connection with preparing this Declaration. I confirmed the
21 accuracy of the records, as well as the necessity for, and reasonableness of, Miller Shah's time
22 and expenses committed to this Action. As a result of this review, I believe the time reflected in
23 the Firm's lodestar calculation and the expenses for which payment is sought are reasonable and
24 were necessary for the effective and efficient prosecution and resolution of the Action. In
25 addition, I believe that the expenses are all of a type that would normally be charged to a fee-
26 paying client in the private legal marketplace.

6. The lodestar amount of \$1,023,662.50 was calculated using Miller Shah's current
rates (or, in the case of individuals who no longer work at Miller Shah firm, using their rates as

1 of the date they last worked for the Firm). A breakdown of the time by timekeeper is provided in
2 Exhibit A and by task in Exhibit B.

3 7. I joined the Firm currently known as Miller Shah as a Partner in 2002. I began
4 working at Pelino & Lentz, P.C. in Philadelphia, Pennsylvania during the Summer of 1996. I am
5 admitted to practice law in the states of California, New Jersey, New York, the Commonwealth
6 of Pennsylvania and Wisconsin, as well as numerous federal courts, including the United States
7 District Courts for the Southern, Northern, Central and Eastern Districts of California; the
8 District of Connecticut, Eastern District of Pennsylvania, District of New Jersey and Eastern
9 District of Wisconsin; and the United States Court of Appeals for the Second Circuit, Third
10 Circuit, Ninth Circuit and Eleventh Circuit and the United States Supreme Court. In addition to
11 these courts and jurisdictions, I have worked on cases with local and co-counsel nationwide and
12 internationally. I concentrate my practice on consumer and qui tam litigation, as well as
13 complex commercial and employment matters. I earned my undergraduate degree in Political
14 Science from the University of Oregon and my law degree from Temple University School of
15 Law. I was actively involved in all aspects of the litigation of this Action.

16 8. In addition to myself, the following attorneys, project analysts, and legal
17 assistants have assisted Miller Shah in performing its work in this case. All of these individuals
18 were full-time employees of Miller Shah at the time they performed work on this matter:

- 19 a. **Alec J. Berin** joined Miller Shah as an Associate in 2019, having
20 previously worked for the Firm as a credit intern, project analyst and law
21 clerk during law school. Mr. Berin graduated in 2015 from Cornell
22 University with a Bachelor of Science in Industrial and Labor Relations,
23 and graduated from the George Washington School of Law in 2019. Mr.
24 Berin serves as one of the Managing Associates of the Firm and performed
25 significant work in connection with expert discovery in this Action.
- 26 b. **Sue Moss** joined Miller Shah in 2003. She is a senior and supervising
paralegal in the Firm with more than 25 years of paralegal experience.
Ms. Moss assisted attorneys in the Firm in certain aspects of the Action in
connection with the review of documents and in connection with the
finalization and filing of the appellate briefs and filings in this Action.

- 1 c. **Jaclyn Reinhart** joined Miller Shah in 2016 as a summer associate. She
2 began working for the Firm full-time in September 2017, after graduating
3 *cum laude* from Boston University School of Law in May 2017. She is
4 admitted to practice law in the State of California. While at Miller Shah,
5 Ms. Reinhart worked primarily on class actions, including consumer class
6 actions and wage and hour disputes. Ms. Reinhart assisted the Firm in this
7 Action primarily by working on expert discovery and *Daubert* filings.
- 8 d. **Paul Rettinger** was Senior Counsel for Miller Shah during this Action.
9 Mr. Rettinger is admitted to practice in the state courts of Pennsylvania, as
10 well as in the United States District Court for the Eastern District of
11 Pennsylvania and the United States Court of Appeals for the Third Circuit.
12 Mr. Rettinger earned his undergraduate degree from the University of
13 Pittsburgh and did graduate studies in biology and chemistry at the
14 Pennsylvania State University and the University of Pennsylvania. Mr.
15 Rettinger graduated *cum laude* from the Temple University School of Law
16 in 1996, where he was a member of the Environmental Law Council and
17 the Environmental Law and Technology Journal. Mr. Rettinger assisted
18 the Firm in this Action by primarily working on expert discovery and
19 reviewing documents produced in discovery.
- 20 e. **Chiharu Sekino** joined Miller Shah in 2008 as a legal assistant and
21 became an associate at Miller Shah in 2015. Mrs. Sekino is admitted to
22 practice law in the State of California. While at Miller Shah, Mrs. Sekino
23 concentrated her practice on complex commercial, employment, and
24 wage/hour cases. Mrs. Sekino earned her Bachelor of Arts degree from
25 the University of California, San Diego, in 2007, where she double-
26 majored in Political Science and Japanese Studies. While working for
Miller Shah, she concurrently received a law degree from California
Western School of Law, graduating *cum laude*, and a Master's Degree in
Social Work from San Diego State University in 2015. Mrs. Sekino
assisted the Firm in this Action primarily by working on expert discovery
and *Daubert* filings.
- f. **Kolin C. Tang** joined Miller Shah in 2009 and became a Partner at the
Firm. Mr. Tang is admitted to practice law in the State of California.
While at Miller Shah, Mr. Tang concentrated his work on securities,
employment and commercial litigation throughout the United States. In
addition, Mr. Tang also performed significant work in the Firm's
whistleblower practice, on cases arising in both the United States and
overseas. Mr. Tang received his undergraduate degree in Economics and
History with honors from the University of California at Berkeley and
earned his law degree from The George Washington University Law
School in 2011, where he was a member of The George Washington
International Law Review. Mr. Tang focused his work in this Action on

1 expert discovery, the preparation of certain pleadings, and provided
2 substantial assistance with respect to the appellate issues in this Action.

3 g. **Additional Paralegals:** Betsy Ferling (28 years' legal experience) and Alexa
4 White (14 years' legal experience). Each of these paralegals have been active
5 in all aspects of this litigation since Miller Shah became involved in the
6 Action.

7 h. **Project Analysts:** Henry Graney, Tyler Rodriguez and Elise Wilson
8 assisted by in working on expert discovery, as well as research on discrete
9 issues.

10 9. Miller Shah's hourly rates have been routinely approved by courts throughout the
11 United States. *See, e.g., Allison v. L Brands, Inc.* (S.D. Oh.), No. 2:20-cv-06018-EAS-CMV
12 [Dkt. 70]; *Barcenas v. Rush University Medical Center* (N.D. Ill.), No. 1:22-cv-00366 [Dkt. 73];
13 *Boley v. Universal Health Services, Inc.* (E.D. Pa.), No. 2:20-cv-02644 [Dkt. 126]; *Butler*
14 *National Corp. v. The Union Central Life Insurance Co.*, Case No. 1-1:12-cv-00177-SJD-KLL
15 (S.D. Oh. 2014) [Dkt. 55]; *Caves v. Walgreen Co.* (E.D. Cal.), No. 2:18-cv-02910-MCE-DB
16 [Dkt. 133]; *Corson v. Toyota Motor Sales U.S.A., Inc.*, Case No. 1:12-cv-8499-JGB (C.D. Cal.
17 2016) [Dkt. 107]; *In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation*,
18 MDL No. 2540 (D.N.J.) [Dkt 54]; *Q+Food v. Mitsubishi Fuso Truck of America, Inc.* (D.N.J.),
19 3:14-cv-06046 [Dkt 70]; *Gay v. Tom's of Maine, Inc.*, Case No. 0:14-cv-60604-KMM (S.D. Fl.
20 2016) [Dkt. 43]; *Golden Star, Inc. v. Mass Mut. Life Ins. Co.*, Case No. 3:11-30235-MGM (D.
21 Mass. 2015) [Dtk. 55]; *Hawaii Structural Ironworkers Pension Trust Fund v. AMC*
22 *Entertainment Holdings, Inc.* (S.D.N.Y.), 1:18-cv-0299, 05210-AJN [Dkt. 230]; *In re: Ford*
23 *Motor Co. Spark Plug and 3-Valve Engine Products Liability Litigation*, Case No. 1:12-md-
24 02316-BYP (N.D. Oh.) [Dkt. 122]; *Jones v. Coca-Cola Consolidated, Inc.* (M.D.N.C.), No.
25 3:20-cv-00654-FDW-DSC [Dkt. 98]; *Terraza v. Safeway, Inc.* (N.D. Cal.), No. 4:16-cv-03994-
26 JST [Dkt. 277]; *Trewin v. Church and Dwight, Inc.*, Case No. 3:12-cv-01475-MAS-DEA (D.N.J.
2015) [Dkt. 68]; *In re Whirlpool Corp. Front Loading Washer Products Liability Litigation*,
Case No. 1:08-WP-65000 (N.D. Oh. 2016) [Dkt. 656].

EXHIBIT A

Aberin, et al. v. American Honda Motor Company, Inc.,
Case No. 4:16-cv-04384-JST

MILLER SHAH LLP LODESTAR

Owner	Billable units	Rate	Amount
Alec Berin	174.20	\$700.00	\$121,940.00
Alexa White	29.80	\$225.00	\$6,705.00
Betsy Ferling	3.20	\$250.00	\$800.00
Chiharu Sekino	60.70	\$650.00	\$39,455.00
Elise Wilson	46.50	\$300.00	\$13,950.00
Henry Graney	12.00	\$200.00	\$2,400.00
Jaclyn Reinhart	93.30	\$400.00	\$37,320.00
James Shah	532.50	\$1,050.00	\$559,125.00
Kolin Tang	287.20	\$750.00	\$215,400.00
Paul Rettinger	27.10	\$500.00	\$13,550.00
Sue Moss	30.7	\$275.00	\$8,442.50
Tyler Rodriguez	18.30	\$250.00	\$4,575.00
TOTAL	1315.50		\$1,023,662.50

EXHIBIT B

Aberin, et al. v. American Honda Motor Company, Inc.,
Case No. 4:16-cv-04384-JST

MILLER SHAH LLP LODESTAR BY TASK

Task	Hours	Lodestar
Investigation		
Fact Discovery	64.9	\$52,300.00
Expert Discovery	716.9	\$580,292.50
Pleadings, Brief, Motions & Appeals	327.3	\$220,342.50
Meetings/Communications	21.7	\$22,750.00
Settlements	34.9	\$29,865.00
Litigation Strategy/Analysis	25.3	\$26,565.00
Class Certification	71.2	\$43,382.50
Court Appearances	20.1	\$21,105.00
Trial Preparation/Trial	33.2	\$27,060.00
Travel		
TOTAL		
	1315.50	\$1,023,662.50

EXHIBIT C

Aberin, et al. v. American Honda Motor Co.,
Case No. 4:16-cv-04384- JST

MILLER SHAH EXPENSES

CATEGORY	AMOUNT
Case Fund Contributions	\$ 18,000.00
Computer Research/Access	\$ 1,009.75
Internal Copying	\$ 107.25
Process Service/Couriers	\$ 26.95
Total:	\$ 19,143.95

Exhibit **G**

1 Christopher A. Seeger, *Admitted Pro Hac Vice*
Email: cseeger@seegerweiss.com
2 SEEGER WEISS LLP
55 Challenger Road, 6th Floor
3 Ridgefield Park, New Jersey 07660
Telephone: (973) 639-9100
4 Facsimile: (973) 639-8656

5 James E. Cecchi, *Admitted Pro Hac Vice*
Email: jcecchi@carellabyrne.com
6 CARELLA, BYRNE, CECCHI, OLSTEIN
BRODY & AGENLLO, P.C.
7 5 Becker Farm Road
Roseland, New Jersey 07068
8 Telephone: (973) 994-1700
Facsimile: (973) 994-1744

9 *Co-Lead Class Counsel*

10
11 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 LINDSAY and JEFF ABERIN (a married
couple), DON AWTRY, CHARLES
14 BURGESS, JOHN KELLY, YUN-FEI LOU,
JOY MATZA, and MELISSA YEUNG
15 individually and on behalf of all others similarly
situated,

16 Plaintiffs,

17 v.

18 AMERICAN HONDA MOTOR COMPANY,
19 INC.,

20 Defendant.

NO. 4:16-cv-04384-JST

**DECLARATION OF AMANDA M.
STEINER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
APPROVAL OF ATTORNEYS' FEES,
COSTS AND CLASS
REPRESENTATIVES' SERVICE
AWARDS**

CLASS ACTION

DEMAND FOR JURY TRIAL

The Honorable Jon S. Tigar

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DECLARATION OF AMANDA M. STEINER IN SUPPORT OF PLAINTIFFS' MOTION FOR
APPROVAL OF ATTORNEYS' FEES, COSTS AND CLASS REPRESENTATIVES'
SERVICE AWARDS - 1

1 I, Amanda M. Steiner, declare as follows:

2 1. I am a member of the law firm of Terrell Marshall Law Group PLLC, counsel of
3 record for plaintiffs in this matter. I am admitted to practice before this Court and am a member
4 in good standing of the bars of the state of Washington. I respectfully submit this declaration in
5 support of Plaintiffs' Motion for Approval of Attorneys' Fees, Costs and Class Representatives'
6 Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in
7 this declaration and could testify competently to them if called upon to do so.

8 2. James Cecchi sets forth the wider work undertaken on behalf of Plaintiffs, the
9 Class Members, and the Settlement Class Members in his Declaration in support of Plaintiffs'
10 Motion for Approval of Attorneys' Fees, Costs, and Class Representatives' Service Awards.
11 This declaration will describe the work undertaken and expenses incurred by my firm as part of
12 these efforts alongside Settlement Class Counsel, as well as work on behalf of Plaintiff Charles
Burgess before his case was consolidated with this case on June 29, 2017 (Dkt. 92).

13 **A. Terrell Marshall's lodestar**

14 3. The time and expense information provided in the charts annexed to this
15 declaration is taken from time and expense records and documentation prepared and maintained
16 by our firm. I reviewed the firm's time and expense records and documentation when preparing
17 this declaration. I confirmed the accuracy of the records, as well as the necessity for, and
18 reasonableness of, the time and expenses committed to this litigation. As a result of this review, I
19 believe the time reflected in the firm's lodestar calculation and the expenses for which payment
20 is sought are reasonable and were necessary for the effective and efficient prosecution and
21 resolution of the Action. In addition, I believe that the expenses are all of a type that would
22 normally be charged to a fee-paying client in the private legal marketplace.

23 4. My firm's lodestar amount of **\$222,633.50** was calculated using the firm's current
24 rates (or, in the case of individuals who no longer work at our firm, using their rate as of the date

1 they last worked for the firm). A breakdown of the time by timekeeper is provided in Exhibit A
2 and a breakdown of the time by task is provided in Exhibit B.

3 **B. Terrell Marshall's background and experience**

4 5. Terrell Marshall is a law firm in Seattle, Washington, that focuses on complex
5 civil and commercial litigation with an emphasis on consumer protection, product defect, civil
6 rights, and wage and hour cases. Terrell Marshall has been appointed lead or co-lead counsel
7 representing multi-state and nationwide classes in state and federal court in Washington and
8 throughout the United States. Since its founding in 2008, the attorneys at Terrell Marshall have
9 represented scores of classes, tried class actions in state and federal court, and obtained hundreds
10 of millions of dollars in monetary relief to workers, consumers, and other individuals. Additional
11 information about our firm's experience and successes can be found on the firm's website,
12 www.terrellmarshall.com. My firm provided the same level of commitment and quality of
engagement in this case as in previous successful cases.

13 6. I became a member of Terrell Marshall in 2015. I practice complex litigation,
14 including the prosecution of consumer, defective product, wage and hour, and civil rights class
15 actions. I received her J.D. from the UC Berkeley School of Law in 1997 and I am admitted to
16 practice in Washington, California, New York and Hawaii. I have authored briefs that have
17 resulted in numerous favorable decisions for plaintiffs in high-profile and complex securities,
18 antitrust, consumer and civil rights class action in federal and state courts throughout the United
19 States. I was selected for inclusion in the annual Northern California "Super Lawyers" list and
20 was named to the Top 50 Women Lawyers of Northern California. I am a Fellow of the
American Bar Foundation.

21 7. Toby Marshall is a founding member of Terrell Marshall who represents clients in
22 a wide variety of class actions and other complex litigation, including wage and hour, product
23 defect, civil rights, and consumer protection cases. He has served as co-lead counsel in numerous
class and collective actions and has tried and won individual and class cases in state and federal

1 court. He has also argued several times before the Washington Supreme Court, the Washington
2 Court of Appeals, and the Ninth Circuit Court of Appeals. In 2002, Mr. Marshall received his
3 J.D. from the University of Washington School of Law, where he served on the Moot Court
4 Honor Board and was selected to the Order of Barristers. Before forming Terrell Marshall, Mr.
5 Marshall was a member of Tousley Brain Stephens PLLC. He regularly speaks at seminars on
6 employment and class action issues. He is a member of the Washington Employment Lawyers
7 Association and serves on WELA's amicus and legislative committees. He also serves on the
8 ACLU of Washington's legal committee. He has been named several times to the Washington
Super Lawyers list.

9 8. Ben Drachler joined Terrell Marshall as an associate in 2017. Mr. Drachler
10 concentrates his practice on complex civil litigation, including the prosecution of consumer,
11 defective product, and wage and hour class actions. Mr. Drachler also litigates complex disputes
12 involving vulnerable adults and trusts and estates. Mr. Drachler received his J.D. from Seattle
13 University, graduating magna cum laude in 2015. Before joining Terrell Marshall, Mr. Drachler
14 served as law clerk to the Honorable Robert H. Whaley in the United States District Court for the
15 Eastern District of Washington, and to the Honorable Thomas S. Zilly in the Western District of
Washington.

16 9. Brittany Maddera was an associate with Terrell Marshall from 2016 to 2018. Ms.
17 Maddera concentrated her practice on complex civil litigation. Ms. Maddera received her J.D.
18 from the University of Washington in 2014. Before joining Terrell Marshall, Ms. Maddera
19 served as a judicial law clerk for the Honorable Catherine Shaffer at the King County Superior
Court.

20 10. Our firm's rates have been approved by courts around the country, including in
21 February 2024 in *Berman v. Freedom Financial Network, LLC*, No. 4:18-cv-01060-YGR (N.D.
22 Cal.); June 2020 in *Mael v. Evanger's Dog & Cat Food Co., Inc.*, No. 3:17-cv-05469-RBL
23 (W.D. Wash.); September 2019 in *Borecki v. Raymours Furniture*, No. 1:17-cv-01188-LAK-SN

24
DECLARATION OF AMANDA M. STEINER IN SUPPORT OF PLAINTIFFS' MOTION FOR
APPROVAL OF ATTORNEYS' FEES, COSTS AND CLASS REPRESENTATIVES'
SERVICE AWARDS - 4

1 (S.D.N.Y.); August 2019 in *Abante Rooter and Plumbing v. Alarm.com*, No. 4:15-cv-06314-
2 YGR (N.D. Cal.); September 2017 in *Melito v. American Eagle Outfitters, Inc.*, No. 14-CV-2440
3 (VEC) (S.D.N.Y.).

4 **C. Terrell Marshall's expenses**

5 11. Our firm also seeks an award of expenses of **\$21,433.67** in connection with the
6 prosecution and resolution of the Action. The expenses pertaining to the Action are reflected in
7 the books and records of our firm. These books and records are prepared from receipts, check
8 records, expense vouchers, and other documents and are an accurate record of the expenses. The
9 expenses incurred by our firm are summarized by category in Exhibit C.

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

12 EXECUTED this 3rd day of April, 2024 at Seattle, Washington.

13 By: /s/ Amanda M. Steiner
14 Amanda M. Steiner, SBN 190047

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DECLARATION OF AMANDA M. STEINER IN SUPPORT OF PLAINTIFFS' MOTION FOR
APPROVAL OF ATTORNEYS' FEES, COSTS AND CLASS REPRESENTATIVES'
SERVICE AWARDS - 5

EXHIBIT A*Aberin v. American Honda Motor Co.,
Case No. 4:16-cv-04384- JST*

<u>NAME</u>		<u>HOURS</u>	<u>RATE</u>	<u>LODESTAR</u>
Amanda Steiner	(P)	147.20	\$ 750.00	\$ 110,400.00
Toby Marshall	(P)	14.90	\$ 750.00	\$ 11,175.00
Ben Drachler	(A)	52.70	\$ 400.00	\$ 21,080.00
Brittany Maddera	(A)	197.00	\$ 325.00	\$ 64,025.00
Eden Nordby	(PL)	15.80	\$ 295.00	\$ 4,661.00
Jodi Nuss	(PL)	24.50	\$ 295.00	\$ 7,227.50
Brandford Kinsey	(LC)	18.20	\$ 225.00	\$ 4,095.00
Total:		470.30		\$ 222,663.50

EXHIBIT B

*Aberin, et al. v. American Honda Motor Co.,
Case No. 4:16-cv-04384- JST*

<u>TASK</u>	<u>HOURS</u>	<u>LODESTAR</u>
Investigation	3.10	\$ 2,325.00
Document Discovery	171.30	\$ 76,206.00
Deposition Discovery	38.60	\$ 15,280.00
Pleadings, Brief, Motions & Appeals	153.70	\$ 68,672.50
Meetings/Communications	21.60	\$ 11,874.00
Settlements	8.30	\$ 6,225.00
Litigation Strategy/Analysis	31.00	\$ 19,553.50
Class Certification	41.60	\$ 22,170.00
Court Appearances	1.10	\$ 357.50
Trial Preparation/Trial	-	\$ -
Travel	-	\$ -
<i>Total:</i>	<i>470.30</i>	<i>\$ 222,663.50</i>

EXHIBIT C

*Aberin, et al. v. American Honda Motor Co.,
Case No. 4:16-cv-04384- JST*

<i>CATEGORY</i>	<i>AMOUNT</i>
Copying costs	\$132.60
Cost Fund Contributions	\$20,000.00
Courier/process server	\$64.50
Fed Ex charges	\$60.76
Filing Fees	\$1,030.00
PACER/Court documents	\$63.50
Postage	\$14.42
Westlaw	\$67.89
<i>Total:</i>	<i>\$ 21,433.67</i>

Exhibit H

CONTAINS REFERENCES TO MATERIALS MARKED HIGHLY CONFIDENTIAL



Lindsey and Jeff Aberin (a married couple), Don Awtrey, Charles Burgess, John Kelly, Yun-Fei Lou, and Joy Matza, individually and on behalf of all others similarly situated,

Plaintiffs

v.

American Honda Motor Co., Inc.,

Defendants

Submitted by:

Richard J. Eichmann
April 1, 2024
United States District Court
Northern District of California
Case No. 4:16-cv-04384-JST

CONTAINS REFERENCES TO MATERIALS MARKED HIGHLY CONFIDENTIAL

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III.	Information Relied Upon	4
IV.	Estimated Incident Rate of HFL Unit Failure.....	4
V.	HFL Unit Failures for Class Vehicles in Class States	7
VI.	Conclusion	8

CONTAINS REFERENCES TO MATERIALS MARKED HIGHLY CONFIDENTIAL

I. Qualifications

1. My name is Richard Eichmann. I am a Senior Managing Director for NERA Economic Consulting. I have over 25 years of experience working as an economic consultant. During my career I have served as a consultant to both public and private companies in a variety of industries and have performed numerous quantitative forecasts, econometric models, valuations, and statistical and damages model analyses. I have prepared and submitted expert reports on the application of statistical methods, sampling, survey design, business valuation, and econometrics as they pertain to the calculation of damages, lost profits, and unjust enrichment. Over my career, I have been hired to value settlements and evaluate damages arising from automobile product defects, breach of contract, and many other claims. I have taught and presented at conferences on the topic of damages as they relate to such matters. I am a Certified Valuation Analyst (CVA) via the National Association for Certified Valuators and Analysts (NACVA) and am certified as a Master Analyst in Financial Forensics (MAFF) in commercial damages via NACVA as well. My current resume is attached within **Appendix 1** to this Report.
2. NERA is being compensated for my services at an hourly rate of \$700. I have also been assisted by NERA staff members who are billed at their standard, tiered rates depending on their experience and qualifications. Neither my, nor NERA's, compensation is dependent on the outcome of this matter.

II. Background and Assignment

3. In 2022, Plaintiffs Lindsey Aberin et al. filed a fourth amended class action complaint alleging that the HandsFreeLink™ (“HFL”) unit of certain Acura vehicles sold by American Honda Motor Co., Inc. (“Honda”) “will get stuck ‘on’ even if not in use and even after the car’s ignition switch is turned off. Once stuck ‘on,’ the [HFL] unit creates a constant and substantial parasitic electric drain on the electric system, leading to drained and dead batteries, recurring battery replacement, and premature failure of other essential electric components such as

CONTAINS REFERENCES TO MATERIALS MARKED HIGHLY CONFIDENTIAL

alternators.”¹ I understand the Court certified a California Class, Kansas Class, New York Class, and Washington Class of persons who purchased the following Acura vehicles in each of the respective states: 2004-2008 TL, 2005-2008 MDX, or 2007-2009 RDX.²

4. I was retained by Seeger Weiss LLP, Settlement Class Counsel, to perform a preliminary estimate of the incident rate of HFL failures expected for the Class Vehicles.

III. Information Relied Upon

5. This Report is a statement of opinions I have reached in this matter and the basis and reasons for those opinions. My conclusions are based on my educational background and work experience; my understanding of the allegations; and Class Vehicles’ sales, warranty, and replacement parts data provided to me by Counsel. The materials I have considered are cited herein and/or listed in **Appendix 2**. A limited set of materials were provided to me to consider in my analysis and my calculations involve material assumptions as a result. I reserve the right to update my opinion if new data is provided to me.

IV. Estimated Incident Rate of HFL Unit Failure

6. I perform a survival analysis to estimate an incident rate of class vehicles experiencing a failure of the HFL unit over a 10-year period, which uses Honda’s data on replacement part shipments, warranty claims, and goodwill for the repair or replacement of the HFL units for Class Vehicles.³ After calculating this failure rate, I apply it to unit sales data for Class Vehicles sold within the four Class States to estimate a count of Class Vehicles that would experience an HFL unit failure during a 10-year period. I then divide this estimated count of HFL unit failures into one of two groups: (i) the estimated number of vehicles with a failed HFL unit that has

¹ *Aberin et al. v. American Honda Motor Co., Inc.*, Fourth Amended Class Action Complaint, United States District Court Northern District of California, Case No. 4:16-cv-04384-JST, September 9, 2022 (“Complaint”), ¶3.

² *Aberin et al. v. American Honda Motor Co., Inc.*, Order Granting Motion For Class Certification; Denying Motions To Strike Expert Testimony, United States District Court Northern District of California, Case No. 4:16-cv-04384-JST, March 23, 2021, p. 3.

³ AHM_HFL_00015708; AHM_HFL_00015709; AHM_HFL_00015710; *Aberin et al. v. American Honda Motor Co., Inc.*, American Honda Motor Co., Inc.’s Amended Responses and Objections to Plaintiffs’ First Set of Interrogatories No. 3 and 4., Case No. 4:16-cv-04384-JST, March 14, 2022, p. 2 (“AHM_HFL_00015708 [] are the relevant warranty claims and goodwill for the repair or replacement of the HFL units in the Class Vehicles.... AHM_HFL_00015709 and 00015710 [] show the number of HFL units sold to dealers for the Class Vehicles.”).

CONTAINS REFERENCES TO MATERIALS MARKED HIGHLY CONFIDENTIAL

been (or will be) replaced, and (ii) the estimated number of vehicles with a failed HFL unit that has not been (nor will be) replaced and are thus assumed to suffer parasitic drain (with or without disconnecting the HFL unit).

7. Generally, a survival analysis is a “collection of statistical procedures for data analysis where the outcome variable of interest is time until an event occurs.”⁴ This type of statistical analysis is regularly used in assessing machine part failures, including the prediction of automotive parts reliability using warranty and replacement data.⁵ When applied to the current case, my survival analysis calculates a probability of a Honda class vehicle “surviving” without a defect of the HFL unit through a 10-year period. Specifically, I apply a “Kaplan–Meier Survival Analysis” and forecast future HFL unit failures using a Weibull distribution, which calculates a failure rate equal to 100% minus the probability of survival after 10 years of vehicle life.⁶ The analysis is detailed further below.
8. My failure rate calculation is based on Honda’s data on replacement part shipments, warranty claims, and goodwill for the repair or replacement of the HFL units for Class Vehicles.⁷ This includes information [REDACTED] regarding Honda’s service of HFL units for the relevant Acura vehicles,⁸ and the number of HFL replacement units shipped to dealers nationally.⁹ The former [REDACTED]

⁴ Clark, T.G. et. al. “Survival Analysis Part I: Basic concepts and first analyses.” *British Journal of Cancer* 89 (2003): 232-238.

⁵ For example, see: Lu, Ming-Wei. “Automotive Reliability Prediction Based on Early Field Failure Warranty Data.” *Quality and Reliability Engineering International* 14, no. 2 (1998): 103-108.

⁶ The Kaplan-Meier Survival Analysis is used due to its ability to account for incomplete information. Given the use of warranty data which only extends until the end of the warranty period for each vehicle, my analysis of failures over a 10-year vehicle life will also account for class vehicles with an HFL unit failure that occurred after the warranty expired. Rich, Jason T. et al. “A practical guide to understanding Kaplan-Meier curves.” *Otolaryngology-Head and Neck Surgery Foundation* 143, no. 3 (2010): 331-336.

⁷ AHM_HFL_00015708; AHM_HFL_00015709; AHM_HFL_00015710.

⁸ AHM_HFL_00015708. I perform the Kaplan-Meier Survival Analysis using the Class Vehicles nationally. There are [REDACTED] used in the analysis with a state listed as “Unknown” that are included.

⁹ AHM_HFL_00015709; AHM_HFL_00015710. Although the replacement parts data contains information on which state a specific replacement part order was shipped [REDACTED]. In isolation, it is therefore not a useful metric in determining all replacements for the Class Vehicles in the Class States. However, when combined with the data on warranty claims and goodwill for the repair or replacement of the HFL units (as subsequently described) it is a useful data point to consider.

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[REDACTED]
[REDACTED]
[REDACTED]
among other variables.¹⁰ The initial dataset provided contains [REDACTED] observations.¹¹ After filtering the data to the nationwide class vehicles, I observe [REDACTED] replacements of defective HFL units nationally.¹²

9. Using this data on warranty claims and goodwill for the repair or replacement of the HFL units, I determine a “time to failure” in days for each observation from [REDACTED] [REDACTED].¹³ All vehicles are assumed to be observed for a full four-year warranty period or a period of 1,461 days (*i.e.*, HFL units are assumed to have not failed for at least four years if they are not observed in the warranty data).¹⁴ Vehicles with HFL units that are not observed to fail within the data are considered “censored,” meaning that they are not considered in the analysis after the initial warranty period because failures for them are no longer recorded in the data.¹⁵ Dealing with censored data is a common practice in survival analysis, and the Kaplan-Meier Survival Analysis is used

¹⁰ AHM_HFL_00015708.

¹¹ AHM_HFL_00015708.

¹² AHM_HFL_00015708. Observations in the analysis are limited to the list of replacement parts from the replacement part data using the [REDACTED]. For a list of replacement parts, *see* AHM_HFL_00015709; AHM_HFL_00015710. In addition, I understand the data on warranty claims and goodwill for the repair or replacement of the HFL units provides incomplete records of replacements, [REDACTED]

[REDACTED] As such, my analysis expands the data (*i.e.*, resamples, with replacement) to match total replacement parts shipped, subsequently assuming [REDACTED]. The remaining Class Vehicles beyond this amount are assumed to have been observed to not fail at least through the 4-year warranty period.

¹³ AHM_HFL_00015708. Any negative or missing values are assumed to be data errors and are dropped from my analysis.

¹⁴ $1,461 = (4\text{-year warranty period} \times 365 \text{ days}) + 1 \text{ leap-year day}$.

¹⁵ In some cases the time to failure within the data exceeds 1,461 days and these observations are also treated as not having failed for the initial four-year period and then censored after four-year period.

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in part because of its ability to account for censored data when determining a survival rate.¹⁶ Kaplan-Meier analysis is “the most widely used” survival function estimator.¹⁷

10. After performing the Kaplan-Meier analysis on the existing dataset, I forecast the survival curve using a Weibull distribution, which is among the most used approaches for estimating future failure rates based on prior data.¹⁸ Based on this analysis, the probability of a Class Vehicle experiencing an HFL unit failure over a 10-year vehicle lifetime is 27.2 percent.

V. HFL Unit Failures for Class Vehicles in Class States

11. After estimating the incident rate of HFL unit failures described above, I then estimate the number of Class Vehicles with an HFL unit failure using the Class Vehicle sales in Class States. This results in an estimated 46,777 Class Vehicles that will experience an HFL unit failure over a 10-year vehicle lifetime.¹⁹
12. To estimate the number of Class Vehicles replacing HFL units (as opposed to Vehicles with a failed HFL unit that is not replaced and is thus assumed to suffer parasitic drain with or without disconnecting the HFL unit), I assume that the Class States’ share of failures within the data on warranty claims and goodwill for the repair or replacement of the HFL units reflects the share of the overall estimated replacements indicated in the replacement part shipping data. This results in an estimated 38,364 Class Vehicles that will experience an HFL unit failure requiring replacement over a 10-year vehicle lifetime, or approximately 22.3 percent of all Class Vehicles. Finally, the set of remaining 8,413 vehicles (*i.e.*, estimated failures that are not

¹⁶ It is often the case that researchers are working with incomplete datasets due to the fact that certain study participants (or vehicles, in this case) may stop being observed for various reasons and thus cannot be calculated as having “survived” or “failed” after a particular point in time. For my analysis, the vehicles that were not serviced during the warranty period would have no service date, but still need to be accounted for in the survival analysis. See Goel, Manish Kumar et al. “Understanding survival analysis: Kaplan-Meier estimate.” *International Journal of Ayurveda Research* 1, no. 4 (2010): 274-278.

¹⁷ Moore, Dirk F. *Applied Survival Analysis Using R*. Switzerland: Springer International Publishing, 2016, p. 25 (“In this chapter we will discuss non-parametric estimators of the survival function. The most widely used of these is the product-limit estimator, also known as the Kaplan-Meier estimator.”).

¹⁸ Moore, Dirk F. *Applied Survival Analysis Using R*. Switzerland: Springer International Publishing, 2016, p. 137 (“In this chapter we will emphasize the exponential and Weibull distributions, since these are the most commonly used parametric distributions.”).

¹⁹ 46,777 Class Vehicles experiencing an HFL unit failure = (171,746 Class Vehicle sales in Class States) x (0.272 probability of experiencing an HFL unit failure). See AHM_HFL_00014527.

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replaced) represents the approximately 4.9 percent of all Class Vehicles with a failed HFL unit that are assumed to suffer parasitic drain over a 10-year vehicle lifetime.²⁰

VI. Conclusion

13. Based on my understanding of the data provided to me, I estimate that 38,364 Class Vehicles in Class States (22.3 percent of all Class Vehicles) contained a failed HFL unit that was (or will be) replaced within a 10-year vehicle lifespan, and an additional 8,413 Class Vehicles in Class States (4.9 percent of all Class Vehicles) have experienced a failed HFL unit that has not (nor will be) replaced and are thus assumed to suffer parasitic drain within a 10-year vehicle lifespan.

Respectfully submitted,



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April 1, 2024

²⁰ 8,413 Class Vehicles in Class States experiencing parasitic drain = 46,777 Class Vehicles experiencing an HFL unit failure – 38,364 Class Vehicle replacements of an HFL unit.

Appendix 1



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Senior Managing Director

Richard Eichmann specializes in the application of applied economic analysis in intellectual property, antitrust, and other commercial litigation. His skills include valuation, econometrics, statistics, sampling, and survey research. He has calculated economic damages in a variety of industries, including the software, drone, encryption, mobile apps, telecommunications, social media, automotive, airline, credit card, financial, energy, gaming and entertainment industries. He has filed expert reports in Federal court on the application of statistical methods, sampling, survey design, and business valuation, lost profits, and patent damages. He has over 30 years of experience in economic consulting, including over 25 years of experience working in litigation consulting, the valuation of intangible assets, and transfer pricing. Mr. Eichmann has provided arbitration, deposition and trial testimony for both jury and bench trials. He is currently the Chair of NERA's Global IP Practice and prior to that led the High-Tech Subcommittee within the IP Practice. Rick also currently serves as the Head of the San Francisco Office for the firm.

Prior to joining NERA, Mr. Eichmann provided economic analysis and dispute advisory services at public and private litigation consulting firms as well as two Big 4 accounting firms. In addition, he has worked as an analyst in the automotive industry utilizing proprietary survey research data for time series analysis and as a research assistant for the Survey Research Center at the Institute for Social Research in Ann Arbor, Michigan on panel study surveys.

Select Projects

Representative examples of Mr. Eichmann's engagement experience include:

Patent and Trademark Litigation

- Patent Infringement (Chemical Mechanical Planarization (CMP) Process Slurry Technology) – Calculated patent infringement damages in the form of lost profits and reasonable royalty in the *CMC* matter.
- Patent Infringement (Cryptographic Processing Relating to Routers and Modems) – Rebutted an opposing damages expert's opinion for client *Cisco* regarding a reasonable royalty analysis that examined issues relating to the incremental benefit relating to cryptographic parallel processors.

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- Patent Infringement (Standard Essential Patents Relating to DSL Technology) – Rebutted an opposing damages expert’s opinion for client *2Wire* regarding FRAND reasonable royalty analysis that examined a modified top-down analysis estimating the benefits attributable to DSL SEP patents.
- Patent Infringement (Unmanned Aerial Vehicles - Drones) – Rebutted an opposing damages expert’s opinion for client *Autel* regarding a lost profits and reasonable royalty analysis that examined the alleged incremental profit attributable to the benefits of patented drone technology.
- Patent Infringement (Thermal Cooling Technology) – Rebutted an opposing damages expert’s opinion for client *Civiq* regarding a lost profits and reasonable royalty analysis that examined the alleged infringement of thermal cooling technology.
- Patent Infringement (Smart Phone Protective Screen Covers) – Rebutted an opposing damages expert’s opinion for client *Aevoe* regarding a reasonable royalty that examined the incremental profit attributable to the benefits of patented smart phone screen protective covers.
- Patent Infringement (Smart Phone Mobile Camera Features) – Rebutted an opposing damages expert’s use of survey studies as an indication of value for client *Motorola Mobility* in a patent infringement suit concerning camera and Wi Fi features. I provided testimony within a jury trial before Judge Orrick in San Francisco, California.
- Patent Infringement (Social Media) – Provided client *Facebook* with a declaration that utilized statistical analysis to examine the underlying assumptions within the model of an opposing expert in a patent infringement suit.
- Patent Infringement (Enterprise Mobility Management) – Provided client *MobileIron* with an assessment of damages incurred as a result of an alleged patent infringement pertaining to Personal Information Management security. I provided testimony within a jury trial before Judge Grewal in San Jose, California.
- Patent Infringement (Gaming) – Rebutted an opposing damages expert’s calculation of reasonable royalty for client *SteelSeries* in a patent infringement suit concerning gaming mice technology. I provided testimony within a jury trial before Judge Payne in Marshall, Texas.
- Patent Infringement (Farm Equipment) – Hired as an expert to provide statistical analysis of the clinical trials run by an agricultural expert to examine the efficiency and alleged improved benefits of a mechanized corn seed planter.
- Patent Infringement (Mobile App – Video Streaming) – Provided a declaration relating to the economics of damages in support of a motion for an injunctive relief relating to patents associated with mobile streaming technology for *Eko*.
- Trademark Infringement (Hardware Trade Associations) – Assisted with the determination of potential market confusion among consumers and attendees of a national hardware trade association conference. Calculated the impact on profits for the conference, in terms of damages, given the impact.
- Trademark Infringement (Pharmaceuticals) – Rebutted an opposing expert’s damages opinion relating to alleged economic damages sustained by alleged market confusion for client *Fera Pharmaceuticals*.
- Copyright Infringement (Software) – Calculated damages sustained by a software manufacturer, *Quest Software, Inc.*

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Trade Secret Misappropriation

- Misappropriation of Trade Secrets (Networking and Telecommunications Market Reports) – Determined direct and consequential damages incurred by *Dell’Oro Group* as result of a breach of fiduciary duty by a former employee alleged to misappropriated trade secrets relating to the generation of standardized market reports.
- Misappropriation of Trade Secrets (Lithium Solid State Batteries) – Valuing seven trade secrets relating to lithium solid state batteries that were alleged to have been misappropriated by former employees of *Quantumscape Corporation*.
- Misappropriation of Trade Secrets (Pharmaceutical Adjudication Services) – Led team in the rebuttal of alleged lost profit and unjust enrichment claims in defense of a leading pharmaceutical adjudication service provider accused of having illegally acquired trade secrets from a former business associate.
- Misappropriation of Trade Secrets (Gene Therapy) – Rebutted an opposing expert’s assessment of damages incurred by a former laboratory employee who alleged that a major academic university misappropriated his intellectual capital in the acquisition of a patented gene therapy.
- Misappropriation of Trade Secrets (Value Added Retailer) – Led team in the calculation of compensatory damages and unjust enrichment claims in defense of a value-added retailer in the Florida market accused of having illegally acquired trade secrets from a competitor.
- Misappropriation of Trade Secrets (Trading Models) – Named expert in a case that involved rebutting alleged damages sustained by an investment management company. The head of the quant group left, along with the core of his group to form a competitor investment management company. The Plaintiff alleged that when he left he took with him a proprietary trading model. Damages centered on valuing the worth and subsequent alleged diminution in value of the alleged stolen trading model.

Antitrust

- Antitrust (Standard Essential Patents) – Provided consulting assistance to a confidential client regarding possible exposure to allegations on anticompetitive behavior due to its alleged failure to license patents at a fair, reasonable, and non-discriminatory (FRAND) rate that were deemed standard essential patents (SEP).
- Antitrust (Real Estate Markets) – Managed the analyses generated to rebut two expert reports that sought to calculate damages in an alleged price-fixing case. I provided statistical support in the case with regard to an examination of the validity of the plaintiff’s expert’s yardstick methodology.
- Antitrust (Construction Commodity) – Designed and managed statistical and econometric analyses to investigate the impact of alleged price-fixing among producers of a construction input commodity. Federal Sentencing Guideline dictated the estimation of affected commerce. A two-stage regression analysis that sought to isolate whether prices of alleged impacted months was utilized. The methodology in the case was ultimately described in an article presented at the Western Economic Association International Annual Conference in Vancouver, B.C. on July 1, 2009
- Antitrust (Energy) – Reviewed plaintiff’s pricing methodology and presented an alternative mitigated price methodology to the Federal Energy Regulatory Commission (FERC) that was ultimately accepted in the matter of the California energy dispute, concerning the defense of thermal generators against the charges of price fixing and collusion.

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- Antitrust (Energy) - Conducted statistical analyses of trader behavior to determine the probability of systematic gaming behavior, in the matter of FERC allegations on natural gas traders, concerning the defense of energy futures trades against the charges of price manipulation.
- Antitrust (Energy) - Managed and led programming analyses of large disparate data sets for determining liability and timing issues, in the matter of an antitrust dispute concerning allegations of collusion in the electric markets.
- Predatory Pricing Behavior (Pharmaceuticals) – Designed and managed the execution of econometric and statistical analyses of HIV pharmaceutical drugs as they pertained to alleged predatory pricing behavior of a supplier. Mr. Eichmann generated code to analyze various model specifications, correcting for first-series serial correlation that might indicate what exogenous variables influenced markets and how.

Breach of Contract

- Breach of Contract (Non-Compete Provisions / Drayage Services) – Estimated the issue irreparable harm to *Roadrunner* in a breach of contract relating to non-compete provisions in a Stock Purchase Agreement.
- Breach of Contract (Winery) – Calculated damages sustained by *Close LaChance Wines* in a breach of contract allegation litigated before JAMs arbitration.
- Breach of Contract (Intellectual Property / Fraud) – Led team in the calculation of damages for a case where the plaintiff alleged that the defendant had failed to disclose a potential liability with regard to a possible infringement of intellectual property concerning soybean germ plasma prior to their merging of assets. The alleged liability materialized several years later and the plaintiff then sought indemnification under the benefit of the bargain method.
- Breach of Contract (Recreational Vehicles) – Rebutted the statistical validity of an opposing expert’s inferences on the use of his survey design in a matter dealing with the impact of sales to a recreational manufacturer as a result of an alleged harm to their reputation due to an interior drywall component. Within the same, case I wrote a separate report that rebutted the statistical validity of an economic expert’s damage calculation that sought to calculate the impact on sales due to an alleged reputational loss.
- Breach of Contract (Furniture) – Calculated lost profit damages alleged in a breach of contract case for *DWS International, Inc.* that involved analyzing management forecasts to estimate the fair market value of a lost opportunity as it related to the patio furniture market. I testified at trial before a jury trial in the Southern District of Ohio.
- Breach of Contract (Breast Pumps) – Calculated loss profit damages alleged in a breach of contract case for *Whittlestone, Inc.* that analyzed margin risk to estimate the fair market value of a lost opportunity as it related to the electric breast pump market.
- Breach of Contract (Agricultural Commodities) – Analyzed the short-term fixed cost structure of a slaughter house operating in a perfectly competitive environment as part of a breach of contract dispute in the agricultural commodities market.
- Breach of Contract (Telecommunications) - Managed the analytical aspects of a complex damage calculation model and prepared and presented our findings to counsel in the matter of a breach of contract dispute between two U.S. telecommunications firms.

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- Breach of Contract (Auto Parts) – Calculated lost profits as a result of a breach of contract regarding easement rights and advertisement obstruction.
- Breach of Contract (Hair Coloring Products) – Calculated lost profits for client, *BehindtheChair.com* in an alleged breach of contract regarding profit distributions from a hair-coloring product business.

Valuation Consulting and Litigation

- Breach of Fiduciary Duty (Visual AI Algorithm Software for Advanced Camera Systems – Smartphones, Tablets, Smart Televisions, Cars, and Robots) – Conducted a valuation utilizing the income and market approaches in a dispute between minority shareholders in a buyout under false pretenses in the *ArcSoft* dispute.
- Employee Stock Option Valuation (Retail Clothing) – Performed two business valuations for *Robert Talbott, Inc.* to estimate both the exercise current share price of a non-controlling, non-marketable privately-held high-end cloth manufacturer used to estimate the value of an alleged employee stock option held by a former CEO in dispute.
- Business Valuation (e-Commerce Start-Up) – Utilized ARIMA time series techniques to forecast subscription revenues of a charitable social network site, for which I calculated the fair market value of the minority interest. The income approach relied heavily on the use of historical subscription data that allowed for a range of values within a statistically confident interval.
- Business Valuation (Telecommunications) - Conducted a business valuation of an alleged lost international telecommunications opportunity that took into consideration varying capital structures within financial projections that served to rebut a plaintiff's valuation model.
- Business Valuation (Financial Services) – Assisted with the critique of a business valuation involving a minority interest of an investment management firm arising out of an employment dispute.

Securities

- Securities Litigation (IPO) - Adapted 10b-5 securities litigation model to estimate alleged damages of IPO allocations and valuations, in the matter of a class action lawsuit against a consortium of major Wall Street underwriters.
- Breach of Contract (Hedge Funds) – Calculated damages for a case that dealt with breach of an investment contract between a seed financier and a hedge fund for *SGAM Newedge Management, Inc.* The case involved valuing a hedge fund as a proxy for alleged lost profits. I testified at a JAMS arbitration in New York.
- Securities Fraud (Stock-Option Back Dating) – Derived statistical models to examine the frequency of stock-option back dating instances and their effect on reported earnings.
- Securities Fraud (Earnings-Smoothing) – Led a team of financial economists to investigate and isolate the prevalence and method in which earnings smoothing impacted share value.
- Mortgage-Backed Securities (Statistical Analysis) – Managed and designed econometric models tasked with analyzing loss causation as it relates to losses across tranches within securitizations.
- Mortgage-Backed Securities (Statistical Analysis) – Named sampling expert in the *Galena Street Fund v. Wells Fargo Bank, N.A.* matter.

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- Mortgage-Backed Securities (Statistical Analysis) – Named sampling expert in the *Federal Housing Finance Agency v. J.P. Morgan Securities LLC et al* matter.
- Mortgage-Backed Securities (Statistical Analysis) – Named sampling expert in the *Federal Home Loan Bank of Pittsburgh v. J.P. Morgan Securities LLC et al* matter.
- Mortgage-Backed Securities (Statistical Analysis) – Provided statistical support of a motion to deny class certification of a proposed class of investors that sought restitution from an underwriter for allegedly not having properly accounted for the risk of the underlying collateral of several securitizations.
- Mortgage-Backed Securities (Statistical Analysis) – Provided statistical and econometric support examining the factors that influence the likelihood of loan default as it pertained to a class action that sought restitution of the alleged wrongdoings of a municipal bond insurance agency.
- Mortgage-Backed Securities (Statistical Analysis) – Provided statistical support in examining the difference of bid and close data provided a municipal bond insurance agency.
- Securities Litigation (10b(5)) – Conducted event studies and loss causation models on a variety of 10b(5) class action case matters.
- Insider Trading – Created an econometric model to analyze the impact and materiality of alleged insider tip investigated by the SEC.GM

Commercial Class Action Litigation

- Class Action (Eyeglasses) – Calculated damages sustained by a class of individuals whose eyeglasses had been sold to them with an alleged false claim of increased precision by *LensCrafters AccuFit* measurements. I utilized a conjoint analysis producing a Willingness to Pay result from a mixed logit model to run a market simulation to arrive at the premium consumers paid as a result of not knowing about the misrepresentation.
- Class Action (Diesel Engines) – Calculated damages sustained by a class of individuals whose Class 8 trucks had been sold to them with a manufacturer defect relating to *Paccar MX-13* diesel engines. I utilized a hedonic regression to isolate the effect of the defect on the resale value of the vehicles.
- Class Action (All-Terrain Vehicles) – Calculated damages sustained by a class of individuals whose ATV vehicles had been sold to them with a manufacturer defect. I utilized a conjoint analysis producing a Willingness to Pay result from a mixed logit model to run a market simulation to arrive at the premium consumers paid as a result of not knowing about the defect.
- Class Action (Automotive) – Calculated damages sustained by a certified class of individuals whose vehicles had been inappropriately seized by a municipality. The task involved analyzing auction and automotive valuation data to determine both the delta and the float.
- Class Action (Automotive) – Designed and managed the execution of econometric and statistical analyses of secondary market pricing in a particular vehicle segment in defense of price impact allegations due to alleged non-disclosures by *Ford Motor Company*. We utilized econometrics to demonstrate that a recall did not, as the plaintiffs alleged, negatively impact depreciation rates of vehicles, but rather other market forces explain the sudden drop, such as rising lease terminations, market segment saturation.
- Class Action (Software Auctions) – Addressed class certification issues as they arose in matter dealing with the alleged breach of contract in the use of auctions. The matter involved analyzing the expected value of an auction.

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- Class Action (Gaming) – Hired by the Indiana state lottery commission to provide consulting services in relation to a class action litigation matter, where I designed and managed the execution of an econometric model that generated expected consumer pricing behavior of a scratch-off game. The model determined the 95 percent confidence interval of sales the lottery commission could have expected to receive but for an alleged misstatement of probabilities on their website.

Class Action (Breach of Contract / Fraud) – Led team in the calculation of damages for a case where the plaintiff alleged that the defendant willingly failed to pay royalties. The case involved a stratified statistical sampling so as to investigate the liability claims of intent as well as damage implications, if any.

False Advertising

- False Advertising (Refresh Rates in Televisions) – Rebutted class action damages for *Vizio* in a matter involving alleged misrepresentation of refresh rates in television monitors.
- False Advertising (Enterprise Resource Planning Software Implementation) – Rebutted alleged economic damages sustained by a global salvage company due to an alleged failed ERP implementation system for *Oracle*.
(http://www.oregonlive.com/politics/index.ssf/2016/09/post_183.html)
- False Advertising (Enterprise Resource Planning Software Implementation) – Rebutted alleged economic damages sustained by a global salvage company due to an alleged failed ERP implementation system for *Sparta Consulting, Inc.*
- False Advertising (Credit Cards) – Calculated economic damages sustained by a credit card processing company, *Heartland Payment Systems, Inc.*, due to the alleged false advertising of its competitor regarding pass-through costs to merchants.
- False Advertising (Consumer Products) – Rebutted economic damages for *Philips Oral Healthcare, Inc.*, alleged to have been sustained by the class as a result of an alleged false claim regarding product quality.
- False Advertising (Trade Association) – Calculated economic damages sustained by a promoter of a trade association trade show that alleged that a competitor trade show was creating consumer confusion due to the use of their trademark infringement and false advertisement.
- False Advertising (Hand Tools) – Calculated economic damages alleged by a class as a result of false advertising, which promoted hand tools sold in the United States as “American made.”
- False Advertising (‘Sippy’ Cups) – Calculated economic damages alleged by a competitor as a result of false advertising, which stated that certain children’s ‘sippy’ cups held certain patents, which they did not.
- False Advertising (Beverages) – Calculated economic damages alleged by a competitor as a result of consumer confusion brought on due to false advertising, which stated that certain beverages held certain ingredients, which they did not

Labor and Employment Litigation

- Class Action (Discrimination) – Analyzed the economics relating to the closing of certain call-centers for an airline company alleged of engaging in age discrimination. While initial analyses provided prima facie evidence of possible age discrimination when identifying the statistical

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differences among call-centers, further analysis indicated that regional influences were in fact greater and more prominent in influencing the company's actions.

- Class Action (Discrimination) – Generated a probit econometric model of the firm's data to model the effects of race, gender, and other attributes and their alleged effect on the probability of an employee being fired as part of an alleged employment discrimination case.
- Class Action (Discrimination) – Analyzed class certification issues as they related to an allegation that defendant chose to close an airline call-center due to the gender and age of its employees. The analysis included both an inquiry of descriptive and inferential statistics as well as cost accounting considerations
- Class Action (Discrimination) – Designed and managed statistical and econometric analyses to investigate the allegation of discriminatory behavior within a major bottling distributor.
- Class Action (Wage/Hour Dispute) – Analyzed class certification issues as they related to a wage-hour dispute of a perfume manufacturer. Conducted a stratified sampling exercise of hand-written invoices of proposed class members and examined the variability, if any, of their work experiences that would influence whether or not they were improperly classified as independent contractors.
- Class Action (Wage/Hour Dispute) – Analyzed class certification issues as they related to a wage-hour dispute of the *Skywest* airline company. Examined various influencing factors that played a role in determining the probability of an alleged class member missing his/her lunch break and how the variance revealed from the data among the influencing factors affects commonality among the alleged class members.

Economic and Statistical Consulting

- Statistical (Gemology) – Designed statistical tests to examine the likelihood of collusion within international grading facilities of various gems, including diamonds.
- Economic (Automotive Markets) – Co-authored the U.S. automotive industry newsletter for J.D. Power and Associates, working directly under the senior economist in executing and managing their syndicated market forecasts and reviews.
- Econometrics (Forecasting) - Created and maintained ARIMA production and sales forecast models for the U.S. and developing markets, including Asia and Latin America.
- Forensic Investigations – Led a FCPA investigation for a U.S. petroleum company with subsidiaries in the Latin America. The case dealt with utilizing statistical techniques on a large set of general ledger transactions and a series of financial statement analyses that ultimately revealed a complex fraud where funds were being laundered via service contracts to funnel bribes.

Richard J. Eichmann

Education

- 1996 University of Michigan, Ann Arbor, MI
M.A., Economics
Completed Comprehensive Exams
Completed Econometrics Field Exam
- 1995 University of Michigan, Ann Arbor, MI
BA, Economics
- 1995 University of Michigan, Ann Arbor, MI
BA, Philosophy

Certifications

- 2016 National Association for Certified Valuers and Analysts (NACVA)
Master Analyst in Financial Forensics (MAFF) - Commercial Damages
Credential ID 703
- 2009 National Association for Certified Valuers and Analysts (NACVA)
Certified Valuation Analyst (CVA)
Credential ID 991115

Professional Experience

- 2014 - present **NERA Economic Consulting**, San Francisco, CA, Los Angeles, CA, & New York, NY
Chair, Global Intellectual Property Practice (2023 – present)
San Francisco Office Head (2022 – present)
Senior Vice President / Senior Managing Director (2020 – present)
Vice President / Managing Director (2014 – 2019)
Economic Damages / Litigation Consulting
- 2004 - 2014 **FTI Consulting, Inc.**, San Francisco, CA (2009 – 2014) and Chicago, IL (2004 – 2009)
Managing Director (2009 – 2014)
Director (2006 – 2008)
Manager (2004 – 2006)
Economic Damages / Litigation Consulting
- 2001 - 2004 **Cornerstone Research**, Washington, D.C.
Research Associate (2001 – 2004)
Economic Analysis and Dispute Advisory Services
Economic Damages / Litigation Consulting
- 2000 - 2001 **Ernst & Young, LLP**, Washington D.C. and Detroit, MI
Senior Consultant (2000 – 2001)

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Economic and Quantitative Analysis
Valuation of Intangible Assets for Transfer Pricing Purposes

KPMG, LLP, Washington D.C.
1998 - 2000 Consultant (1998 – 2000)
Forensic and Litigation Consulting
Economic Damages / Litigation Consulting

J.D. Power and Associates, Troy, MI
1996 - 1998 Analyst (1997 – 1998)
Research Analyst (1996 – 1997)
Forecasting and Economic Analysis
Econometric and Discrete Choice Modeling Survey Analysis

University of Michigan, Ann Arbor, MI
1995 - 1996 Researcher, Inter-University Consortium for Political and Social Research
1993 - 1996 Researcher, Institute for Social Research (ISR), Survey Research Center

Teaching Experience

National Association for Certified Valuators and Analysts (NACVA)
2015 - present Teach valuation training courses concerning econometrics and intellectual property damages as part of the Financial Forensics training program

FTI Consulting, Inc.
2005 – 2014 Developed and taught a three-day CLE-approved course titled “Calculating Economic Damages in Commercial Litigation” as part of the national training for consultants and senior consultants across all FTI Consulting, Inc. business segments.

Northern Virginia Community College, Alexandria, VA
1998 - 1999 Adjunct Lecturer within the Department of Economics, teaching “Microeconomics 101” and “Macroeconomics 102”

University of Michigan, Institute for Social Research (ISR), Survey Research Center
1995 - 1996 (summers) Teaching Assistant for the Summer Institute in Social Research Methods, assigned to assist international graduate students taking courses “Introductory Statistical Methods and Applications for the Social Sciences” as well as “Econometrics”

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Honors and Awards

- 2021 **The Consulting Report** ©
Named one of the Top 50 Government Consultants.
[The Top 50 Government Consultants of 2021 | The Consulting Report](#)
- 2014 **National Association of Certified Valuators and Analysts**
Named one of the “40 Under Forty” Valuation Analysts.
[NACVA CTI 2014 40 Under 40 Honorees \(annualconsultantsconference.com\)](#)
- 2005 - 2014 **FTI Consulting, Inc.**
Recognized for “Excellent Contributions in Training” for 9 years in a row

Publications

1. “Forward Citation Analysis as a Means to Apportion Relative Value in Patent Infringement Cases,” published by the National Association for Certified Valuators and Analysts (NACVA), QuickRead on February 18, 2016.
2. “An Overview of Methods for Estimating Lost Revenues in Economic Damages,” published by the National Association for Certified Valuators and Analysts (NACVA), QuickRead on June 18, 2015.
3. “Use of Two-Stage Linear Regression Models in Identifying the Existence and Extent of Affected Commerce in Price-Fixing Cases,” co-author with M. Mercurio, working paper.
4. “Continuing Patent Applications and Performance of the U.S. Patent and Trademark Office – Extended,” co-authors C. Quillen and O. Webster, The Federal Circuit Bar Journal, August 2002.
5. “Southeast Asian Crisis: Implications in the Asian Automotive Industry,” co-author R. Schnorbus, J.D. Power and Associates Syndicated Report, December 1997.

Presentations

1. “IP & Antitrust: Considerations for the High-Tech Sector,” panelist, hosted by Antitrust West Coast Conference, held on November 17, 2020.
2. “Lost Profits: Principles, Methods and Strategies to Prove and Defend Damages LIVE Webcast,” presenter, hosted by The Knowledge Group, held on October 7, 2019.
3. “Smallest Saleable Patent-Practicing Unit when Deriving FRAND in Light of Recent Federal Rulings,” presenter, hosted by the Damages and Injunction Committee of the IPO, held on June 13, 2019 via a Committee hosted webinar.
4. “The Concept of Apportionment in Patent Infringement Matters: Methods Considered,” presented at the NACVA and CTI’s 2019 Annual Consultants’ Conference in Salt Lake City, UT on June 6, 2019.

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5. “Overview of Damages in IP Litigation Involving Standard Essential Patents (SEPs),” presented as part of the “Issues in Litigation” section of the Western Economic Association International (WEAI) Conference in Tokyo, Japan on March 22, 2019. <https://weai.org/files/view/26/Prelim-Prog-Tokyo2019.pdf>
6. “Calculating Intellectual Property Damages – How to Prepare for the 2019 Landscape,” co-presenter, hosted by The Knowledge Group, held on February 13, 2019 via webinar. <https://www.theknowledgegroup.org/webcasts/calculating-intellectual-property-damages/>
7. “IP and Antitrust Developments for the High Tech Sector,” panelist, Antitrust West Coast 2019, held on February 12, 2019 in San Francisco, CA, <https://law.knect365.com/antitrust-usa-west-coast/>.
8. “An Overview of Damages and the Role of the Damages Expert in Intellectual Property,” instructor, Financial Valuation Seminar, hosted by the National Association of Certified Valuators and Analysts (NACVA), held on December 14, 2018 in Ft. Lauderdale, Florida, <http://www.nacvanation.com/ftlauderdale/>.
9. “Transnational IP Litigation: Opportunities and Challenges – Focus on US IP Litigation,” panelist, Berkeley-Tsinghua Annual Forum of 2018, jointly hosted by the Berkeley and Tsinghua Schools of Law, held on December 4, 2018 in Beijing, China, <https://tbsi.berkeley.edu>.
10. “Trade Secret Damages: Remedies for Victims of Trade Secret Violations,” panelist, hosted by the Daily Journal Professional Education, held on October 30, 2018 in Palo Alto, California, <http://legacy.callawyer.com/events/trade-secrets-2018/#event-venue>.
11. “Factors to Consider for Injunctive Relief from an Economic Perspective: Irreparable Harm,” presenter, hosted by the Damages and Injunction Committee of the IPO, held on October 11, 2018 via a Committee hosted webinar.
12. “Mock International Arbitration: Toward Early Dispute Resolution of Standard Essential Patents (SEPs) in the 5G Era,” presenter, hosted by the Japan Patent Office, the University of Tokyo, and the Rader Foundation, held on June 29, 2018 at the University of Tokyo, Japan, http://www.jpo.go.jp/shoukai_e/soshiki_e/photo_gallery2018062991.html.
13. “Patent Infringement Damages,” presented on February 1, 2018, presenter, hosted by The Knowledge Group via a webinar, <https://www.theknowledgegroup.org/webcasts/patent-infringement-and-damages>.
14. “Trade Secret Damages from the Perspective of a Damages Expert,” presented on October 18, 2017, as a guest lecturer for the UC-Davis School of Law course titled “Trade Secrets and Restrictive Covenants, Employee Mobility, Raids, and Corporate Espionage.”
15. “Trade Secret Damages and Remedies,” co-presenter, hosted on May 19, 2017 by Bridgeport Continuing Education in San Francisco, California, <http://bridgeportce.com/bridgeportce/live-programs/trade-secret-and-employee-mobility-san-francisco-2017.html>.

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16. "A Penny or a Pound: Apportioning Damages in Patent Cases," panel member hosted on May 17, 2017, by the Licensing Executive Society (LES), Silicon Valley Chapter in Palo Alto, California, <http://www.lesusacanada.org/event/201705svc>.
17. "Raising Start-Up Capital," panel member of a webinar, hosted by Expert Webcast on January 7, 2016, available on demand at <http://www.expertwebcast.com/raising-start-up-capital/>.
18. "Patent Infringement Reasonable Royalty Damages: Apportion the Increment?," panel member hosted by the Asian Pacific American Bar Association (APABA) in Palo Alto, CA on November 23, 2015.
19. "Calculation of Economic Damages in Patent Litigation Matters," at the Financial Forensics and Expert Witness Conference, hosted by the National Association for Certified Valuators and Analysts (NACVA) in Houston, TX on October 19, 2015.
20. "Ease of Enforcement and Magnitude of Damages Awards as Determinative Factors in Establishing the Market Value of a Patent: Trends in IP Damages Awards," at the Tenth Annual Conference on Best Practices in Patent Monetization, hosted by Law Seminars International in San Francisco, CA on March 26, 2015.
21. "Supreme Court Takes a Middle Path in Reaffirming Fraud on the Market Theory," presented via Thomson Reuters as a national webinar on September 3, 2014 and currently available online via West LegalEdCenter.
22. "Statistical and Technological-Based Fact-Gathering in Wage-and-Hour Cases," at the Annual Wage & Hour Conference presented via Bridgeport Continuing Education in San Francisco, CA on October 10, 2013.
23. "Business Damages Analysis & Modeling: Litigating and Proving Damages," presented via Bridgeport Continuing Education in San Francisco, CA on May 10, 2013.
24. "New Disclosure Rules and What They Mean For ERISA Class Certification," panel speaker for FTI Consulting ERISA Fiduciary Litigation and Compliance Breakfast Series 2012 in Chicago, IL on April 24, 2012.
25. "Understanding and Proving Damages: Business Damages Analysis and Modeling," presented via Bridgeport Continuing Education in San Francisco, CA on April 12, 2012.
26. "Litigating a Trade Secret Case: Economic Damage Considerations," presented via Bridgeport Continuing Education in San Francisco, CA on December 9, 2010.
27. "Financial Forecasting," presented within the Mergers and Acquisitions section of the American Institute of Certified Public Accountants (AICPA) meeting held in San Francisco, CA on August 4, 2010.

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28. “Application of Multivariate Regression Analysis in Identifying Economic Damages,” white paper presented under the “Law and Crime” section of the Western Economic Association International Annual Conference in Portland, Oregon on July 1, 2010.
29. “The Use of Regression Analysis as a Means to Better Forecast Sales When Using the DCF Method,” presented within the Business Valuation section of the National Association of Certified Valuators and Analysts (NACVA) and Institute of Business Appraisers (IBA), 2010 Annual Consultants’ Conference, held in Miami, Florida, on June 4, 2010, now available online as a webinar (https://www.nacva.com/store_product.asp?prodid=120).
30. “Hand Rule as a Basis for Calculating Punitive Damages” paper originally presented at the Southern Economic Association Conference in Washington, DC on November 19, 2005 and again at the Annual Meeting of the World Institute for Research and Publication (WIRP) – Law on May 16, 2010.
31. “Use of Two-Stage Linear Regression Models in Identifying the Existence and Extent of Affected Commerce in Price-Fixing Cases,” paper to be co-presented with M. Mercurio under the “Commercial Damages and Antitrust Litigation” section of the Western Economic Association International Annual Conference in Vancouver, B.C. on July 1, 2009.
32. “An Economic Analysis of Punitive Damages” co-presented with Andrew Frey of Mayer, Brown, Rowe & Maw LLP and John Thomas, Office of General Counsel of Ford Motor Company at a conference titled “Managing Risks in High Stakes Litigation” in Chicago, IL on December 2, 2004.

Expert Designations and Testimony

1. *CMC Materials, Inc. v. Dupont de Nemours, Inc. et al.*, U.S. District Court, District of Delaware, Case No. 1:20-cv-00738-MN, Expert Report filed on March 27, 2023. (Hon. Jennifer L. Hall)
2. *Marc Chan et al. v. ArcSoft Inc. et al.*, U.S. District Court, Northern District of California, Oakland Division, Case No. 4:19-CV-05836 JSW, Expert Report filed April 27, 2023, Deposition Testimony given July 21, 2023, Trial Testimony given January 31, 2024. (Hon. Laurel Beeler) ([AI Image Co. Hit With \\$14.1M Verdict Over Lowball Buyout - Law360](#))
3. *Edible IP, LLC et al. v. 1-800-Flowers.com, Inc. et al.*, U.S. District Court, Northern District of Georgia, Atlanta Division, Case No. 20-cv-02405-VMC, Expert Report filed on February 17, 2023, Deposition given May 11, 2023. (Hon. Omar A. Williams)
4. *TecSec, Incorporated v. International Business Machines Corporation, SAS Institute, Inc., SAP America, Inc., SAP AG, Cisco Systems, Inc., Oracle America, Inc. (f/k/a Sun Microsystems, Inc.), Sybase, Inc., Software AG, Adobe Systems, Inc., eBay, Inc., Paypal, Inc. and Oracle Corporation*, U.S. District Court, Eastern District of Virginia, Case No. 110-cv-115 LMB/TCB, Amended Expert Report filed March 31, 2023. (Hon. Patricia Tolliver Giles)
5. *LumaSense Technologies, Inc. v. Advanced Engineering Services, LLC*, U.S. District Court, Northern District of California, Case No. 5:20-cv-07905, Expert Report filed on September 14, 2022. (Hon. William H. Orrick)

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6. *Netgear, Inc. v. Asustek Computer, Inc. and Asus Computer International, Inc.*, U.S. District Court, Northern District of California, Case No. 5:21-cv-08993, Expert Report filed on August 12, 2022. (Hon. Charles R. Breyer)
7. *Targa Management Holdings, LLC, Targa Parent Holdings, LLC, Targa Buyer, LLC, The Chudy Group, LLC (d/b/a/ TCGRx) and Parata Systems, LLC v. Duane S. Chudy, Dean A. Chudy, Jonathan F. Chudy, Golf Gifts & Gallery, Inc., James T. Spernow, Matthew E. Noffsinger, and the JFC Group (d/b/a TruPakRx)*, State of Wisconsin Circuit Court, Milwaukee County, Case No. 2021CV000938, Expert Report filed on June 14, 2022, Deposition Testimony given September 14, 2022. (Hon. Laura Gramling Perez)
8. *Wesley Won et al. v. General Motors, LLC*, U.S. District Court, Eastern District of Michigan, Case No. 2:19-cv-11044-DML-DRG, Expert Report filed on October 9, 2021, Deposition Testimony given December 3, 2021. (Hon. David M. Lawson)
9. *Robert Ponzio et al. v. Mercedes-Benz USA, LLC and Daimler AG*, U.S. District Court, Northern District of Georgia, Atlanta Division, Case No. 1:18-CV-03984-MHC, Declaration filed on January 27, 2021 and on July 21, 2021. (Hon. Joseph H. Rodriguez)
10. *Express Lien, Inc. v. Handle, Inc. et al.*, U.S. District Court, Eastern District of Louisiana, Case No. 2:19-cv-10156-SSV-MBN, Expert Report filed on March 10, 2021, Deposition Testimony given April 30, 2021. (Hon. Jane T. Milazzo).
11. *RingCentral, Inc. v. Nextiva, Inc. et al.*, U.S. District Court, Northern District of California, Case No. 5:19-cv-02626-NMC, Expert Report filed on January 19, 2021, Rebuttal Report filed on February 24, 2021, Deposition Testimony given on March 12, 2021. (Hon. Nathanael M. Cousins)
12. *JBF Interlude 2009 LTD – Israel (collectively, “Eko”) v. Quibi Holdings, Inc.*, U.S. District Court, Central District of California, Western Division, Civil Action No. 2:20-CV-2299, Declaration filed on April 1, 2020, Reply Declaration filed on April 21, 2020, Declaration filed on October 27, 2020, Deposition Testimony given on December 8, 2020. (Hon. John A. Kronstadt)
13. *Apartment Owners Association of California, Inc. et al. v. City of Los Angeles et al.*, Superior Court of the State of California for the County of Los Angeles, Consolidated Case No. BC709658, Expert Report filed October 21, 2020, Deposition Testimony given on November 23, 2020 (Hon. Maren E. Nelson)
14. *TecSec, Incorporated v. International Business Machines Corporation, SAS Institute, Inc., SAP America, Inc., SAP AG, Cisco Systems, Inc., Oracle America, Inc. (f/k/a Sun Microsystems, Inc.), Sybase, Inc., Software AG, Adobe Systems, Inc., eBay, Inc., Paypal, Inc. and Oracle Corporation*, U.S. District Court, Eastern District of Virginia, Case No. 110-cv-115 LMB/TCB, Expert Report filed August 17, 2020, Deposition Testimony given on September 15, 2020 (Hon. Liam O’Grady)
15. *SZ DJI Technology Co., Ltd. and DJI Europe B.V. v. Autel Robotics USA, LLC and Autel Aerial Technology Co. Ltd.*, U.S. District Court, District of Delaware, Civil Action No. 1:16-CV-00706-

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LPS-CJB, Expert Report filed on January 19, 2018, Supplemental Report filed on March 7, 2018, Rebuttal Report filed on January 23, 2020, Deposition Testimony given on February 11, 2020, Supplemental Rebuttal Report filed on June 22, 2020, Deposition Testimony given on July 6, 2020. (Hon. Leonard P. Stark)

16. *Ariza et al. v. Luxottica Retail North America, d/b/a, LensCrafters*, United States District Court, Eastern District of New York, Brooklyn Division, Case No. 1:17-cv-05216-PKC-RLM, Expert Report filed on September 10, 2019, Rebuttal Report filed on November 13, 2019, Deposition Testimony given on December 10, 2019, Declaration filed on February 18, 2020.
17. *Quest Software, Inc. v. Nike, Inc.*, United States District Court for the District of Oregon, Portland Division, Case No. 3:18-cv-00721, Expert Report filed on July 19, 2019.
18. *JRV, LLC et al. v. Winery Exchange, Inc.*, JAMS Arbitration – San Francisco Resolution Center, Reference Number 1100090897, Expert Report filed on May 15, 2019, Rebuttal Report filed on May 25, 2019, Deposition Testimony given on May 28, 2019, Arbitration Testimony given on June 20, 2019. (Ms. Zela “Zee” G. Claiborne, Esq.)
19. *BK Trucking Co. et al. v. Paccar, Inc. et al.*, United States District Court, District of New Jersey, Case No. 1:15-cv-02282-JPS-AMD, Expert Report filed on January 14, 2019, Supplemental Report filed on April 12, 2019, Rebuttal Report filed on June 7, 2019, Deposition Testimony given on June 19, 2019. (Hon. Jermone B. Simandle)
20. *Roadrunner Intermodal Services, LLC v. T.G.S. Transportation, Inc.*, U.S. District Court Eastern District of California, Case No. 1:17-CV-01056-DAD-BAM, Declaration filed on October 24, 2017, Expert Report filed on March 11, 2019, Deposition Testimony given on April 4, 2019, Supplemental Report filed on April 12, 2019, Deposition Testimony given on April 23, 2019. (Hon. Dale A. Drozd)
21. *Manufacturing Resources International, Inc. v. Civiq Smartscales, LLC et al.*, United States District Court, District of Delaware, Case No. 1:17-cv-00269-RGA, Expert Report filed on February 19, 2019, Deposition Testimony given on April 2, 2019. (Hon. Richard G. Andrews)
22. *Micrel, LLC v. Ray Zinn*, Superior Court of the State of California For the County of San Mateo, Case No. 538785, Expert Report filed on March 23, 2017, Deposition Testimony given on April 26, 2017, Trial Testimony given on January 10, 2019. (Hon. Richard H. DuBois)
23. *Johannessohn et al. v. Polaris Industries, Inc.*, United States District Court, District of Montana, Case No. 0:16-cv-03348-PJS-LIB, Expert Report filed on November 16, 2018, Deposition Testimony given on January 17, 2019, Expert Report filed on March 21, 2019. (Hon. Nancy Brasel)
24. *TQ Delta, LLC v. 2Wire, Inc.*, United States District Court for the District of Delaware, Case No. 13-cv-1835-RGA, Expert Report filed on November 9, 2018, Expert Report filed on November 29, 2018, Deposition Testimony given on December 17, 2018, Expert Report filed on December 28, 2018, Deposition Testimony given on January 29, 2019. (Hon. Richard G. Andrews)
25. *Dell’Oro Group, Inc. v. 650 Group, LLC et al.*, U.S. District Court, Northern District of California,

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San Francisco Division, Case No. 3:17-cv-00750-JD, Expert Report filed on August 7, 2018, Declaration filed on September 10, 2018, and Supplemental Expert Report filed on September 20, 2018.

26. *Copart, Inc. v. Sparta Consulting*, U.S. District Court Eastern District of California, Case No. 2:14-CV-0046-KJM-CKD, Affirmative Expert Report regarding Counter-Claims, May 31, 2016, Rebuttal Report regarding Contract Claims filed on November 24, 2016, Rebuttal Report regarding Trade Secret Claims filed on December 16, 2016, Deposition Testimony given on January 17, 2017, Trial Testimony given on May 16, 2018. (Hon. Kimberly J. Mueller)
27. *CamSoft Data Systems, Inc. v. Southern Electronics Supply, Inc.*, United States District Court, Middle District of Louisiana, Case No. 3:09-cv-01047, Expert Report filed April 14, 2018. (Hon. Janice Clark)
28. *Quantumscape Corporation v. Z. Chen & K. Kerman*, Judicial Arbitration and Mediation Services, Inc., Reference Number 1100088671, Deposition Testimony given April 10, 2018.
29. *The Parallax Group International, LLC v. Incstores, LLC*, U.S. District Court Central District of California, The Southern District, Case No. 8:16-cv-929-AG-DFM, Expert Report filed on August 3, 2017, Deposition Testimony given on March 20, 2018. (Hon. Andrew J. Guilford)
30. *Polygroup Limited (MCO), (Petitioner) v. Willis Electric Company, Limited (Patent Owner)*, United States Patent and Trademark Office Before the Patent Trial and Appeal Board, Case Nos. IPR2016-01610; -01612, Declaration filed on August 23, 2017, Deposition Testimony given on September 26, 2017, and, Supplemental Declaration filed on November 13, 2017 and on December 8, 2017.
31. *Evolved Wireless, LLC v. Lenovo Group, Ltd., Lenovo (United States) Inc., and Motorola Mobility LLC*, U.S. District Court District of Delaware, Case No. 1:15-cv-00544-SLR, Expert Report filed on July 17, 2017, Deposition Testimony given on August 15, 2017. (Hon. Sue Lewis Robinson)
32. *The Regents of the University of California v. St. Jude Medical, Inc.*, U.S. District Court Northern District of California, Oakland Division, Case No. 4:16-cv-06210-YGR. (Hon. Yvonne Gonzalez Rogers)
33. *BehindtheChair.com v. D. Christal; Olaplex, LLC; LiQWD, Inc.*, Superior Court of California, County of Los Angeles, LASC Case No. BC 569584, Expert Report filed April 6, 2017, Deposition Testimony given on April 13, 2017. (Hon. Debra K. Weintraub)
34. *Robert Larsen et al. v. Vizio, Inc.*, United States District Court, Central District of California – Southern Division, Case No. 8:14-cv-01865-CJC-JCG, Expert Report completed March 27, 2017. (Hon. Cormac J. Carney)
35. *JoAnna C. Sullivan v. Stephen A. Finn*, United States District Court, California Northern District, Case No. 3:16-cv-01948-WHO, Expert Report filed on March 1, 2017. (Hon. William H. Orrick)
36. *Improved Search, LLC v. AOL, Inc.*, In the United States District For the District of Delaware, Case

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No. 12-262 (SLR) (SRF). (Hon. Leonard P. Stark)

37. *San Francisco News Paper Company LLC v. Hearst Corporation et al.*, Superior Court of the State of California For the City and County of San Francisco, Case No. CGC-13-532369, Expert Report filed on November 10, 2016; Deposition Testimony given on December 9, 2016; Supplemental Report filed on April 24, 2017; and, Deposition Testimony given on May 23, 2017. (Hon. Curtis E. Karnow)
38. *Reily Foods Company, Inc. v. Schiff Food Products Company, Inc. et al.*, U.S. District Court for the Eastern District of Louisiana, Civil Action No. 16-01505, Expert Report filed on December 6, 2016, Mediation December 7 – 8, 2016. (Hon. Jane Triche Milazzo)
39. *Recovery Village at Umatilla, L.L.C. v. Humana Health Insurance Company of Florida, Inc. et al.*, In the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, Complex Litigation Unit, Case No. CACE 15-014725(07), Expert Report completed on December 16, 2016.
40. *FatPipe, Inc. v. Talari Networks, Inc.*, U.S. District Court for the Eastern District of Texas, Tyler Division, Case No. 6:15-cv-00458-RWS. (Hon. Robert W. Schroeder, III)
41. *State of Oregon, the Oregon Health Authority, and the Oregon Department of Human Services; the Oregon Health Insurance Exchange Corporation, dba Cover Oregon v. Oracle America, Inc. et al.*, In the Circuit Court of the State of Oregon, For the County of Marion, No. 14 C 20043. Case settled on September 15, 2015. (Hon. Anna J. Brown).
42. *Clos LaChance Wines, Inc. v. A.V. Brands, Inc.*, JAMS Arbitration, Expert Report and Deposition Testimony filed and given on February 19, 2016, Arbitration Testimony given on March 8, 2016.
43. *Racing Optics, Inc. v. Aevoe Corporation*, U.S. District Court for the District of Nevada, Civil Action No. 2:15-cv-01774-JCM-VCF. (Hon. Robert C. Jones)
44. *Ferring B.V. v. Fera Pharmaceuticals, LLC, Perrigo Company, Perrigo Company PLC, Perrigo Company of Tennessee, and Perrigo New York, Inc.*, U.S. District Court for the Eastern District of New York, Civil Action No. 2:13-CV-04640, Expert Report, December 11, 2015. (Hon. Sandra J. Feuerstein)
45. *Better Mouse Company, LLC v. SteelSeries APS; and SteelSeries North America Corp.*, U.S. District Court for the Eastern District of Texas, Marshall Division, Case No. 2:14-cv-198, Expert Report, filed on September 24, 2015, Trial Testimony given on January 13, 2016. (Hon. Roy S. Payne) (http://www.nera.com/publications/archive/2016/nera_s-role-in-better-mouse-company--llc-v--steelseries-aps-et-a.html)
46. *Heartland Payment Systems, Inc. v. Mercury Payment Systems, LLC*, U.S. District Court for the Northern District of California, San Francisco Division, Case No. 3:14-cv-00437-JCS. (Hon. Joseph C. Spero)
47. *Emblaze LTD. v. Microsoft Corporation*, U.S. District Court for the Northern District of California, Case No. 3:12-cv-5422 JST. (Hon. Yvonne Gonzalez Rogers)

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48. *FormFactor, Inc. v. MarTek, Inc.*, U.S. District Court for the Northern District of California, San Francisco Division, Case No. 3:14-cv-01122, Expert Report May 1, 2015. (Hon. James Donato)
49. *Interstate Fire & Casualty Company and Firemen's Fund Insurance Company v. Apartment Management Consultants, LLC, Sunridge Partners, LLC, and Amber Nicole Lompe*, U.S. District Court for the District of Wyoming, Civil Action No. 13-CV-278 J, Expert Report March 18, 2015, Deposition Testimony, June 8, 2015, and Supplemental Expert Report, August 13, 2015. (Hon. Alan B. Johnson)
50. *Good Technology Corporation and Good Technology Software, Inc. v. MobileIron, Inc.*, U.S. District Court for the Northern District of California, San Jose Division Case No. 12-05826-EDL, Expert Report filed on January 9, 2015 and February 13, 2015; and, Trial Testimony given on July 28, 2015. (Hon. Paul Singh Grewal)
51. *Fujifilm Corporation v. Motorola Mobility LLC*, United States District Court Northern District of California San Francisco Division Case No. C 12-03587 RS, Expert Report filed on October 31, 2014 and January 15, 2015; Deposition Testimony given on November 18, 2014; and, January 26, 2015; and, Trial Testimony given on April 28, 2015. (Hon. William H. Orrick)
52. *Coe et al. v. Philips Oral Healthcare, Inc.*, United States District Court Western District of Washington Master Docket No. 2:13-cv-00518-MJP. (Hon. Marsha J. Pechman)
53. *Venture Corporation LTD and Venture Design Services, Inc. v. James Barrett*, U.S. District Court for the Northern District of California Case No. CV-13-03384-PSG (ADR), Expert Report filed on October 6, 2014. (Hon. Paul Singh Grewal)
54. *M. Villanueva et al. v. Fidelity National Title Company, et al.*, Santa Clara County Superior Court Case No. 1-10-CV-173356, Expert Report filed on March 20, 2014, Deposition Testimony given on March 21, 2014; and, Trial Testimony given on May 15, 2014. (Hon. Peter H. Kirwan)
55. *Federal Housing Finance Agency, etc. v. JPMorgan Chase et al.*, U.S. District Court Southern District of New York Case No. 11 Civ. 6188(DLC). (Hon. Denise Kote)
56. *KB Homes v. K&L Gates, LLP (aka Kirkpatrick & Lockhart Preston Gates Ellis LLP) et al*, Los Angeles County Superior Court Case No. BC484090, Rebuttal Declaration filed on May 5, 2014, Expert Report filed on January 17, 2014, and Deposition Testimony given on January 23, 2014. (Hon. William F. Highberger)
57. *Galena Street Fund, L.P. v. Wells Fargo Bank, N.A.*, U.S. District Court for the District of Colorado Case No. 1:12-cv-00587-MSK, Expert Report filed on May 2, 2014. (Hon. Michael J. Wantanabe)
58. *Hyphenated Systems, LLC v. Brukar Nano, Inc. et al*, Santa Ana County Superior Court, Unlimited Jurisdiction Case No. 1-11-CV212650, Expert Report and Deposition Testimony filed and given on October 22, 2013.

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59. *Henry A., et al. v. Michael Willden, et al.*, U.S. District Court, District of Nevada Case No. 2:10-CV-00528- RCJ-PAL. (Hon. Robert C. Jones)
60. *Uthe Technology Corporation v. Aetrium, Inc., Henry Allen, et al.*, U.S. District Court, Northern District of California, San Francisco Division Case No. 3:95-cv-02377-WHA, Expert Report filed on June 14, 2013 and, Deposition Testimony given on June 19, 2013. (Hon. William Alsup)
(<https://www.law360.com/articles/471175/uthe-s-20-year-racketeering-fight-with-aetrium-ends>)
61. *Richard Cohen v. Robert Talbott, Inc.*, American Arbitration Association Case No. 74 116 170 11 DECR.
62. *Wireless Ink Corporation v. Facebook, Inc., Google, Inc., Youtube, Inc., Youtube LLC, and MySpace, Inc.*, U.S. District Court, Southern District of New York Case No. 10-cv-1841 and 11.cv-1751, Declaration on August 6, 2012. (Hon. P. Kevin Castel)
63. *Allied Fellowship Service v. RMD Services I, LLC et al.*, Alameda County Superior Court Case No. RG09488702. (Hon. P. Kevin Castel)
64. *Whittlestone, Inc. v. Handi-Craft Company*, U.S. District Court, Northern District of California, Oakland Division Case No. 08-04193 SBA, Expert Report filed on May 14, 2012, and Deposition Testimony given on June 14, 2012. (Hon. Jacqueline Scott Corley)
(<https://www.law360.com/articles/187910/motions-to-strike-can-t-nix-damages-claims-9th-circ->)
65. *C. Scimienti v. The Leland Stanford Junior University et al.*, U.S. District Court, Southern District of California Case No. 08-cv-01730-W-BLM, Expert Report filed on February 1, 2011, and Deposition Testimony given on May 6, 2011. (Hon. Anthony J. Battaglia)
66. *Cardstore.com, Inc. f/k/a Ink2 Corporation v. Mimeo.com, Inc.*, JAMS Arbitration, Expert Report completed on December 21, 2010 (settled date of filing).
67. *DWS International, Inc. dba Marble Dimensions Worldwide v. Meixia Arts and Handcrafts Co. Ltd., Home Casual, LLC, et al.*, U.S. District Court, Southern District of Ohio, Case No. 3:09cv458, Expert Report filed on August 16, 2010, Deposition Testimony given on January 21, 2011 and, Trial Testimony given on June 24, 2011. (Hon. Thomas M. Rose)
68. *LBV Asset Management LLP et al. v. SGAM Newedge Management, Inc. et al.*, JAMS Arbitration, Expert Report filed on April 28, 2010, Supplemental Expert Report filed on June 2, 2010, and Arbitration Testimony given on June 10, 2010.
69. *Celso Robledo et al. v. City of Chicago et al.*, U.S. District Court, Northern District of Illinois, Eastern Division Case No. 05 C 0335, Expert Report filed on November 21, 2008. (Hon. Elaine E. Bucklo)
70. *Coachmen Industries et al. v. Crane Composites, Inc. f/k/a Kemlite*, U.S. District Court, Northern District of Indiana Case No. 3:06-CV-0160-CAN, Expert Report filed on July 1, 2007 and separate Expert Report filed on June 21, 2007 and July 1, 2007. (Hon. Christopher A. Neuchterlein)

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71. *Tiffany Blackwell et al. v. Skywest Airlines, Inc.*, U.S. District Court, Southern District of California Case No. 06CV0307, Expert Report filed on June 25, 2007. (Hon. Dana M. Sabraw)
(<https://www.law360.com/articles/79187/airline-exempt-from-calif-meal-rest-laws-judge>)

Appendix 2

Documents Relied Upon

Legal Filings and Exchanges

- *Aberin et al. v. American Honda Motor Co., Inc.*, Order Granting Motion For Class Certification; Denying Motions To Strike Expert Testimony, United States District Court Northern District of California, Case No. 4:16-cv-04384-JST, March 23, 2021
- *Aberin et al. v. American Honda Motor Co., Inc.*, American Honda Motor Co., Inc.'s Amended Responses and Objections to Plaintiffs' First Set of Interrogatories No. 3 and 4., Case No. 4:16-cv-04384-JST, March 14, 2022
- *Aberin et al. v. American Honda Motor Co., Inc.*, Fourth Amended Class Action Complaint, United States District Court Northern District of California, Case No. 4:16-cv-04384-JST, September 9, 2022

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