

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE SUBARU BATTERY DRAIN
PROD. LIAB. LITIG.

No. 1:20-CV-03095-JHR-MJS

HON. JOSEPH H. RODRIGUEZ

**NOTICE OF PLAINTIFFS' UNOPPOSED MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

PLEASE TAKE NOTICE that at the Final Fairness Hearing currently scheduled for December 13, 2022 at 2:00 p.m., Plaintiffs will move the Court to enter the proposed order submitted herewith that will grant their unopposed motion seeking (1) the payment of \$4,100,000.00 to Class Counsel for the payment of their attorneys' fees and reimbursement of expenses, and (2) the payment of service awards in the amount of \$4,000.00 each to Amy Burd, Walter Gill, David Hansel, Glen McCartney, Roger Baladi, Tamara O'Shaughnessy, Anthony Franke, Matthew Miller, Steven Stone, Howard Bulgatz, Mary Beck, David Davis, and Colin George (\$52,000) in total).¹

¹ Plaintiffs will also request that the Court enter an order granting final approval to the settlement and dismissing this action with prejudice. A motion seeking that relief will be filed separately.

PLEASE TAKE FURTHER NOTE that Plaintiffs will rely on their Memorandum of Law, Joint Certification of Matthew R. Mendelsohn, Matthew D. Schelkopf, and Adam Polk, and other related materials in support of this motion.

PLEASE TAKE FURTHER NOTE that Defendants do not oppose this motion.

Dated: October 24, 2022

Respectfully Submitted,

By: /s/ Matthew D. Schelkopf
Matthew D. Schelkopf
Joseph B. Kenney
SAUDER SCHELKOPF LLC
1109 Lancaster Avenue
Berwyn, Pennsylvania 19312
Telephone: (610) 200-0581
mds@sstriallawyers.com

By: /s/ Matthew Mendelsohn
Matthew Mendelsohn
**MAZIE SLATER KATZ
& FREEMAN, LLC**
103 Eisenhower Parkway
Roseland, NJ 07068
Telephone: (973) 228-9898
mrm@mazieslater.com

By: /s/ Adam Polk
Adam Polk (*pro hac vice*)
Jordan Elias (*pro hac vice*)
GIRARD SHARP LLP
601 California St #1400
San Francisco, CA 94108
Telephone: (866) 981-4800
apolk@girardsharp.com

Class Counsel

Bruce D. Greenberg
LITE DEPALMA GREENBERG, LLC
570 Broad Street, Suite 1201
Newark, NJ 07102
Telephone: (973) 623-3000
bgreenberg@litedepalma.com

Plaintiffs' Liaison Counsel

Benjamin F. Johns
**CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP**
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Telephone: 610-642-8500
bfj@chimicles.com

Chair of Plaintiffs' Executive Committee

Todd Garber
**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**
One North Broadway
Suite 900
White Plains, NY 10605
Telephone: (914) 298-3281
tgarber@fbglaw.com

Daniel Herrera
**CAFFERTY CLOBES MERIWETHER
& SPRENGEL LLP**
150 S. Wacker Drive, Suite 3000
Chicago, IL 60606
Telephone: (312) 782-4880
dherrera@caffertyclobes.com

Tina Wolfson
AHDOOT & WOLFSON, P.C.
1016 Palm Ave
West Hollywood, CA 90069
Telephone: (310) 474-9111
twolfson@ahdootwolfson.com

Plaintiffs' Executive Committee

CERTIFICATE OF SERVICE

I, Matthew D. Schelkopf, hereby certify that the foregoing **NOTICE OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS** was filed on this 24th day of October, 2022, using the Court's CM/ECF system, thereby electronically serving it on all counsel of record in this case.

/s/ Matthew D. Schelkopf
Matthew D. Schelkopf

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PROD. LIAB. LITIG.

No. 1:20-CV-03095-JHR-MJS

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**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES,
AND SERVICE AWARDS**

Matthew R. Mendelsohn
**MAZIE SLATER KATZ
& FREEMAN, LLC**
103 Eisenhower Parkway
Roseland, NJ 07068
(973) 228-9898

Matthew D. Schelkopf
SAUDER SCHELKOPF LLC
1109 Lancaster Avenue
Berwyn, Pennsylvania 19312
(610) 200-0581

Adam Polk
GIRARD SHARP LLP
601 California Street, Suite 1400
San Francisco, CA 94108
(866) 981-4800

Class Counsel

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I. INTRODUCTION

Plaintiffs filed this action alleging that certain Subaru vehicles suffer from a defect that causes the vehicles' batteries to drain, leaving the vehicles inoperable. After engaging in motion practice and participating in core discovery into the merits and class certification, Class Counsel engaged in protracted settlement negotiations with Subaru. The resulting nationwide settlement will provide substantial benefits to over 3.7 million current and former owners and lessees of approximately 2.8 million Settlement Class Vehicles. The Court granted preliminary approval of the Settlement on June 23, 2022 (ECF No. 75), and the Settlement Administrator has already received a substantial number of claims from Settlement Class Members who are entitled to reimbursement and who are availing themselves of the service coverage provided through the settlement. Class Counsel now respectfully move for attorneys' fees, reimbursement of litigation expenses, and service awards.¹

¹ On October 20, the Court approved the Parties' request for an extension until November 11 for the present motion and Plaintiffs' motion for final settlement approval. (ECF No. 87.) While the Parties continue to address claim administration issues, Class Counsel are filing their fee application promptly, in advance of the November 5 objection deadline, to ensure that any class member has an opportunity to respond to Class Counsel's request for attorneys' fees, expenses, and service awards. FED. R. CIV. P. 23(h); *see In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 446 (3d Cir. 2016); *Keil v. Lopez*, 862 F.3d 685, 704-05 (8th Cir. 2017). Plaintiffs, with the filing of their final approval motion, will supplement the record in support of both motions.

Assisted by the Hon. Joel Schneider, U.S.M.J. (Ret.), over the course of many months, the parties negotiated and executed a Settlement that provides Settlement Class Members with a range of benefits directed at addressing the alleged problems in the Settlement Class Vehicles. The relief secured for the Settlement Class includes cash reimbursement for out-of-pocket repairs and other costs, warranty extensions, a free upgrade to the software in the Settlement Class Vehicles, and other valuable relief. The parties negotiated attorneys' fees, expenses, and service awards only after they had reached a signed agreement on the relief for the Settlement Class. This arms' length fee negotiation was contested and took into account the value both of the relief obtained and of Class Counsel's professional work performed in this matter.

Subaru agreed to pay Class Counsel, subject to the Court's approval, an award of up to \$4.1 million in attorneys' fees and costs, inclusive of the litigation expenses that Class Counsel advanced, and to pay each Class Representative a service award of \$4,000. Class Counsel respectfully ask the Court to approve these awards. The fee amount is well justified by Class Counsel's work, which was undertaken on contingency, by the quality of representation, and the excellent settlement for the vehicle owners and lessees who make up the Class, in spite of Subaru's vigorous defense. As discussed below, the awards the Parties agreed to are reasonable, consistent with Third Circuit precedent, and should be approved.

II. FACTUAL BACKGROUND

A. Plaintiffs' Pre-Suit Investigation and Complaint Allegations

Plaintiffs filed suit to obtain relief for themselves and similarly situated individuals who purchased or leased Subaru vehicles that Plaintiffs allege suffer from a uniform defect that can cause a parasitic drain of the vehicle's battery power ("Defect"). This drain causes the batteries to fail prematurely, leaving consumers with inoperable vehicles and potentially leaving them stranded. Plaintiffs alleged Subaru knew about the Defect because it issued a series of technical service bulletins relating to problems associated with the Defect, and large numbers of customers presented their Vehicles to Subaru dealerships for repair.

Class Counsel filed this action after a thorough investigation into the alleged Defect in Subaru vehicles going back to model year 2015. This investigation included, *inter alia*, interviewing and reviewing documents from hundreds of prospective class members; reviewing various forms of consumer reporting and complaints submitted to the National Highway Traffic Safety Administration ("NHTSA"); reviewing Subaru manuals and technical service bulletins that discuss the alleged Defect; reviewing federal motor vehicle regulations regarding safety standards; analyzing Subaru electrical system and battery designs in conjunction with experts in the automotive field; supervising electrical and diagnostic battery

tests; and investigating potential claims. (*See* Joint Certification of Matthew R. Mendelsohn, Matthew D. Schelkopf, and Adam Polk (“Joint Cert.”), ¶ 7.)

Plaintiffs are residents of California, Florida, Illinois, Michigan, New Jersey, New York, Texas, and Washington who purchased Class Vehicles. (Consolidated Class Action Complaint, ECF No. 18 (“Complaint”) at ¶¶ 10-22, 30, 40, 47, 54, 60, 68, 75, 82, 89, 97, 102, 109, 115.) Plaintiffs sought to represent a Nationwide Class and state subclasses of Vehicle purchasers and lessees in the Plaintiffs’ home states, and asserted claims for breach of express warranty, breach of the implied warranty of merchantability, fraudulent concealment, violations of various state consumer fraud statutes and the federal Magnuson-Moss Warranty Act, and unjust enrichment. (*Id.* at ¶¶ 182-183, 191-380.)

B. History of the Litigation

Between March 2, 2020 and April 23, 2020, five related cases were filed against Subaru, which the Court consolidated. (ECF No. 9.) Counsel in the related actions conferred over several months and agreed to a stipulated leadership structure with the undersigned serving as Interim Co-Lead Counsel, supported by an experienced Executive Committee and Liaison Counsel. (ECF No. 15.)

On June 18, 2020, Plaintiffs filed their Consolidated Class Action Complaint. (ECF No. 18.) On August 3, Subaru moved to dismiss, and the Parties fully briefed that motion. (ECF Nos. 34, 38, 39, 42.) While the motion to dismiss

was pending, the Parties served document requests and interrogatories, and negotiated a Stipulation Regarding Discovery outlining the core issues as to which discovery would proceed prior to the Court's ruling on the motion. (ECF No. 31.) The Parties also negotiated and filed a Discovery Confidentiality Order. (ECF No. 31, 41.) On March 31, 2021, this Court issued a 67-page Opinion granting in part and denying in part the motion to dismiss. (ECF Nos. 46-47.) On April 28, Subaru filed an Answer to the Consolidated Class Action Complaint. (ECF No. 50.) Following the Court's ruling on the motion to dismiss, the Parties negotiated and filed a Joint Discovery Plan. (ECF No. 63.)

Beginning August 20, 2021, the Parties engaged in informal, formal, and eventually confirmatory discovery. Plaintiffs' discovery efforts included preparation and review of initial disclosures, propounding and responding to interrogatories and requests for production of documents, review of documents produced by Subaru, and the deposition of Subaru's Director of Field Quality, John Gray. (Joint Cert. ¶ 16.)

C. The Parties' Settlement Negotiations

On May 12, 2021, the Parties informed the Court of their intent to pursue mediation with Judge Schneider. (ECF No. 52.) The Parties participated in a daylong mediation on July 7, 2021, followed by several additional mediation sessions over the next five months. (Joint Cert. ¶ 12.) In conjunction with the

mediation, the Parties exchanged documents subject to Federal Rule of Evidence 408. The documents showed in part Subaru's internal warranty claims analyses, sales figures, efficacy of proposed remedies, and other information relevant to the alleged defect and its effects. (*Id.* at ¶ 13.) After extensive negotiations supervised by Judge Schneider, on November 9, 2021, the Parties reached an agreement in principle to resolve Plaintiffs' class action claims. (*Id.* at ¶ 14.)

The terms of the Settlement Agreement ("Settlement" or "SA") are the product of arm's-length negotiations between experienced counsel for both sides. (*Id.* at ¶ 23.) Prior to entering into the Settlement, Class Counsel independently analyzed the nature of the Defect and Subaru's contention that it had implemented measures to address it, consulted automotive engineering experts, studied government reports, and interviewed and collected documents from hundreds of class members. (*Id.* at ¶ 15.) Class Counsel also engaged in confirmatory discovery to assess Subaru's contention that it has resolved the alleged defect, including by taking the deposition of Subaru's 30(b)(6) designee, John Gray.

D. The Settlement Class

Upon final approval, the Settlement will provide substantial benefits to the following Settlement Class: All natural persons, who are residents of the continental United States, including Hawaii or Alaska, who currently own or lease, or previously owned or leased, a Settlement Class Vehicle originally purchased or

leased in the continental United States, including Alaska or Hawaii. Excluded from the Settlement Class are the employees, officers, or directors of Subaru, affiliated Subaru entities; or Subaru's authorized retailers; all entities claiming to be subrogated to the rights of Settlement Class Members, issuers of extended vehicle warranties, third party issuers, and any Judge to whom the Litigation is assigned.

(See SA at § III.1.)

E. Settlement Relief Benefiting the Class

Subaru has agreed to provide several forms of relief that address the Defect and its consequences.

1. Warranty Extension for Current Owners or Lessees

(a) First Battery Replacements

The Settlement provides enhanced warranty protections to Settlement Class members. Subaru has agreed to extend its existing three year/36,000 mile New Vehicle Limited Warranty for the Settlement Class Vehicles, to cover 100% of the cost for a first battery replacement for a period of five years or 60,000 miles, whichever occurs first. For Settlement Class Vehicles that have exceeded five years or 60,000 miles as of the Settlement Notice Date, Subaru will extend its New Vehicle Limited Warranty for three months, without regard to mileage, to cover 50% of the Battery Replacement Costs for a first battery replacement. (SA at § V.A.1.)

(b) *Subsequent Battery Replacements*

In instances where the replacement batteries fail, Subaru has agreed to extend its three year/36,000 mile New Vehicle Limited Warranty to cover the costs of a replacement battery. The parameters of the Settlement Extended Warranty will be the greater of Subaru's existing replacement-part warranty or:

- (i) 100% of the Battery Replacement Costs (including parts and labor) up to a period of five (5) years or sixty thousand (60,000) miles (whichever comes first) from the In-Service Date of the Settlement Class Vehicle regardless of the number of battery replacements the Settlement Class Vehicle has already received;
- (ii) 80% of the Battery Replacement Costs (including parts and labor) up to a period of seven (7) years or eighty-four thousand (84,000) miles (whichever comes first) from the In-Service Date of the Settlement Class Vehicle; or
- (iii) 60% of the Battery Replacement Costs (including parts and labor) up to a period of eight (8) years or one hundred thousand (100,000) miles (whichever comes first) from the In-Service Date of the Settlement Class Vehicle.

(SA at § V.A.2.)

(c) *Extended Warranty Customer Reimbursement*

Settlement Class Members who, prior to the Notice Date, purchased a Subaru extended service contract (known as Added Security) and were not entitled to battery coverage through that program will receive a warranty extension consistent with the time and mileage limitations described above. (SA at § V.A.3.)

2. Reimbursement for Out-of-Pocket Costs

Importantly, any Settlement Class Member who has not already been fully reimbursed by Subaru or a third party, will be entitled to reimbursement of their out-of-pocket repair costs for a Qualifying Battery Condition² incurred prior to the Notice Date. Additionally, as set forth in the chart provided below, depending on circumstances, Settlement Class Members will receive an additional payment over and above the amounts they paid for expenses related to the alleged defect.

Examples of expenses eligible for reimbursement under this provision include, but are not limited to, out-of-pocket expenses for any battery replacements and/or battery testing and diagnosis performed by an Authorized Subaru Retailer, and out-of-pocket expenses for towing services. Settlement Class Members who had their Class Vehicle serviced and/or repaired at a third-party repair facility will also be entitled to reimbursement of the money they paid for any battery replacements and/or battery testing and diagnosis performed by the third-party repair facility, as well as out-of-pocket expenses for towing services if, prior to those repair-related services, the Class Member presented his or her Vehicle to an authorized Subaru

² “Qualifying Battery Condition” is defined in the Settlement Agreement as a “Settlement Class Vehicle in which the battery died (i.e., the battery was discharged beyond the ability to start the Class Vehicle).” (ECF No. 72-2.)

dealership or contacted Subaru's customer service division regarding the battery-related issue. (SA at § V.B.)

The Settlement Agreement provides that reimbursement for a Qualifying Reimbursable Repair will be at the following rates:

# of Owner Paid Repairs	Within 3 years / 36,000 miles	5 years / 60,000 miles	7 years / 84,000 miles	8 years / 100,000 miles
1	120%	100%	N/A	N/A
2	140%	125%	100%	55%
3+	165%	140%	120%	100%

(SA at § V.B.6.)

3. Reimbursement for Extraordinary Circumstances

In addition to the above-described relief, Settlement Class Members who experienced two or more battery failures within five years and 60,000 miles from the In-Service Date of the Settlement Class Vehicle are also eligible, subject to submission of a claim and appropriate documentation, to receive 140% of Reasonably Related Reimbursable Costs incurred because the Class Member was stranded as a result of a battery failure that occurred prior to the Notice Date. Recoverable expenses include, without limitation, hotel expenses, meals, and equipment purchased to sustain battery operation, and other expenses reasonably related to the battery failure. A Settlement Class Member who qualifies for the

cash payments under this provision will also be entitled to receive a \$140 single-use Subaru service voucher, which will remain valid for one year from the date the claim is approved. (SA at § V.C.)

4. Free Remedial Software Update (“Reflash”)

The Settlement also grants any Settlement Class Member who continues to experience the Battery Drain Defect the opportunity to present his or her Class Vehicle to an Authorized Subaru Retailer and receive a free software update at the dealership that improves the engine control charging logic. This software update improves the engine control module charging logic of the batteries in the Settlement Class Vehicles, allowing the Vehicles’ alternators to provide additional charge to the batteries. (Joint Cert. ¶ 16.) Settlement Class Members who already received and paid for this update are entitled to submit a claim and receive a 100% reimbursement of expenses incurred for the update. (SA at § V.D.)

5. Costs of Notice and Settlement Administration

Subaru is solely responsible for the costs of Class Notice and Settlement administration. (SA at § V.E.)

6. Attorneys’ Fees, Expenses and Service Awards

Plaintiffs seek, and Subaru has agreed to pay, subject to the Court’s approval, Attorney Fees and Expenses of up to \$4,100,000. Subaru has also agreed to pay, subject to Court approval, Service Awards in the amount of \$4,000 to each

of the 13 named Plaintiffs. Attorneys' Fees and Expenses, as well as Service Awards, will be in addition to the benefits provided directly to the Settlement Class, and will not reduce or otherwise affect the benefits made available to Settlement Class Members. (SA at § XII.)

F. Notice to Settlement Class Members

The Settlement Agreement includes a comprehensive notice plan, to funded by Subaru and overseen by the experienced Settlement Administrator, JND Legal Administration. Class Counsel have monitored and participated in the Notice and Administration process to ensure that the Settlement Administrator is acting in accordance with the Settlement Agreement, and will continue to do so after final approval. (SA at § VII.B.)

Settlement Class Members have been notified of the Settlement by direct mail. Subaru identified Settlement Class Members through its records; verified or updated their contact information through Experian, a third party that maintains and collects the names and addresses of automobile owners; and sent out the Notice to the members of the Settlement Class by postcard. Prior to this mailing, an address search through the United States Postal Service's National Change of Address database was conducted to ensure the latest address information for Settlement Class Vehicle owners and lessees. For each individual Notice returned as undeliverable, the Settlement Administrator re-mailed the Notice where a

forwarding address was provided. For remaining undeliverable Notices where no forwarding address was provided, the Settlement Administrator performed an advanced address search (e.g., a skip trace) and re-mailed those undeliverable Notices to the extent any new and current addresses were located. For the approximately 2.6 million Class Members for whom the Settlement Administrator had email addresses, they also received an email notice about the Settlement that included a hyperlink to the Settlement Website and electronic versions of the Long Form Notice and Claim Form. (Joint Cert. ¶¶ 19-22.)

Subaru also set up and maintains a dedicated settlement website, www.subarubatterysettlement.com, that posts the Notice, Claim Form, Settlement Agreement and other relevant documents. Likewise, Class Counsel have also included a link to the Settlement Website on their respective law firms' websites. Subaru has paid, and will continue to pay, the costs of Notice and Settlement Administration, and provided notice of the settlement to the appropriate state and federal officials as required by the Class Action Fairness Act, 28 U.S.C. § 1715. (SA at § VII.)

Notice was sent on September 21, 2022. (*See* ECF No. 75.) Settlement Class Members seeking reimbursement for Qualifying Repairs previously undertaken must submit a Claim Form within 60 days of the Effective Date.

The Settlement Agreement delineates the procedure in the event the Settlement Administrator rejects a claim for reimbursement of out-of-pocket expenses. The Settlement Administrator will provide notice of its decision to any such claimant and provide him or her with 45 days to cure any deficiencies and/or request a Second Review. (SA at § VI.)

G. Release of Liability

In exchange for the foregoing, Settlement Class Members who do not timely exclude themselves will be bound by a release of all claims arising out of or relating to the claims that were asserted in the Complaint (“the Released Claims”). *See Grimes v. Vitalink Commc ’ns Corp.*, 17 F.3d 1553, 1563 (3d Cir. 1994). The Released Claims will extend to Defendants and their related entities and persons. The Released Claims will not, however, apply to any claims for death, personal injury, property damage (other than damage to Class Vehicles), or subrogation. The Settlement Agreement provides that upon finality, the case will be dismissed with prejudice. (SA at §§ II.29 and XI.)

H. The Preliminary Approval Order and Response by Settlement Class Members

On June 23, 2022, the Court granted preliminary approval of the Parties’ Settlement Agreement, directed the Parties to submit a final approval motion of the Settlement by October 21, 2022, and set a Final Fairness Hearing for November

29, 2022, at 11:00 a.m. (ECF No. 75.) Pursuant to the Order, Settlement Class Members have until November 5, 2022 to submit objections to the Settlement, or to request to be excluded from the Settlement Class. (*Id.* at ¶ 13.) The Settlement Class Members who do not opt out have until sixty (60) days after the Settlement becomes effective to submit a claim form. (*Id.* at ¶ 20.) On October 20, 2022, the Court entered an Order granting the parties' request to adjourn the Final Approval Hearing until December 13, 2022, and also extended Class Counsel's deadline to file their motions for final approval and for attorneys' fees, expenses, costs, and service awards, until November 11, 2022. (ECF No. 87.)

Although the deadline for opt-outs and objections has not yet passed, to date, Class Counsel are aware of ten objections to the Settlement Agreement. Plaintiffs' motion for final approval will address these objections. As of this filing, there have been 211 requests for exclusion. (Joint Cert. ¶ 24.)

III. ARGUMENT

In a class action, "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." FED. R. CIV. P. 23(h). "The awarding of fees is within the discretion of the Court, so long as the Court employs the proper legal standards, follows the proper procedures, and makes findings of fact that are not clearly erroneous." *In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at *15 (D.N.J. May 14, 2012) (citing *In re Cendant*

Corp. PRIDES Litig., 243 F.3d 722, 727 (3d Cir. 2001)). When awarding fees in a class action settlement, the Court is “required to clearly articulate the reasons that support its fee determination.” *Henderson v. Volvo Cars of N. Am.*, LLC, 2013 WL 1192479, at *14 (D.N.J. Mar. 22, 2013) (citations omitted). By negotiating the fee at arm’s length, the parties followed the Supreme Court’s directive that “[i]deally, of course, litigants will settle the amount of a fee.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

Consistent with the Settlement Agreement, Class Counsel seek a fee and expense award of \$4,100,000.00, which accounts for both the attorneys’ fees of the eight law firms representing Plaintiffs (whose collective lodestar is \$2,923,825.00), and reimbursement of \$54,648.31 in litigation expenses they advanced. Plaintiffs also seek approval of \$4,000 service awards for each of the thirteen Class Representatives (\$52,000 total). The requested awards are reasonable in light of the work performed and the results achieved by the Settlement, and are consistent with similar awards recently approved by other courts in this district. The Settlement is the product of strenuous efforts by Class Counsel through difficult phases of investigation, discovery, and adversarial litigation, in a case involving complex issues of fact and law. These fees, costs and service awards will be paid separately from (and in addition to) the benefits made available to the Settlement Class, and should be approved for the reasons stated below.

A. The Fee Request Should Be Evaluated Under the Lodestar Method.

In class action settlements, attorneys' fees are assessed either through the percentage-of-recovery method or through the lodestar method. *Granillo v. FCA US LLC*, 2019 WL 4052432, at *3 (D.N.J. Aug. 27, 2019) (quoting *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006)). Which of these two methodologies to use is "within the district court's sound discretion." *Charles v. Goodyear Tire & Rubber Co.*, 976 F. Supp. 321, 324 (D.N.J. 1997).

Generally, the lodestar method is applied when "the nature of the recovery does not allow the determination of the settlement's value necessary for application of the percentage-of-recovery method." *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) (lodestar method appropriate where value of settlement "evades . . . precise evaluation"); *Petruzzi's Inc. v. Darling-Delaware Co.*, 983 F. Supp. 595, 604 (M.D. Pa. 1996) ("[T]he difficulty in ascribing a reasonable value to the settlement militates against use of a percentage method."). Thus, the lodestar method is typically used where—as with this Settlement—there is no common fund from which the attorneys' fees will be drawn. *See, e.g., Phillips v. Philadelphia Hous. Auth.*, 2005 WL 1899504, at *3 (E.D. Pa. Aug. 8, 2005) (utilizing lodestar method

when there was no common fund); *Talone v. Am. Osteopathic Ass'n*, 2018 WL 6318371, at *16 (D.N.J. Dec. 3, 2018) (same).

The Court should apply the lodestar method to determine a reasonable fee because the fees and expenses will be paid in addition to the benefits provided directly to the Settlement Class. “Here, the settlement benefits are not derived from a set pool of funds, and no specific monetary figure has been set aside to provide relief to the Class Members.” *Granillo*, 2019 WL 4052432, at *3; *see Saint v. BMW of N. Am., LLC*, 2015 WL 2448846, at *15 (D.N.J. May 21, 2015) (using lodestar method “because (1) there is no common fund and (2) the nature of the relief provided—providing additional warranty coverage moving forward—evades the precision required to use the percentage of recovery method.”). Thus the lodestar method is typically used in similar “class action settlements against automobile manufacturer[s]” where the settlement benefits “are not derived from a common fund and . . . cannot be calculated precisely[.]” *Granillo*, 2019 WL 4052432, at *3; *see, e.g., Skeen v. BMW of N. Am., LLC*, 2016 WL 4033969, at *18 (D.N.J. July 26, 2016); *Henderson*, 2013 WL 1192479, at *16; *Gray v. BMW of N. Am., LLC*, 2017 WL 3638771, at *6 (D.N.J. Aug. 24, 2017); *see also, e.g., McLennan v. LG Elecs. USA, Inc.*, 2012 WL 686020, at *10 (D.N.J. Mar. 2, 2012); *In re Philips*, 2012 WL 1677244, at *16.

Application of the lodestar method will fairly compensate Class Counsel for their work in achieving the Settlement. When applying this method, the Court “determines an attorney’s lodestar by multiplying the number of hours he or she reasonably worked on a client’s case by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer.” *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). The Court “is not required to engage in this analysis with mathematical precision or ‘bean-counting’” and “may rely on summaries submitted by the attorneys” without “scrutiniz[ing] every billing record.” *Henderson*, 2013 WL 1192479, at *15 (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005)); see *Fox v. Vice*, 563 U.S. 826, 838 (2011) (“[T]rial courts need not, and indeed should not, become green-eyeshade accountants.”).

B. Counsel’s Lodestar Amount Is Reasonable.

Plaintiffs’ counsel’s lodestar is currently \$2,923,825.00.³ Plaintiffs’ counsel billed their time at their actual billing rates currently charged to hourly clients,⁴ and

³ Plaintiffs’ counsel include the three Class Counsel firms (Mazie Slater Katz & Freeman, LLC; Sauder Schelkopf LLC; Girard Sharp LLP) and five additional firms that participated in the case (Lite DePalma Greenberg, LLC; Chemicles Schwartz Kriner & Donaldson-Smith LLP; Finkelstein, Blankinship, Frei-Pearson & Garber, LLP; Cafferty Clobes Meriwether & Sprengel LLP; Ahdoot & Wolfson, P.C.).

⁴ The hourly billable rates of Class Counsel used to calculate these lodestar values are consistent with the hourly rates routinely approved by this Court in complex

application of this time has been necessary to secure the results obtained for the class.

Lodestar is determined in two steps. *See In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *17 (D.N.J. Mar. 26, 2010). The first step is to ascertain the appropriate hourly rate, based on the attorneys' customary billing rate and the "prevailing market rates" in the relevant community. *Id.* The second step considers whether the billable time was reasonably expended. *Id.* "Time expended is considered 'reasonable' if the work performed was 'useful and of a type ordinarily necessary to secure the final result obtained from the litigation.'" *Id.* at *54-55 (quoting *Public Interest Research Group of N.J., Inc. v. Windall*, 51

class action litigation. The Court's orders granting final approval in both *Yaeger v. Subaru of Am., Inc.*, No. 1:14-cv-4490-JBS-KMW, 2016 WL 4547126 (D.N.J. Aug. 31, 2016) and *Salcedo v. Subaru of Am., Inc.*, No. 1:17-cv-8173-JHR-AMD, ECF No. 48 (D.N.J. June 5, 2019) approved the billing rates of Sauder Schelkopf attorneys and found the hours billed to be reasonable. In addition, the Court in *Henderson* found that Sauder Schelkopf attorneys' "billing rates to be appropriate and the billable time to have been reasonably expended." 2013 WL 1192479, at *16. Courts have also approved the hourly rates of Mazie Slater Katz & Freeman, LLC. *See, e.g., Bauman v. V Theater Group, LLC*, 2:14-cv-1125 (D.NV. July 2, 2020); *Majdipour v. Jaguar Land Rover N. Am., LLC*, 2:12-cv-07849 (D.N.J. Feb. 3, 2020); *Feldman v. BRP US, Inc.*, Civ. Ac. No. 17-cv-61150 (S.D. FL. Nov. 19, 2018); *Gray v. BMW of N. Am., LLC*, Civ. Ac. No. 13-cv-3417 (D.N.J. Aug. 24, 2017). Likewise, courts have approved Girard Sharp LLP's professional rates. *See, e.g., In re Capacitors Antitrust Litig.*, No. 3:14-CV-03264-JD, 2020 WL 6813220, at *4 (N.D. Cal. Sept. 15, 2020), *report & recommendation adopted*, 2020 WL 6544472 (N.D. Cal. Nov. 7, 2020); *In re Nexus 6P Prods. Liab. Litig.*, No. 17-cv-02185-BLF (N.D. Cal. Nov. 12, 2019), ECF No. 225.

F.3d 1179, 1188 (3d Cir. 1985)). The lodestar figure is “presumptively reasonable” when it is calculated based on a reasonable hourly rate as applied to a reasonable number of hours expended. *Planned Parenthood of Cent. N.J. v. Attorney Gen. of N.J.*, 297 F.3d 253, 265 n.5 (3d Cir. 2002) (citations omitted).⁵

The Joint Certification of Matthew Mendelsohn, Adam Polk, and Matthew Schelkopf recounts the time and expenses incurred by both Class Counsel and the Plaintiffs’ counsel firms, and their professional time devoted to this case was reasonable. As discussed above, the necessary work included pre-suit investigation, briefing a lengthy motion to dismiss, conducting informal, formal, and confirmatory discovery, reviewing documents produced by Subaru, analyzing the alleged Battery Defect and Subaru’s contention that it had implemented measures to remedy it, consulting with automotive engineering experts, interviewing and collecting documents from hundreds of class members, deposing Subaru’s 30(b)(6) designee, attending mediations, negotiating and documenting the settlement, and responding to a regular stream of inquiries from Settlement Class Members. (Joint Cert. ¶¶ 7, 10-11, 15-16.) *See McLennan*, 2012 WL 686020, at *10 (time spent investigating the case, responding to class members, working with

⁵ The final step in the lodestar analysis, discussed below, is to determine whether to increase or decrease the lodestar amount by applying a lodestar multiplier. *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *18.

experts, opposing motion to dismiss, and negotiating and crafting settlement was compensable). As of September 30, 2022, Plaintiffs' counsel have devoted over 4,474 hours of contingent work litigating this matter.

Based on these figures, the requested fee amount of \$4,045,351.69 (\$4,100,000 minus the \$54,648.31 in expenses) yields a 1.38 multiplier of Plaintiffs' counsel's actual lodestar, \$2,923,825.00. *See Saint*, 2015 WL 2448846, at *15 ("The lodestar multiplier is then obtained by dividing the proposed fee award by the lodestar amount."). The multiplier will decrease over time as Class Counsel continue to perform additional work on behalf of the Class, including supervising the ongoing administration of the Settlement claims process.

Courts routinely find in complex class action cases that a multiplier of one to four of counsel's lodestar is fair and reasonable. *See Boone v. City of Phila.*, 668 F. Supp. 2d 693, 714 (E.D. Pa. 2009); *In re Prudential*, 148 F.3d at 341 (quoting 3 Herbert Newberg & Alba Conte, *Newberg on Class Actions*, Section 14.03 at 14-5 (3d ed. 1992)). The Third Circuit has observed that it has "approved a multiplier of 2.99 in a relatively simple case." *Milliron v. T-Mobile United States*, 423 Fed. Appx. 131, 135 (3d Cir. 2011) (citing *Cendant PRIDES*, 243 F.3d at 742); *see also In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *8 (D.N.J. May 31, 2012) (finding a multiplier of 1.6 "is an amount commonly approved by courts of this Circuit"); *McLennan v. LG Electronics USA, Inc.*, 2012

WL 686020, at *10 (D.N.J. Mar. 2, 2012) (finding a multiplier of 2.93 appropriate where, *inter alia*, “[c]lass counsel prosecuted this matter on a wholly contingent basis, which placed at risk their own resources, with no guarantee of recovery”); *McCoy*, 569 F. Supp. 2d at 479 (finding a multiplier of almost 2.3 to be reasonable). The 1.38 multiplier sought here is reasonable and should be approved.

C. A Percentage Cross-Check Confirms the Reasonableness of the Requested Fee.

“Regardless of the method chosen, [the Third Circuit has] suggested it is sensible for a court to use a second method of fee approval to cross-check its initial fee calculation.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 300. In lodestar cases, courts often apply the percentage-of-recovery method to “cross-check” the reasonableness of the fee. *See, e.g., Granillo*, 2019 WL 4052432, at *8 (applying lodestar method before conducting a cross-checking “using the percentage of recovery method”); *In re Philips*, 2012 WL 1677244, at *17 (same).

In *Gunter v. Ridgewood Energy Corp.*, the Third Circuit listed non-exhaustive factors for district courts to consider in evaluating fee applications in class actions:

- (1) the size of the fund created and the number of persons benefitted;
- (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel;
- (3) the skill and efficiency of the attorneys involved;
- (4) the complexity and duration of the litigation;
- (5) the risk of nonpayment;

(6) the amount of time devoted to the case by plaintiffs’ counsel; and (7) the awards in similar cases.

Gunter, 223 F.3d at 195 n.1; see *In re Wawa, Inc. Data Sec. Litig.*, 2022 WL 1173179, at *10 (E.D. Pa. Apr. 20, 2022) (discussing these factors). These factors “need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest.” *Id.* As applied here, the *Gunter* factors confirm that Class Counsel’s fee request is reasonable.

1. Size of the fund and the number of persons benefited

The Settlement in this case makes substantial relief available to Settlement Class Members and the requested fee will not diminish or affect any of these benefits. Approximately 2.8 million Settlement Class Vehicles have been sold and leased throughout the United States. Both current and former owners and lessees of the Settlement Class Vehicles will be eligible to participate in the relief described above, including the robust warranty extensions and the ability to make claims for out-of-pocket expenses associated with a qualifying battery failure in Settlement Class Vehicles. See, e.g., *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 103 (D.N.J. 2012) (“By reaching a favorable Settlement . . . Class Counsel have avoided significant expense and delay and have also provided an immediate benefit”). Class Counsel have been contacted by many Settlement Class Members

who have submitted claims for reimbursement and are obtaining repairs under the extended warranty.

The value of the extended warranty benefits further supports counsel’s fee request. *See Granillo*, 2019 WL 4052432, at *9 (finding that extended warranties “conferred a substantial benefit” to class members and factoring estimated value of warranties in conducting cross-check). Courts typically consider the estimated value of warranty relief when determining whether a requested attorneys’ fee is reasonable. *See, e.g., In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.*, 733 F. Supp. 2d 997, 1008, 1014 (E.D. Wis. 2010) (“find[ing] that \$45.7 million is a reasonable estimate of the value of warranty relief” and “with a [total] settlement value of \$110.7 million, . . . the applicable fee percentage should be 25%, with a resulting fee of \$27,675,000.”); *O’Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 305 (E.D. Pa. 2003) (awarding attorneys’ fees to class counsel based on a settlement that included a warranty); *Vaughn v. American Honda Motor Co.*, 627 F. Supp. 2d 738, 746 (E.D. Tex. 2007). Class Counsel will provide additional information on warranty valuation in their motion seeking final approval of the Settlement.

2. Low percentage of objections

The deadline by which Settlement Class Members may object to the Settlement—including Plaintiffs’ request for attorneys’ fees—is November 4,

2022. Class Counsel are aware of only 12 objections to date, and thus the low number of objections supports approval of the requested fee. *See In re Philips*, 2012 WL 1677244, at *18 (the fact that only six objections were received weighed in favor of fee request); *Reinhart*, 327 F. Supp. 2d at 435 (“[T]he Court concludes that the lack of a significant number of objections is strong evidence that the fees request is reasonable.”); *see also Weber v. Gov’t Emps. Ins. Co.*, 262 F.R.D. 431, 451 (D.N.J. 2009). Class Counsel will address the merits of the objections in their motion seeking final approval of the Settlement.

3. Skill and efficiency of Class Counsel

Class Counsel have diligently and efficiently prosecuted Plaintiffs’ claims, and have invested the necessary time and costs to properly investigate and pursue the class claims and position them for a favorable settlement. (Joint Cert. ¶¶ 7, 10-11.) The results obtained in this case reflect the skill with which Class Counsel prosecuted this litigation. *See In re Philips*, 2012 WL 1677244, at *18 (“Class Counsel obtained substantial benefits for the Class Members, a consideration that further evidences Class Counsels’ competence. Thus, this factor also weighs in favor of approval of the fee award.”). The “single clearest factor reflecting the quality of class counsels’ services to the class are the results obtained.” *In re Safety Components Sec. Litig.*, 166 F. Supp. 2d 72, 96 (D.N.J. 2001). Related factors include “the quality of the result achieved, the difficulties faced, the speed and

efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.” *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 476 (D.N.J. 2008) (quoting *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 465 (E.D. Pa. 2008)). The purpose and goal of this *Gunter* factor is to ensure “that competent counsel continue to undertake risky, complex and novel litigation” for the benefit of large numbers of class members who might otherwise lack reasonable access to justice. *Gunter*, 223 F.3d at 198.

Class Counsel’s work included investigating the cause of the battery failures; drafting complaints; successfully opposing a motion to dismiss; propounding written discovery requests; and engaging in written discovery and taking a deposition. On a separate track, Class Counsel also engaged in multiple mediations and several months of settlement negotiations with Subaru, ultimately achieving an superb result for the Class. In addition, “the quality and vigor of opposing counsel is also important in evaluating the services rendered by Class Counsel” and Subaru was ably represented in this case by experienced attorneys from Ballard Spahr LLP. *Granillo*, 2019 WL 4052432, at *10.

This factor therefore weighs in favor of the requested fee. *See, e.g., McCoy*, 569 F. Supp. 2d at 476 (citing “the performance and quality of opposing counsel”

as a factor in evaluating the quality of class counsel's work); *Granillo*, 2019 WL 4052432, at *10.

4. Complexity and duration of the case

This complex class action litigation was initiated over two years ago and has required extensive work by Class Counsel. Several courts have recognized that “any class action presents complex and difficult legal and logistical issues which require substantial expertise and resources.” *Stalcup v. Schlage Lock Co.*, 505 F. Supp. 2d 704, 707 (D. Colo. 2007); *Granillo*, 2019 WL 4052432, at *10.

The facts and legal issues were highly complex, implicating 2.8 million vehicles, over 3.7 million Class Members across the country, and extensive dealership repair networks. (Joint Cert. ¶¶ 6, 24.) In prosecuting the actions, Class Counsel reviewed and analyzed documents produced by Subaru and numerous non-parties and retained and worked with expert witnesses and consultants. (*Id.* at ¶¶ 7, 11, 15.) The Settlement is the product of negotiations that occurred over many months. (*Id.* at ¶ 12.) On this record, the amount of compensation sought by Class Counsel is reasonable. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 305.

5. The risk of nonpayment

Class Counsel have prosecuted this litigation on a purely contingency basis and Subaru vigorously defended itself from the outset, including by moving to dismiss all of Plaintiffs' claims, asserted on behalf of a putative nationwide class

and state subclasses. Given the complexity of the issues presented, the risk of non-recovery was sufficiently substantial to justify counsel's fee request. *See O'Keefe*, 214 F.R.D. at 309 ("Any contingency fee includes a risk of non-payment. That is why class counsel will be paid a percentage that is several times greater than an hourly fee in this case."); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 122 (D.N.J. 2012 ("Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees.") (internal citations omitted)).

6. The amount of time devoted by counsel

As reflected in the accompanying declarations, Plaintiffs' counsel have devoted over 4,474 hours of contingent work litigating this matter and will continue to dedicate a significant amount of time to this case. Class Counsel anticipate spending a significant amount of additional time answering questions from Settlement Class Members, assisting Settlement Class Members with the claims process, appearing at the fairness hearing, and auditing reimbursement claims. The time reported here does not include this future work. *See Yaeger*, 2016 WL 4547126, at *2 ("This does not include fees for services to be rendered to the class in the future, such as monitoring and enforcement of the administration of Settlement Agreement."); *Henderson*, 2013 WL 1192479, at *15 n.11. Class Counsel's commitment of time and effort supports their fee request.

7. Awards in similar cases

A review of similar class actions in the District of New Jersey demonstrates that the fee request here is reasonable and appropriate. *See, e.g., In re Volkswagen Timing Chain Prod. Liab. Litig.*, No. 2:16-cv-2765 (JLL)(JAD), 2018 WL 11413299 (D.N.J. Dec. 14, 2018) (approving \$8,650,000 fee and expense award); *Bang v. BMW of N. Am., LLC*, No. 2:15-cv-6945(MCA)(SCM), ECF No. 121 (D.N.J. Sept. 11, 2018) (approving requested \$3.022 million fee and expense award); *In re Mercedes-Benz Tele Aid Contract Litig.*, No. 07-cv-2720 (DRD), 2011 WL 4020862 (awarding \$6,250,00 in attorneys' fees and costs)(D.N.J. Sept. 9, 2011); *McGee v. Cont'l Tire N. Am., Inc.*, 2009 WL 539893, at *2 (D.N.J. Mar. 4, 2009) (\$2,274,983.70 in fees and expenses, representing a multiplier, justified in a consumer class action); *O'Keefe*, 214 F.R.D. at 304 (\$4,896,783.00 in fees justified in class action involving allegedly defectively design rear lift-gate latch); *Weiss v. Mercedes-Benz of N. Am.*, 899 F. Supp. 1297, 1304 (D.N.J. 1995) (fee award of \$11,250,000.00 was fair and reasonable in class action settlement involving allegations of vibration in automobile's steering system).

Accordingly, each of the *Gunter* factors supports granting the requested fee.

D. Plaintiffs' Counsel's Expenses Should Be Approved.

Class Counsel also request reimbursement of their out-of-pocket litigation expenses of \$54,648.31,⁶ which is the amount of expenses that counsel reasonably advanced in furtherance of investigating and prosecuting this litigation. “Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.” *Careccio v. BMW of N. Am. LLC*, 2010 WL 1752347, at *7 (D.N.J. Apr. 29, 2010) (quoting *In re Safety Components Int’l Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001)).

The Joint Certification summarizes Plaintiffs’ counsel’s current out-of-pocket expenses by category. *See In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *29 (D.N.J. Nov. 15, 2016) (approving class counsel’s expenses where they were “summarized by category” and were “the type of expenses routinely charged to hourly paying clients and, therefore, should be reimbursed”). The amount is reasonable, and Plaintiffs respectfully request that it be approved. *See, e.g., In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *19 (approving expenses that were “adequately documented and reasonably and appropriately incurred in the prosecution of the case.”); *In re Datatec Sys. Sec.*

⁶ Pursuant to the Settlement Agreement, these expenses will be reimbursed through the \$4,100,000 fee and expense award. (SA at § X.1.)

Litig., 2007 WL 4225828, at *9 (D.N.J. Nov. 28, 2007); *Granillo*, 2019 WL 4052432, at *11 (approving \$38,786.83 in expenses that defendant “agreed to pay separately from the class relief.”). Thus, Plaintiffs respectfully request that the Court approve reimbursement of these expenses, which were necessary to the prosecution and settlement of this case. (Joint Cert. at ¶¶ 7, 9-18.)

E. The Requested Service Awards Should Be Approved.

Finally, the Court should recognize the Class Representatives’ contributions to the Settlement by granting service award payments of \$4,000. The Class Representatives were integral to the successful result for the Class. After stepping forward to represent the other affected consumers, these Plaintiffs participated in many conferences and meetings with their attorneys, searched for and produced documents relevant to their claims, and kept abreast of the significant developments in the case, in close consultation with counsel. (Joint Cert. at ¶ 77.) Like Class Counsel’s fee and expense request, these service awards will be paid separately from the Settlement consideration for Class Members, and will not reduce the recovery to any Class Member. *See In re LG/Zenith Rear Projection TV Class Action Litig.*, 2009 WL 455513, at *9 (D.N.J. Feb. 18, 2009) (approving service award that “will not decrease the recovery of other class members.”).

The requested awards are relatively modest in comparison to other awards that courts in this district have approved. *See, e.g., Granillo*, 2019 WL 4052432, at

*12 (approving \$5,000 in service awards and noting that “[t]he amount requested is similar to amounts awarded by courts in this District”); *Talone*, 2018 WL 6318371, at *17 (\$15,000 to each plaintiff); *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *23-24 (D.N.J. Apr. 8, 2011) (approving service awards of \$10,000 to each of the named plaintiffs); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. at 125 (approving service awards totaling \$85,000, consisting of \$5,000 to each of the class representatives); *Henderson*, 2013 WL 1192479, at *19 (approving service awards of between \$5,000 to \$6,000 for each of six class representatives).

The \$4,000 awards requested here are reasonable and Plaintiffs’ respectfully request that the Court approve them.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court award Class Counsel \$4,100,000.00 in attorneys’ fees and expenses, and grant a \$4,000 service award to each of the 13 Class Representatives.

Dated: October 24, 2022

Respectfully submitted,

By: /s/ Matthew D. Schelkopf
Matthew D. Schelkopf
Joseph B. Kenney
SAUDER SCHELKOPF LLC
1109 Lancaster Avenue
Berwyn, Pennsylvania 19312
Telephone: (610) 200-0581
mds@sstrialawyers.com

By: /s/ Matthew Mendelsohn
Matthew Mendelsohn
**MAZIE SLATER KATZ
& FREEMAN, LLC**
103 Eisenhower Parkway
Roseland, NJ 07068
Telephone: (973) 228-9898
mrm@mazieslater.com

By: /s/ Adam Polk
Adam Polk (*pro hac vice*)
Jordan Elias (*pro hac vice*)
GIRARD SHARP LLP
601 California St #1400
San Francisco, CA 94108
Telephone: (866) 981-4800
apolk@girardsharp.com

Class Counsel

Bruce D. Greenberg
LITE DEPALMA GREENBERG, LLC
570 Broad Street, Suite 1201
Newark, NJ 07102
Telephone: (973) 623-3000
bgreenberg@litedepalma.com

Plaintiffs' Liaison Counsel

Benjamin F. Johns
**CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP**
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Telephone: 610-642-8500
bfj@chimicles.com

Chair of Plaintiffs' Executive Committee

Todd Garber
**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**
One North Broadway
Suite 900
White Plains, NY 10605
Telephone: (914) 298-3281
tgarber@fbfglaw.com

Daniel Herrera
**CAFFERTY CLOBES MERIWETHER
& SPRENGEL LLP**
150 S. Wacker Drive, Suite 3000
Chicago, IL 60606
Telephone: (312) 782-4880
dherrera@caffertyclobes.com

Tina Wolfson
AHDOOT & WOLFSON, P.C.
1016 Palm Ave
West Hollywood, CA 90069
Telephone: (310) 474-9111
twolfson@ahdootwolfson.com

Plaintiffs' Executive Committee

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE SUBARU BATTERY DRAIN
PROD. LIAB. LITIG.

No. 1:20-cv-03095-JHR-MJS

**JOINT CERTIFICATION OF MATTHEW R. MENDELSON, MATTHEW D.
SCHELKOPF, AND ADAM POLK IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

We, Matthew R. Mendelsohn, Matthew D. Schelkopf, and Adam Polk Adam E. Polk, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. Matthew R. Mendelsohn is a partner at Mazie Slater Katz & Freeman, LLC (“Mazie Slater”) in Roseland, New Jersey and one of the attorneys of record for Plaintiffs and the Settlement Class. Mr. Mendelsohn submits this certification based upon personal knowledge, in support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards, and if called to do so, could testify to the matters contained herein.

2. Matthew D. Schelkopf is a partner at Sauder Schelkopf, LLC (“Sauder Schelkopf”) in Berwyn, Pennsylvania and another attorney of record for Plaintiffs and the Settlement Class. Mr. Schelkopf submits this submits this certification based upon personal knowledge, in support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards and if called to do so, could testify to the matters contained herein.

3. Adam E. Polk is a partner at Girard Sharp LLP (“Girard Sharp”) in San Francisco, California and another attorney of record for Plaintiffs and the Settlement Class. Mr. Polk submits this submits this certification based upon personal knowledge, in support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards, and if called to do so, could testify to the matters contained herein.

4. Attached hereto as **Exhibit 1** is a true and correct copy of declarations submitted by attorneys at the additional five firms whose professionals performed work in furtherance of the prosecution and resolution of this litigation: Chimicles Schwartz Kriner & Donaldson-Smith LLP; Lite DePalma Greenberg, LLC; Finkelstein, Blankinship, Frei-Pearson & Garber, LLP; Cafferty Clobes Meriwether & Sprengel LLP; Ahdoot & Wolfson, P.C.

I. Overview of Litigation and Legal Services Provided to the Class

5. This action was brought by Plaintiffs Amy Burd, Walter Gill, David Hansel, Glen McCartney, Roger Baladi, Tamara O’Shaughnessy, Anthony Franke, Matthew Miller, Steven Stone, Howard Bulgatz, Mary Beck, David Davis, and Colin George (“Plaintiffs”) on behalf of themselves and a putative class of all persons or entities in the United States, who currently own or lease, or previously owned or leased, a Class Vehicle.¹

6. Plaintiffs alleged that the 2.8 million Class Vehicles contain a defect that causes parasitic drain of battery power (the “Battery Drain Defect” or “Defect”). Plaintiffs further alleged that the resulting drain causes premature battery failure, an event that can leave drivers and their passengers stranded.

¹ The Class Vehicles include model years (“MY”) 2015-2020 Subaru Outback, MY 2015-2020 Forester, MY 2015-2020 Legacy, MY 2015-2020 WRX, and MY 2019-2020 Ascent (the “Vehicles” or “Class Vehicles”).

7. Before filing this action, Class Counsel conducted an in-depth investigation into the alleged Battery Drain Defect. The investigation included interviewing and reviewing documents from hundreds of prospective class members; studying various sources of consumer reporting; monitoring the National Highway Traffic Safety Administration (“NHTSA”) website, on which consumers were complaining about the alleged defect; analyzing Subaru manuals and technical service bulletins that discussed the alleged defect; reviewing federal motor vehicle regulations regarding safety standards; identifying potential defendants; researching causes of action and other cases involving similar defects; and consulting with automotive engineering experts.

8. The named Plaintiffs are residents of New Jersey, New York, California, Florida, Illinois, Michigan, Texas and Washington and each Plaintiff alleged that his or her Class Vehicle experienced the Battery Drain Defect. The Complaint proposed certification of a Nationwide Class and subclasses of vehicle purchasers and lessees in the Plaintiffs’ home states. Plaintiffs asserted claims for violations of various state consumer fraud statutes and the Magnuson-Moss Warranty Act, and also alleged claims for breach of express warranty, breach of the implied warranty of merchantability, common law fraud, and unjust enrichment.

9. Certain of the Plaintiffs filed their initial complaint on March 20, 2020. After additional cases were filed, the Court consolidated all related cases and set a

briefing schedule for the appointment of lead counsel. Counsel in the various related actions conferred and agreed to a stipulated leadership structure with the undersigned serving as Interim Co-Lead Counsel, supported by an experienced Executive Committee and Liaison Counsel.

10. On June 18, 2020, Plaintiffs filed their Consolidated Class Action Complaint. On August 3, 2020 Subaru filed a motion to dismiss, which the parties fully briefed over the following months. On March 31, 2021, the Court issued a 67-page Opinion granting in part and denying in part the motion to dismiss. On April 28, Subaru filed an Answer to the Consolidated Class Action Complaint.

11. Since August of 2020, the Parties have engaged in various types of party and non-party discovery. Plaintiffs served initial disclosures, propounded and responded to interrogatories and requests for production of documents, reviewed documents produced by Subaru, and took the 30(b)(6) deposition of Subaru's Director of Field Quality, John Gray.

II. The Settlement, Notice, and Claims Administration

12. On May 12, 2021, the Parties informed the Court they intended to pursue mediation. The parties participated in a full-day mediation with the Hon. Joel Schneider, U.S.M.J. (Ret.) on July 7, 2021. They subsequently participated in several additional mediation sessions over the next five months.

13. The Parties also exchanged confirmatory discovery subject to Federal Rule of Evidence 408. The documents contained Subaru's warranty claims analyses, sales data, the efficacy rates of various remedial measures, and additional information concerning the alleged Defect and its effects.

14. On November 9, 2021, as a result of extensive negotiations under Judge Schneider's supervision, the Parties reached a settlement in principle to resolve Plaintiffs' class action claims.

15. Before entering into the Settlement Agreement Class Counsel assessed the defect, examined government reports, consulted with automotive engineering experts, and interviewed hundreds of class members and reviewed their documents.

16. On March 3, 2022 Class Counsel also deposed Subaru's 30(b)(6) designee, John Gray, to assess Subaru's contention that it has resolved the alleged defect.

17. The Settlement provides substantial benefits to the proposed Settlement Class. The Settlement Class includes: All natural persons, who are residents of the continental United States, including Hawaii or Alaska, who currently own or lease, or previously owned or leased, a Settlement Class Vehicle originally purchased or leased in the continental United States, including Alaska or Hawaii. Excluded from the Settlement Class are (a) those claims for personal injury and/or property damage (claims for a Qualifying Battery Condition or Qualifying Battery Failure in a

Settlement Class Vehicle are included regardless of whether they additionally experienced personal injury or property damage for which they do not make a claim; however, those additional claims for personal injury and/or property damaged shall be deemed excluded from the Settlement Class) and/or subrogation; (b) all Judges who have presided over the Action and their spouses; (c) all current employees, officers, directors, agents and representatives of Defendants, and their family members; (d) any affiliate, parent or subsidiary of Defendants and any entity in which Defendants have a controlling interest; (e) anyone acting as a used car dealer; (f) anyone who purchased a Settlement Class Vehicle solely for the purpose of resale; (g) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company who acquired a Settlement Class Vehicle as a result of a total loss; (h) any insurer of a Settlement Class Vehicle; (i) issuers of extended vehicle warranties and service contracts; (j) any Settlement Class Member who, prior to the date of the Settlement Agreement, settled with and released Defendants or any Released Parties from any Released Claims; (k) any Settlement Class Member that files a timely and proper Request for Exclusion from the Settlement Class; and (l) third party issuers.

18. Subaru has agreed to provide several forms of valuable relief that address the issues raised by the litigation, including (a) a warranty extension for current owners and lessees, (b) reimbursements for out-of-pocket expenses, (c) compensation for extraordinary circumstances, (d) a free software update for qualifying Class

Vehicles, (e) payment for class notice and claims administration, and (f) payment of attorneys' fees, expenses and incentive awards.

19. The Settlement Agreement includes a comprehensive notice plan, to be paid for by Subaru and overseen by the experienced Settlement Administrator: JND Legal Administration. Class Counsel have the right to monitor and participate in the Notice and Administration process to ensure that the Settlement Administrator is acting in accordance with the Settlement Agreement.

20. Subaru first identified Settlement Class Members through its records; verified or updated the contact information through Experian, a third party that maintains and collects the names and addresses of automobile owners; and sent out direct mail notice to the members of the Settlement Class.

21. An address search through the United States Postal Service's National Change of Address database was also conducted to ensure the latest address information for Settlement Class Vehicle owners and lessees. If an individual Notice was returned as undeliverable, the Settlement Administrator forwarded it where a forwarding address had been provided. If no forwarding address was provided, the Settlement Administrator performed an advanced address search (e.g., a skip trace) and re-mailed undeliverable Notices if any new and current addresses were located.

22. The Settlement Administrator also emailed a notice containing a hyperlink to the Settlement Website and electronic versions of the Full Notice and

Claim Form to the approximately 2.6 million Class Members for whom Subaru maintained an email address. Subaru also maintains a dedicated settlement website that includes the Full Notice, Claim Form, Settlement Agreement, and other relevant documents. Likewise, Class Counsel have included a link to the Settlement Website on their respective law firm's websites.

23. The terms of the Settlement Agreement were negotiated at arm's-length by experienced counsel for both parties. The named Plaintiffs all approve of the Settlement and view it as a "win" for the class.

24. The deadline for opt-outs and objections is November 5, 2022. Out of a class of 3.7 million members, to date fewer than twelve individuals have objected to the Settlement, and only 211 have asked to be excluded from the class.

III. Settlement Class Counsel's Lodestar

A. Mazie Slater

i. Firm Overview

25. Mr. Mendelsohn is a partner at Mazie Slater, a fifteen-person law firm in Roseland, New Jersey, and he has continuously and successfully litigated automobile defect class action lawsuits since 2007. During that time, he has repeatedly been appointed as Class Counsel by courts throughout the country and has successfully resolved many cases on behalf of millions of vehicle owners and lessees. In 2012, the New Jersey Law Journal named him as one of the "New Leaders of the

Bar,” and observed that he was “fast becoming one of the most prominent automotive class-action attorneys in New Jersey.”²

26. Examples of some of the vehicle defect cases in which Mr. Mendelsohn has held a lead role include:

- *Majdipour v. Jaguar Land Rover N. Am., LLC* (D.N.J. 2:12-cv-07849-MCA-LDW) (appointed Co-Lead Class Counsel on behalf of owners and lessees of Range Rover vehicles containing allegedly defective air suspension systems resulting in a nationwide settlement providing reimbursements and extended warranties);
- *Feldman v. BRP US, Inc.* (S.D. FL. 17-cv-61150) (appointed Co-Lead Class Counsel on behalf of NY, NJ, FL and TX purchasers of Sea-Doo watercraft suffering from allegedly defective exhaust components resulting in a settlement providing 100% reimbursement and an agreement to cover the defect under warranty);
- *Gray v. BMW of North America, LLC* (D.N.J. 13-cv-3417-WJM-MF) (appointed Co-Lead Class Counsel on behalf of BMW 6-series owners and lessees alleging defects in the convertible systems resulting in a nationwide settlement providing a free repair of the defect, reimbursements for past repairs and an extended warranty);
- *Zaskorn v. American Honda Motor Co.* (E.D. Cal. 2:11-cv-2610-KJM-KJN) (appointed Co-Lead Class Counsel on behalf of 1.68 million class members alleging brake defects in Honda Civic vehicles resulting nationwide settlement providing reimbursements for past premature brake wear and coverage for continuing premature wear into the future)
- *Aarons v. BMW of North America, LLC* (C.D. Cal. 2:11-cv-7667-PSG-CW) (appointed Co-Lead Class Counsel on behalf of owners and lessees of Mini Cooper vehicles with alleged transmission defects resulting in a nationwide settlement providing reimbursements for past failures and reimbursement for the diminished vehicle value for class members who previously sold their vehicles);

² <https://www.law.com/njlawjournal/almID/1202567879607/new-leaders-of-the-bar/?slreturn=20200330150452#>

- *Keegan v. American Honda Motor Co.* (C.D. Cal. 2:10-cv-09508-MMM-AJW) (appointed Co-Lead Class Counsel on behalf of more than 1 million owners and lessees of Honda Civic vehicles with alleged suspension defects resulting in premature tire wear resulting in a nationwide settlement providing free control arm replacements, reimbursements for past repairs and reimbursements for premature tire replacements);
- *In re Nissan Radiator/Transmission Cooler Litigation* (S.D.N.Y. 10-cv-7493-VB) (appointed Co-Lead Class Counsel on behalf of more than 1 million owners and lessees of Nissan Pathfinder, Xterra and Frontier vehicles containing radiator defects that damaged the transmission, resulting in a nationwide settlement providing a warranty extension to 10 years/100,000 miles and providing reimbursements for past repairs);
- *Alin v. American Honda Motor Co., Inc.* (D.N.J. 2:08-cv-04825-KSH-PS) (appointed Co-Lead Class Counsel on behalf of hundreds of thousands of owners and lessees of Honda Odyssey and CR-V vehicles and Acura TSX vehicles containing alleged air-conditioning system defects, resulting in a nationwide class action settlement providing free vehicle repairs to resolve the alleged defect and reimbursements for past repairs);
- *Dewey v. Volkswagen*, (D.N.J. 2:07-CV-2249-FSH-PS) (lead role in nationwide class action involving 3 million Volkswagen and Audi vehicles owned or leased by approximately 5.5 million Class Members that contained alleged sunroof drainage system defects resulting in interior and electrical system damage, resulting in a settlement valued at \$69 million providing free repairs to remedy the defect, reimbursements for past repairs and changes to the maintenance schedule to prevent future failures);
- *Fath v. American Honda Motor Co., Inc.* (D.MN. No. 18-CV-1549-NEB-LIB) (appointed Chair of Executive Committee in class action on behalf of owners and lessees of Honda CR-V and Honda Civic vehicles allegedly containing engine defects, resulting in a proposed nationwide settlement providing a product update to remedy the alleged defect, warranty extension and reimbursements for past repairs).

27. Mr. Mendelsohn continues to litigate numerous automobile defect cases in various courts throughout the United States. In the course of litigating these cases, Mazie Slater has helped to shape the law in this area, resulting in numerous reported

decisions including: *Neale v. Volvo Cars of North America, LLC*, 794 F.3d 353 (3d Cir. 2015); *Dewey v. Volkswagen Aktiengesellschaft*, 558 Fed.Appx. 191 (2014); *Gray v. BMW of North America, LLC*, 22 F.Supp.3d 373 (D.N.J. 2014); *Dewey v. Volkswagen of America*, 909 F.Supp.2d 373 (D.N.J. 2012); *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170 (3d. Cir 2012); *Keegan v. Am. Honda Motor Co.*, 838 F.Supp.2d 929 (C.D. Cal. 2012); *Keegan v. Am. Honda Motor Co.*, 284 F.R.D. 504 (C.D. Cal. 2012); *Delguercio v. Volkswagen of America*, 558 F. Supp. 2d 505 (D.N.J. 2008).

28. In addition to automobile defect cases, Mr. Mendelsohn has also been appointed Class Counsel in numerous other consumer class actions including: *McLaughlin v. IDT Energy* (S.D.N.Y. 1:14-cv-04107); *Claridge v. North Am. Power & Gas, Inc.*, Case No. 15-1261 (S.D.N.Y.); *In re HIKO ENERGY LLC Litigation* (S.D.N.Y. 14-cv-1771); *Meyer v. Bebe Stores, Inc.* (N.D. Cal. 14-cv-267); *Haghayeghi v. Guess?, Inc.* (S.D. Cal. 14-cv-00020); and *Bauman v. V Theater, et al* (D. NV. 2:14-cv-01125-RFB-PAL).

29. Mr. Mendelsohn maintains an active trial practice, having tried numerous complex cases, including product liability cases to verdict over the last ten years. In recognition of this active trial practice, he has been designated by the New Jersey Supreme Court as a Certified Civil Trial Attorney.

ii. Attorney Staffing and Fees

30. To date, in performing work on this case, Mazie Slater attorneys and staff expended 615.4 hours for a total lodestar of \$429,060.00. In accordance with the Court's direction concerning time and expense reporting (ECF No. 15 at 6), the firms' attorneys and staff kept detailed contemporaneous records of the time they spent on this litigation. In auditing time, Mazie Slater exercised billing judgment to eliminate any inefficiency or duplication.

31. These hours were reasonable and necessary given the complex nature of the case and the results achieved. The hours are also reasonable under the factors used by the federal and state courts in New Jersey to determine and measure such matters.

32. Based on experience in similar actions, it is expected that Class Counsel will expend significant additional attorney time through the conclusion of this matter, assuming that no appeals are filed. If an appeal is filed, that amount would increase significantly.

33. A review of recent class action settlements in New Jersey revealed that the rates for partners in law firms practicing in the Federal Courts of New Jersey range from about \$550.00 per hour to a high of about \$1,100.00 per hour. Rates for attorneys designated as counsel range from about \$450.00 per hour to about \$800.00, and rates for associates range from about \$300.00 per hour to about \$700.00 per hour.

34. For example, in the matter of *In re Mercedes-Benz Emission Litigation*, No. 2:16-cv-881-KM-ESK, the fee application filed on April 22, 2021 (ECF No. 312) sets forth the 2021 hourly rates of several class action law firms, including:

Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. (Roseland, NJ)
 Partners: \$620-\$995
 Of Counsel: \$675
 Associates: \$550

Seeger Weiss, LLP (Ridgefield Park, NJ)
 Partners: \$795-\$985
 Of Counsel: \$875
 Associates: \$475-625

Hagens Berman Sobol Shapiro (Seattle, WA)
 Partners: \$625-\$1125
 Of Counsel: \$750
 Associates: \$375-\$550

35. Likewise in *Spanier v. Bayerische Motoren Werke Aktiengesellschaft*, No. 2:20-cv-15081-CCC-AME, the fee application filed on August 8, 2022 (ECF No. 55) sets forth the 2022 hourly rates of The Rosen Law Firm, P.A., with Partners charging \$1,075, Counsel charging \$800 and Associates billing \$600-\$700.

36. The current hourly rates set forth below for attorneys at Mazie Slater are consistent with the rates discussed above:

Name	Title	Hours	Rate	Total
David Mazie	Managing Partner	43.3	\$950	\$41,135.00

Matthew Mendelsohn	Partner	512.4	\$700	\$358,680.00
David Estes	Associate/Partner	13.6	\$625	\$8,500.00
Christopher Geddis	Associate	46.1	\$450	\$20,745.00
TOTALS		615.4		\$429,060.00

37. The hours above were recorded contemporaneously, in one-tenth of an hour increments.

38. The hourly rates above are the current hourly rates for each applicable biller and are the usual and customary rates currently charged Mazie Slater's cases.

39. Mazie Slater's detailed time entries will be provided to the Court for an *in camera* review.

40. Mazie Slater's rates have been previously approved by multiple courts.

See, e.g.:

- *Bauman v. V Theater Group, LLC*, 2:14-cv-1125 (D.NV. July 2, 2020) (approving Mazie Slater's hourly rates);
- *Majdipour v. Jaguar Land Rover N. Am., LLC*, 2:12-cv-07849 (D.N.J. Feb. 3, 2020) (approving Mazie Slater's hourly rates of \$425 for associates and \$595 to \$900 for partners);
- *Feldman v. BRP US, Inc.*, Civ. Ac. No. 17-cv-61150 (S.D. FL. Nov. 19, 2018) (approving Mazie Slater's hourly rates ranging from \$395 to \$850);
- *Gray v. BMW of N. Am., LLC*, Civ. Ac. No. 13-cv-3417 (D.N.J. Aug. 24, 2017) (approving Mazie Slater's hourly rates of \$395 for associates and \$570 to \$850 for partners);

- *In re HIKO Energy, LLC Litigation*, Civ. Ac. No. 7:14-cv- 1771-VB (S.D.N.Y. May 9, 2016) (holding that Mazie Slater’s hourly rates of \$395 for associates and \$550 to \$825 for partners was reasonable);
- *Overton v. sanofi-aventis US, LLC*, Civ. Ac. No. 3:13-cv-05535-PGS-DEA (D.N.J. Feb. 10, 2016) (approving Mazie Slater’s attorney fees with hourly rates ranging from \$395 for associates to \$825 for the most senior partner);
- *Aarons v. BMW of North America, LLC*, 2014 WL 4090564 (C.D. Cal. Apr. 29, 2014) (The Honorable Philip S. Gutierrez, U.S.D.J. stated that “the Court is satisfied that those requested rates are reasonable”);
- *In re Nissan Radiator/Transmission Cooler Litigation*, 2013 WL 4080946 (S.D.N.Y. May 30, 2013)(holding that “the hourly rates charged by Mazie Slater Katz & Freeman, LLC ranged from \$795 (partner) to \$325 (associate), with the bulk of the work being handled by a partner who charged \$525 per hour. Accordingly, a lodestar cross check confirms the reasonableness of the requested fee.”)

iii. Expenses Incurred in Prosecuting the Litigation

41. The lodestar figure does not include our firm’s litigation expenses, which are recorded separately. To date, our firm has incurred a total of unreimbursed expenses in the amount of \$15,491.23.

42. The expenses incurred by Mazie Slater are as follows:

Expense Category	Amount
Articles/Books/Data Purchase	\$34.95

Court Fees	\$550.00
Delivery Expenses	\$15.86
Expert Fees	\$9,491.67
Mediation Fees	\$5,000.00
Service of Process Fees	\$115.90
Legal Research	\$282.85
TOTAL	\$15,491.23

43. Each of the above stated expenses were incurred in connection with this litigation, and were necessary for the advancement of the litigation and are reflected in the books and records of the firm. These books and records are prepared from expense vouchers and check records prepared in the normal course of business, and are an accurate record of the expenses incurred.

B. Sauder Schelkopf

i. Firm Overview

44. Sauder Schelkopf is a four-attorney firm located in Berwyn, Pennsylvania representing plaintiffs in consumer fraud class actions, product liability, and other complex class action litigation in Pennsylvania, New Jersey, and across the United States.

45. In 2022, LawDragon recognized Mr. Schelkopf in its list of 500 Leading Plaintiff Consumer Lawyers. The Legal Intelligencer named him to its 2020

Pennsylvania Trailblazers list recognizing 31 lawyers who “have taken extra measures to contribute to positive outcomes . . . and who are truly agents of change.” Since 2010, Mr. Schelkopf has been selected by Pennsylvania Super Lawyers as a Rising Star (a distinction held by the top 2.5% of attorneys in PA) and then a Pennsylvania Super Lawyer, as chosen by their peers and through the independent research of Law & Politics. In 2012, The American Lawyer Media, publisher of The Legal Intelligencer and the Pennsylvania Law Weekly, named Mr. Schelkopf as one of the “Lawyers on the Fast Track” a distinction that recognized thirty-five Pennsylvania attorneys under the age of 40 who show outstanding promise in the legal profession and make a significant commitment to their community. Mr. Schelkopf was also selected as a Top 40 under 40 by the National Trial Lawyers in 2012-2015. In 2020, Mr. Schelkopf was selected to America’s Top 100 High Stakes Litigators[®] in Pennsylvania, comprised of the nation’s most exceptional trial lawyers for high stakes legal matters. In 2021, Mr. Schelkopf was selected as a Top 25 Products Liability Trial Lawyer and then as a Best Lawyer[®] in America (Mass Tort/Class Action) in 2022.

46. Mr. Schelkopf has an extensive background in litigation on behalf of consumers, and he is currently serving as lead or co-lead counsel in many class actions in federal courts across the country, including automotive defect cases similar to this one.

47. Mr. Schelkopf has been restoring, building and racing automobiles since he was 15 years old. Prior to attending law school, he worked in two automotive shops performing everything from routine maintenance to full automotive restorations. These opportunities have provided him with first-hand experience and expertise with automotive drivetrains and electrical systems. He continues to restore and maintain his own automobiles while three of his most recent auto restorations have been featured in nationally circulated automotive publications.

48. Mr. Schelkopf has extensive experience prosecuting consumer class action cases against automobile manufacturers, including:

- Appointed as Class Counsel by Judge Madeline Cox Arleo in *Zhao v. Volkswagen Group of Am., Inc.*, No. 2:21-cv-11251-MCA-LDW (D.N.J.) on behalf of owners and lessees of approximately two million Volkswagen and Audi vehicles that experienced premature water pump failures. Final approval was granted to a nationwide class action settlement on April 19, 2022.
- Appointed as Class Counsel by Judge Josephine L. Staton in *In re: Hyundai and Kia Engine Litig.*, No. 8:17-cv-00838-JLS-JDE 02223 (C.D. Cal.) on behalf of owners and lessees of approximately 4 million Hyundai and Kia vehicles that experienced catastrophic engine failure. Final approval was granted to a nationwide class action settlement valued at \$892 million on May 10, 2021.
- Appointed as Class Counsel by Judge Susan D. Wigenton in *Brown v. Hyundai Motor Am.*, No. 2:18-cv-11249-SDW-JAD (D.N.J.) on behalf of owners and lessees of approximately 1 million Hyundai vehicles related to a defect that caused premature engine failure. Judge Wigenton granted final approval to the proposed class action settlement on April 20, 2021.

- Appointed as Class Counsel by Judge Nancy E. Brasel in *Fath v. American Honda Motor Co., Inc.*, No. 18-cv-1549 (D. Minn.) on behalf of owners and lessees of approximately 800,000 Honda vehicles that experienced oil dilution. Final approval was granted to a nationwide class action settlement on September 11, 2020.
- Appointed as Class Counsel by Judge Joseph H. Rodriguez in *Salcedo v. Subaru of America, Inc.*, 1:17-cv-08173 (D.N.J.) on behalf of owners and lessees of MY 2012-2017 Subaru WRX and WRX STi vehicles with alleged connecting rod bearing defect that resulted in engine failure. Final approval was granted to a nationwide class action settlement on June 5, 2019.
- Appointed as Class Counsel by Judge Madeline Cox Arleo in *Bang v. BMW of North America, LLC*, No. 2:15-cv-6945 (D.N.J.) in a case involving certain BMW vehicles containing a defect resulting in excessive oil consumption. Final approval was granted to a nationwide class action settlement on September 11, 2018.
- Appointed as Class Counsel by Judge Jerome B. Simandle in *Yaeger v. Subaru of America, Inc.*, No. 1:14-cv-4490-JBS-KMW in a case involving certain Subaru vehicles with an alleged defect that caused excessive engine oil consumption. Final approval was granted to a nationwide class action settlement on August 31, 2016.
- Appointed Class Counsel in *Davitt v. Honda North America, Inc.*, No. 2:13-cv-00381-MCA-JBC (D.N.J.), a class action lawsuit on behalf of current and former owners and lessees of certain Honda CR-V vehicles containing alleged defective door lock actuators. Honorable Madeline Arleo granted final approval of the settlement on May 8, 2015.
- Appointed Class Counsel in *Henderson v. Volvo Cars of North America, LLC*, No. 2:09-cv-04146-CCC-JAD (D.N.J.), a class action lawsuit on behalf of current and former owners and lessees of Volvo vehicles related to an alleged transmission defect in model years (“MY”) 2003-2005 XC90 Turbo 6-cylinder SUVs.

Final approval was granted to a settlement that conferred a substantial benefit on over 90,000 class members.

- Appointed as Interim Co-Lead Interim Class Counsel by Judge George Caram Steeh in *Tolmasoff v. General Motors, LLC*, No.: 2:16-cv-11747 (E.D. Mich.) in a case involving a claim of overstated miles-per-gallon in GM vehicles.
- Appointed as Co-Class Counsel in *Mendoza v. Hyundai Motor Co.*, No. 5:15-cv-01685 (N.D. Cal.) related to premature engine failure in certain Hyundai vehicles. Judge Freeman granted final approval to the settlement on January 31, 2017.
- Appointed as Co-Class Counsel in *Whalen v. Ford Motor Company*, No. 3:13-cv-03072-EMC (N.D. Cal.), a class action lawsuit on behalf of owners and lessees of Ford and Lincoln vehicles related to an alleged design defect in which the Sync®, MyFordTouch® and MyLincolnTouch® systems fail to operate as designed.
- Appointed as Co-Lead Counsel in *Lyman v. Ford Motor Co.*, No. 21-cv-10024 (E.D. Mich.), a class action lawsuit on behalf of owners and lessees of Ford vehicles related to an alleged defect that causes excessive engine oil consumption.

ii. Attorney Staffing and Fees

49. To date, in performing work on this case, Sauder Schelkopf's attorneys and staff expended 972.90 hours for a total lodestar of \$720,435.00. In accordance with the Court's direction concerning time and expense reporting (ECF No. 15 at 6), the firm's attorneys and staff kept detailed contemporaneous records of the time they spent on this litigation. In auditing time, Sauder Schelkopf exercised billing judgment to eliminate any inefficiency or duplication.

50. Sauder Schelkopf has staffed projects necessary to the successful outcome of this matter with attorneys and staff according to their skills and expertise, and sought to avoid duplication and other efficiencies in prosecuting the case. All work reflected in the lodestar was performed for the benefit of the class.

51. Below is a chart showing the professionals who worked on this matter for Sauder Schelkopf, their positions at the firm (e.g., Partner, Associate, Paralegal, Law Clerk), the total number of hours they worked, their hourly billing rates, and the resulting lodestar. These figures reflect efficient staffing and work that the firm reasonably performed for the benefit of the class.

Name	Title	Hours	Rate	Total
Joseph Sauder	Partner	3.0	\$950	\$2,625.00
Matthew Schelkopf	Partner	598.60	\$700	\$493,845.00
Joseph Kenney	Partner	244.20	\$625	\$152,625.00
Lori Kier	Of Counsel	112.50	\$450	\$67,500.00
Sonjay Singh	Associate	5.4	\$300	\$1,620.00
Paula Lyons	Paralegal	6.4	\$300	\$1,920.00
Amanda Harding	Law Clerk	0.4	\$150	\$60.00
Heather Swadley	Law Clerk	2.40	\$100	\$240.00
TOTALS		972.90		\$720,435.00

52. The rates set forth above are these professionals' customary rates that Sauder Schelkopf currently charges in similar matters for which the firm is paid on a

contingent basis. For former employees, the rate applied is the rate that Sauder Schelkopf charged for the professional at the time they departed the firm.

53. Sauder Schelkopf's detailed time entries will be provided to the Court for an *in camera* review.

54. Sauder Schelkopf's lodestar will increase in the months to come as a result of our ongoing work responding to class member inquiries, preparing the Reply in Support of Plaintiffs' Motions for Final Approval of Settlement and for Attorneys' Fees, Expenses, and Service Awards, and supervising the administration of the settlement. Based on his experience in analogous circumstances, Mr. Schelkopf believes these services will add several hundred thousand dollars to Sauder Schelkopf's total lodestar in the case. Sauder Schelkopf reserves the right to apply for reimbursement of attorneys' fees and expenses attributable to services provided after the date of this application.

55. Based on relevant experience and knowledge of the type and quality of work performed on this case, Sauder Schelkopf's rates are commensurate with the rates charged by other firms with similar experience and expertise in our legal market. Sauder Schelkopf's rates are based on the years of experience of our various practitioners, their standing in their respective fields, the prevailing rates charged by comparable firms, the legal markets where services are rendered, and the complexity of the work undertaken for clients. Sauder Schelkopf sets its hourly rates based on

peer law firm surveys published in *The National Law Journal*; and our independent review of the hourly rates charged by other attorneys in comparable litigation.

56. Sauder Schelkopf's billing rates do not reflect charges for litigation expenses. Expense items are billed separately; such charges are not duplicated in the firm's lodestar.

57. Sauder Schelkopf's rates have been previously approved by multiple courts:

- *Zhao v. Volkswagen Group of Am., Inc.*, No. 2:21-cv-11251-MCA-JRA, ECF No. 60 (D.N.J. Oct. 19, 2022);
- *Brown v. Hyundai Motor Am.*, No. 2:18-cv-11249-SDW-JAD, ECF No. 69 (D.N.J. Apr. 19, 2021);
- *Fath v. American Honda Motor Co., Inc.*, No. 18-cv-1549-NEB-LIB, ECF No. 148 (D. Neb. Sept. 11, 2020);
- *Salcedo v. Subaru of Am., Inc.*, No. 1:17-cv-08173-JHR-AMD, ECF No. 47 (D.N.J. June 5, 2019);
- *Bang v. BMW of N. Am., LLC*, No. 2:15-cv-6945-MCA-SCM, ECF No. 121 (D.N.J. Sept. 11, 2018);
- *Yaeger v. Subaru of Am., Inc.*, No. 1:14-cv-4490-JBS-KMW, ECF No. 110 (D.N.J. Aug. 31, 2016); and
- *Davitt v. Honda North America, Inc.*, No. 2:13-cv-00381-MCA-JBC, ECF No. 70 (D.N.J. May 8, 2015)

iii. Expenses Incurred in Prosecuting the Litigation

58. Sauder Schelkopf advanced a variety of out-of-pocket expenses in furtherance of the prosecution of this litigation. The expenses set forth below are reflected in the firm's books and records that are regularly maintained in the ordinary course of the firm's business. These books and records are prepared using invoices, receipts, check records, and other source materials and are an accurate record of the expenses incurred. Third-party expenses are not marked up, meaning that the firm requests reimbursement only for the amount actually billed by the third party. Below is an itemized list of the unreimbursed expenses that Sauder Schelkopf incurred in this litigation.

Expense Category	Amount
Advertising	\$2,071.05
Court Fees	\$400.00
Depositions	\$1,867.20
Expert Fees/Consultants	\$7,246.66
Service	\$204.33
Postage	\$6.40
TOTAL:	\$11,795.64

C. Girard Sharp

i. Firm Overview

59. Girard Sharp is a national litigation firm that serves individuals, institutions and business clients in cases involving antitrust, securities, consumer protection, privacy, and whistleblower laws. Girard Sharp is distinguished as a Tier 1 law firm for plaintiffs’ mass tort and class action litigation by *U.S. News & World Report* and has been included on its list of “Best Law Firms” from 2013 to 2022. *The National Law Journal* named Girard Sharp to its elite “Plaintiffs’ Hot List,” a selection of top U.S. plaintiffs’ firms recognized for wins in high-profile cases. Girard Sharp has been selected as counsel following competitive application processes by such clients as the California Teachers’ Retirement System, the California Public Employees’ Retirement System, and Kansas Public Employees’ Retirement System. Girard Sharp’s past clients include Allianz Life Insurance Company and Fireman’s Fund Insurance Company.

60. Girard Sharp specializes in class action litigation in courts throughout the United States. Girard Sharp has led cases in a range of subject matter areas, including securities, antitrust, products liability, consumer finance, predatory lending, life sciences, sexual abuse, and civil rights. Some representative cases illustrating the scope of Girard Sharp’s experience are:

- *In re USC Student Health Center Litigation*, No. 2:18-cv-04258-SVW (C.D. Cal.). Girard Sharp served as co-lead class counsel in an action brought by women alleging Dr. George Tyndall sexually assaulted them and that USC and the Board of Trustees of USC failed to respond appropriately to Dr. Tyndall's misconduct. Along with co-lead counsel, Girard Sharp negotiated a settlement finally approved in 2020 that created a \$215 million fund and required USC to adopt and implement procedures to identify and prevent sexual misconduct.
- *In re Lenovo Adware Litigation*, MDL No. 2624 (N.D. Cal.). Girard Sharp is co-lead counsel for a class of computer purchasers whose online activities were surreptitiously monitored by pre-installed software that degraded the computers' performance, operating continuously in the background as it analyzed browsing activity and injected ads into visited webpages. The court certified a nationwide indirect purchaser class for trial, 2016 WL 6277245 (N.D. Cal. Oct. 27, 2016), and the case then settled favorably for class members.
- *In re: Mercedes-Benz Tele Aid Contract Litigation*, No. 2:07-cv-02720-DRD (D.N.J.). Girard Sharp filed this product liability class action on January 12, 2007. Plaintiffs moved for class certification on October 6, 2008 (ECF No. 60). On April 27, 2009, the court granted Plaintiffs' motion and appointed Girard Sharp as Co-Lead Counsel. (ECF No. 106). The court granted final approval of a settlement valued at \$50 million on September 9, 2011 (ECF No. 208).
- *In re Lehman Brothers Holdings Securities & ERISA Litigation*, No. 09-MD-2017 (S.D.N.Y.). Girard Sharp was appointed to the executive committee charged with managing MDL proceedings arising out of the collapse of Lehman Brothers Holdings, Inc., the largest bankruptcy in American history. Girard Sharp also served as class counsel for a certified class of retail investors in Lehman-issued principal protection notes sold by UBS Financial Services, Inc. The *Lehman* litigation yielded recoveries of \$735 million.
- *Billitteri v. Securities Am., Inc.*, No. 3:09-cv-01568-F (N.D. Tex.). Girard Sharp served as lead counsel in an action brought by investors in a failed investment scheme. The firm coordinated settlement negotiations with bankruptcy trustees and competing plaintiff groups,

securing a global \$150 million settlement. In approving the settlement, the court wrote that “Class counsel in this case possess great competence and experience, and the result reached in this case perfectly exemplifies their abilities. The Court has been extremely impressed with the conduct, skill, and accomplishment of class counsel throughout this litigation.” 2011 WL 3585983, at *8 (N.D. Tex. Aug. 4, 2011).

- *Paeste v. Government of Guam*, No. 1:11-cv-00008 (D. Guam). Girard Sharp obtained a permanent injunction against the government of Guam requiring the timely payment of refunds of the Guam Territorial Income Tax. The plaintiffs challenged the government’s refund program, pursuant to 42 U.S.C. § 1983, as a violation of equal protection and asserted claims under the Organic Act of Guam. The Ninth Circuit affirmed the district court’s orders, rejecting Guam’s sovereign immunity and subject matter jurisdiction arguments. 798 F.3d 1228 (9th Cir.), *cert. denied*, 579 U.S. 928 (2016).

61. Girard Sharp is representing Plaintiffs and class members in this case on a pure contingency basis. In pursuing these claims, the firm risked the outlay of substantial time and out-of-pocket expenses with no guarantee of recovery. We recognized that the litigation would be lengthy and hard fought, and defended by sophisticated and experienced counsel, heightening the risk of being uncompensated. Professional time that Girard Sharp devoted to this case would otherwise have been spent on other matters.

ii. Attorney Staffing and Fees

62. To date, in performing work on this case, Girard Sharp’s attorneys and staff expended 1,343.9 for a total lodestar of \$895,509.50. In accordance with the Court’s direction concerning time and expense reporting (ECF No. 15 at 6), the firms’

attorneys and staff kept detailed contemporaneous records of the time they spent on this litigation. In auditing time, Girard Sharp exercised billing judgment to eliminate any inefficiency or duplication.

63. Girard Sharp has staffed projects necessary to the successful outcome of this matter with attorneys and staff according to their skills and expertise, and sought to avoid duplication and other efficiencies in prosecuting the case. All work reflected in the lodestar was performed for the benefit of the class.

64. Below is a chart showing the professionals who worked on this matter for Girard Sharp, their positions at the firm (e.g., Partner, Associate, Litigation Assistant), the total number of hours they worked, their hourly billing rates, and the resulting lodestar. These figures reflect efficient staffing and work that the firm reasonably performed for the benefit of the class.

Name	Title	Hours	Rate	Total
Daniel C. Girard	Partner	7.10	\$1,195	\$8,484.50
Jordan Elias	Partner	85.90	\$1,050	\$90,195.00
Adam E. Polk	Partner	250.20	\$975	\$243,945.00
Simon S. Grille	Partner	162.00	\$875	\$141,750.00
Trevor T. Tan	Associate	213.10	\$850	\$181,135.00
Mikaela Bock	Associate	98.60	\$600	\$59,160.00
Sean Greene	Associate	129.30	\$575	\$74,347.50
Deirdre Roney	Associate	19.30	\$400	\$7,720.00
Gabriella Carnevale	Associate	26.90	\$400	\$10,760.00
Estela Barajas	Law Clerk	91.00	\$200	\$18,200.00
Natalie Attar	Paralegal	16.00	\$300	\$4,800.00
Molly Kearnan	Paralegal	62.20	\$225	\$13,995.00
Gina Levine	Paralegal	54.30	\$225	\$12,217.50
Cole Limbach	Paralegal	128.00	\$225	\$28,800.00
TOTAL		1,343.90		\$895,509.50

65. The rates set forth above are these professionals' customary rates that Girard Sharp currently charges in similar matters for which the firm is paid on a contingent basis. For former employees, the rate applied is the rate that Girard Sharp charged for the professional at the time they departed the firm.

66. The rates charged by Girard Sharp are being paid by hourly clients in other matters and are reasonable under the prevailing market conditions for similar complex litigation services. The court in the *Auto Parts* antitrust MDL, for example, approved rates "well in line with the market, with recent reports explaining that senior lawyers at top law firms routinely charge well over \$1,000." The court observed that "in national markets, partners routinely charge between \$1,200 and \$1,300 an hour, with top rates at several large law firms exceeding \$1,400." *In re Auto. Parts Antitrust Litig.*, No. 12-MD-02311, 2019 WL 13090127, at *3 (E.D. Mich. Dec. 29, 2019) (cleaned up). Another court recently found that "billing rates of \$895 to \$1,295 per hour for partners and counsel, and between \$565 and \$985 for associates is reasonable within the legal community of Los Angeles for attorneys of similar skill." *Hope Med. Enters., Inc. v. Fagron Compounding Serv., LLC*, No. 2:19-CV-07748-CAS (PLAx), 2022 WL 826903, at *3 (C.D. Cal. Mar. 14, 2022). Girard Sharp's rates thus are reasonable and in fact often lower than the rates being paid by their clients' adversaries.

67. Girard Sharp's detailed time entries will be provided to the Court for an *in camera* review.

68. Girard Sharp's lodestar will increase in the months to come as a result of our ongoing work responding to class member inquiries, preparing the Reply in Support of Plaintiffs' Motions for Final Approval of Settlement and for Attorneys' Fees, Expenses, and Service Awards, and supervising the administration of the settlement. Based on his experience in analogous circumstances, Mr. Polk believes these services will add several hundred thousand dollars to Girard Sharp's total lodestar in the case. Girard Sharp reserves the right to apply for reimbursement of attorneys' fees and expenses attributable to services provided after the date of this application.

69. Based on relevant experience and knowledge of the type and quality of work performed on this case, Girard Sharp's rates are commensurate with the rates charged by other firms with similar experience and expertise in our legal market. Girard Sharp's rates are based on the years of experience of our various practitioners, their standing in their respective fields, the prevailing rates charged by comparable firms, the legal markets where services are rendered, and the complexity of the work undertaken for clients. Girard Sharp sets its hourly rates based on arm's length negotiations with sophisticated in-house counsel; peer law firm surveys published in *The National Law Journal*; and our independent review of the hourly rates charged by other attorneys in comparable litigation.

70. Girard Sharp's rates have been approved by courts in other, similar matters. Most recently, in a case involving manipulation of commodities markets in which Girard Sharp served on the plaintiffs' executive committee, the court during its final fairness hearing on July 7, 2022, approved Girard Sharp's hourly rates, and rates for comparable professionals of up to \$1,295 per hour. *In re JPMorgan Precious Metals Spoofing Litig.*, No 1:18-cv-10356-GHW (S.D.N.Y.). Other representative cases in which courts approved Girard Sharp's rates include:

- *In re Capacitors Antitrust Litig.*, No. 3:14-CV-03264-JD, 2020 WL 6813220, at *4 (N.D. Cal. Sept. 15, 2020), *report and recommendation adopted*, 2020 WL 6544472 (N.D. Cal. Nov. 7, 2020);
- *In re Nexus 6P Products Liab. Litig.*, No. 17-cv-02185-BLF, Dkt. #225 (N.D. Cal. Nov. 12, 2019);
- *Weeks v. Google LLC*, No. 18-cv-00801, Dkt. #184 (N.D. Cal. Aug. 30, 2019);
- *In re Lidoderm Antitrust Litig.*, No. 14-MD-02521-WHO, 2018 WL 4620695, at *2 (N.D. Cal. Sept. 20, 2018);
- *In re Yahoo Mail Litig.*, No. 5:13-cv-04980-LHK, Dkt. #42 (N.D. Cal. Aug. 25, 2016);
- *In re High Tech Employee Antitrust Litig.*, No. 11-cv-02509, 2015 WL 5158730, at *9 (N.D. Cal. Sept. 2, 2015).

iii. Expenses Incurred in Prosecuting the Litigation

71. Girard Sharp's billing rates do not reflect charges for litigation expenses. Expense items are billed separately; such charges are not duplicated in the firm's lodestar.

72. Girard Sharp advanced a variety of out-of-pocket expenses in furtherance of the prosecution of this litigation. The expenses set forth below are reflected in the firm's books and records that are regularly maintained in the ordinary course of the firm's business. These books and records are prepared using invoices, receipts, check records, and other source materials and are an accurate record of the expenses incurred. Third-party expenses are not marked up, meaning that the firm requests reimbursement only for the amount actually billed by the third party. Below is an itemized list of the unreimbursed expenses that Girard Sharp incurred in this litigation.

Expense Category	Amount
Advertising	\$ 9,234.99
Airfare	\$ 17.00
Computer Research	\$ 2,036.57
Court Fees	\$ 259.56
Expert Fees/Consultants	\$ 6,413.56
Filing Fees	\$ 218.36
Long Distance	\$ 39.09
Mediation/Arbitration	\$ 5,000.00

Expense Category	Amount
Postage	\$ 20.85
TOTAL:	\$ 23,239.98

IV. Time and Expenses of All Plaintiffs' Counsel

73. Class members also benefitted from the considerable skill and experience of counsel on the Executive Committee and Liaison Counsel who advised Interim Co-Lead Counsel on the Consolidated Amended Complaint, mediation with Defendants, and settlement. These additional counsel performed valuable work in consultation with Lead Counsel, lending their considerable expertise and knowledge to the litigation effort.

74. A summary chart showing the time and expenses incurred by the Executive Committee and Liaison Counsel in this litigation appears below.

Firm	Hours	Lodestar	Expenses
Ahdoot & Wolfson, PC	308.80	\$221,405.00	\$618.37
Chimicles Schwartz Kriner & Donaldson-Smith LLP	805.20	\$395,358.00	\$2,635.86
Cafferty Clobes Meriwether & Sprengel LLP	212.80	\$142,135.00	\$394.93
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP	118.40	\$66,070.00	\$72.30
Lite DePalma Greenberg & Afanador, LLC	97.00	\$53,852.50	\$400.00
TOTALS:	1,542.20	\$878,820.50	\$4,121.46

75. Executive Committee and Liaison Counsel's detailed time entries will be provided to the Court for an *in camera* review.

76. Executive Committee and Liaison Counsel's expenses are reflected on the books and records of the respective firms and were reasonable and necessary to the successful resolution of this case.

V. Service Awards for the Plaintiffs

77. All of the Plaintiffs made significant contributions to the litigation and settlement and took a risk by standing up to serve the Class, which endured the battery defect. Each Plaintiff retained counsel, communicated with Interim Class Counsel over the course of the litigation, searched for and preserved their records, provided information and documents related to the battery defect, reviewed and approved the pleadings, were kept apprised of case progress and the negotiations, and approved the settlement.

78. Based on the time and effort the Plaintiffs dedicated to the class over the course of this litigation, we believe that a \$4,000 service award to each of them is fair and reasonable, and respectfully request these awards be approved.

* * *

79. Based on the facts stated above and the points and authorities set forth in their accompanying motions, Plaintiffs respectfully request that the Court grant their Motion for Attorneys' Fees, Expenses, and Service Awards.

We declare under penalty of perjury that the foregoing is trusted and correct.

Executed on October 24, 2022.

By: /s/ Matthew D. Schelkopf

Matthew D. Schelkopf

By: /s/ Matthew R. Mendelsohn

Matthew R. Mendelsohn

By: /s/ Adam E. Polk

Adam E. Polk

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE SUBARU BATTERY DRAIN
PROD. LIAB. LITIG.

No. 1:20-cv-03095-JHR-JS

**DECLARATION OF
BENJAMIN F. JOHNS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

I, Benjamin F. Johns, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a partner at Chimicles Schwartz Kriner & Donaldson-Smith LLP (“CSKD” or “Chimicles Firm”) in Haverford, Pennsylvania. I submit this Declaration in support of Plaintiffs’ motion for attorneys’ fees, expenses, and service awards in connection with the class action settlement in this case. I make this declaration based on my own personal knowledge and records maintained by my law firm in the ordinary course of business and, if called upon to do so, could testify competently to the matters set forth herein.

A. CSKD’s Professional Qualifications

2. CSKD has years of relevant experience in class action litigation. The Firm and its lawyers are litigators in the field of consumer protection class actions, including cases involving allegedly defective automobile components.

3. A detailed description of CSKD and its attorneys can be found in the Firm Resume attached as Exhibit A.

B. CSKD 's Lodestar

4. The lodestar incurred by each individual biller at CSKD on this matter as of September 30, 2022 is as follows:

Name	Position	Hours	Hourly Rate	Lodestar
Benjamin F. Johns	Partner	173.40	\$775.00	\$134,385.00
Andrew W. Ferich	Former Associate	64.80	\$525.00	\$34,020.00
Alex M. Kashurba	Associate	263.00	\$500.00	\$131,500.00
Zachary P. Beatty	Associate	82.30	\$430.00	\$35,389.00
David W. Birch	Former IT	2.00	\$400.00	\$800.00
Justin P. Boyer	Paralegal	129.70	\$300.00	\$38,910.00
Sydney B. Spott	Paralegal	6.50	\$300.00	\$1,950.00
Carlynn A. Wagner	Former Associate	25.40	\$260.00	\$6,604.00
Kiera A. Wadsworth	Paralegal	3.60	\$250.00	\$900.00
Madeline C. Landry	Former Paralegal	54.50	\$200.00	\$10,900.00
TOTAL		805.20		\$395,358.00

5. Before compiling this final chart below, I reviewed all of our firm's billable time and, exercising my billing judgment, removed any potentially redundant or unnecessary billing entries. I am the only partner at my firm for whom we are submitting reimbursable time.

6. The hours above were recorded contemporaneously and in one-tenth of an hour increments.

7. The hourly rates above are the current hourly rates for each applicable biller and are the usual and customary rates charged by each applicable biller in the firm's cases.

8. The firm's hourly rates are regularly accepted by courts throughout the country for purposes of class action fee awards. *See, e.g., In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, at *47 ("The Court finds the billing rates [of the Chimicles Firm] to be appropriate and the billable time to have been reasonably expended."); *In re Elk Cross Timbers*

Decking Marketing, Sales Practices and Prods. Liab. Litig., No. 15-0018 (JLL) (JAD) (D.N.J. Feb 27, 2017), Dkt. No. 126 at 2 (reviewed Class Counsel’s “time summaries and hourly rates,” and found that “the hourly rates of each of Plaintiffs’ Steering Committee firm are . . . reasonable and appropriate in a case of this complexity.”); *Alessandro Demarco v. Avalon Bay Communities, Inc.*, No. 2:15-628-JLL-JAD (D.N.J. July 11, 2017), Dkt. No. 223 at ¶18 (“The Court, after careful review of the time entries and rates requested by Class Counsel [including the Chimicles Firm] and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel’s application for attorneys’ fees”). *See also In re Wawa, Inc., Data Sec. Litig.*, No. 19-6019, 2022 U.S. Dist. LEXIS 72569, at *37 (E.D. Pa. Apr. 20, 2022) (finding the blended hourly rate of various firms, including the Chimicles Firm, to be reasonable).

9. All hours were reasonably incurred under the supervision of Co-Lead Counsel and necessary to litigating this matter.

10. CSKD’s work included:

- Significant pre-complaint investigation
- Filing a complaint
- Work consolidating all the filed cases
- Vetting potential class representatives for the Consolidated Amended Complaint
- Worked with class representatives and Chimicles clients Roger Baladi and Colin George throughout the course of the litigation, including responding to and collecting discovery
- Vetting, retaining, and working with liability experts, including an automotive battery expert who performed testing on Class Vehicles

- Assisted with drafting and editing the Consolidated Amended Complaint
- Researched and briefed sections of the motion to dismiss opposition
- Assisted with mediation and settlement, including with our experience settling a prior case with Subaru and vetting potential warranty valuation experts.
- Responding to numerous class member inquiries.

11. In incurring the time set forth above, the firm followed the detailed billing protocol circulated by Co-Lead Counsel on May 10, 2020.

12. I have provided a copy of CSKD’s detailed time entries to Co-Lead Counsel and have authorized them to make such records available to the Court for an *in camera* review.

C. CSKD’s Litigation Expenses

13. CSKD’s litigation expenses are as follows as of September 30, 2022:

Expense Type	Total
Adwords/Advertisements	\$1,005.33
Computer Research	\$523.13
Filing Fees	\$400.00
Subscriptions	\$299.95
Photocopies – Internal	\$250.25
Subpoena Service	\$147.20
Postage	\$10.00
Total	\$2,635.86

14. The expenses incurred by CSKD are reflected in the books and records of the Firm. The books and records are prepared from expense vouchers, invoices, receipts, and other reasonable supporting records and are an accurate record of the expenses incurred.

15. All expenses were reasonably incurred and necessary to litigating this matter.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 21, 2022

A handwritten signature in black ink, appearing to read "B. Johns", written in a cursive style.

Benjamin F. Johns
CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP
361 W. Lancaster Avenue
Haverford, PA 19041
610-642-8500
bfj@chimicles.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE SUBARU BATTERY DRAIN
PROD. LIAB. LITIG.

No. 1:20-cv-03095-JHR-JS

**DECLARATION OF
TINA WOLFSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

I, Tina Wolfson, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a partner at Ahdoot & Wolfson, PC ("AW") in Burbank, California. I submit this Declaration in support of Plaintiffs' Motion for motion for attorneys' fees, expenses, and service awards in connection with the class action settlement. I make this declaration based on my own personal knowledge, and if called upon to do so, could testify competently to the matters set forth herein.

A. AW's Professional Qualifications

2. AW has years of relevant experience in class action litigation. AW and its lawyers are litigators in the field of consumer protection class actions, including data breach class actions.

3. A detailed description of AW and its attorneys can be found in the firm's resume attached as Exhibit A.

B. AW's Lodestar

4. The lodestar incurred by each individual biller at AW is as follows as of September 30, 2022:

Name	Position	Hours	Hourly Rate	Lodestar
Tina Wolfson	Partner	53.8	\$950	\$51,110.00
Henry Kelston	Partner	8.3	\$900	\$7,470.00
Bradley King	Partner	201.7	\$750	\$151,275.00
Ruhandy Glezakos	Associate	1.5	\$450	\$675.00
Samantha Benson	Paralegal	4.4	\$250	\$1,100.00
Amber Brashear	Paralegal	34.2	\$250	\$8,550.00
Windy Loritsch	Paralegal	4.2	\$250	\$1,050.00
Heidi Liivamagi	Paralegal	0.7	\$250	\$175.00
TOTAL		308.8		\$221,405.00

5. The hours above were recorded contemporaneously and in one-tenth of an hour increments.

6. The hourly rates above are the current hourly rates for each applicable biller and are the usual and customary rates charged by each applicable biller in AW's cases.

7. AW's hourly rates are regularly accepted by courts throughout the country for purposes of class action fee awards. *See, e.g., Eck, et al. v. City of Los Angeles*, No. BC577028 (Cal. Super. Ct. Feb. 2018) (\$295 million finally approved settlement where the Court awarded Class Counsel's full request of approximately \$15 million based on percentage of the fund method and commensurate hourly rates); *In re Zoom Video Commc'ns, Inc. Privacy Litig.*, No. 3:20-cv-02155-LB (N.D. Cal. Apr. 21, 2022) (Dkt. 249; \$85 million minimum value finally approved settlement where the Court awarded Class Counsel's full request of approximately \$21 million based on percentage of the fund method and commensurate hourly rates); *Lavinsky v. City of Los Angeles*, No. BC542245 (Cal. Super Ct. Oct. 2019) (\$51 million minimum value finally approved settlement where the Court awarded Class Counsel's full request of approximately \$8 million based on percentage of the fund method and commensurate hourly rates); *Pantelyat v. Bank of America*, No.

1:16-cv-08964-AJN (S.D.N.Y. Jan. 31, 2019) (Dkt. 116; \$22 million finally approved settlement where the Court awarded Class Counsel's full request of \$5.5 million based on percentage of the fund method and commensurate hourly rates); *Williamson, et al. vs. McAfee, Inc.*, Case No. 5:14-cv-00158-EJD (N.D. Cal. Feb. 15, 2017) (Dkt. 118; \$85 Million settlement in deceptive auto renewal case); *Smith v. Floor & Decor Outlets of Am., Inc.*, Case No. 1:15-cv-04316-ELR, (N.D. Ga. Jan. 10, 2017) (Dkt. No. 69; \$14.5 Million product liability settlement re: laminate flooring); *Chimeno-Buzzi v. Hollister Co.*, Case No. 1:14-cv-23120-MGC (S.D. Fla. April 11, 2016) (Dkt. No. 155; \$10 Million TCPA Settlement).

8. All hours were reasonably incurred under the supervision of Co-Lead Counsel and necessary to litigating this matter.

9. AW's work included factual investigation of the alleged defect, legal research as to viable causes of action against Defendant, interviewing and vetting dozens of prospective clients and class members, drafting an initial complaint as well as assisting Co-Lead Counsel with drafting the consolidated complaint, conferring with Plaintiffs to draft written discovery responses, collecting relevant documents from Plaintiffs pursuant to discovery, researching and drafting of portions of Plaintiffs' opposition to Defendant's motion to dismiss the consolidated complaint, and conferring with Co-Lead Counsel and Plaintiffs regarding settlement negotiations and finalizing the parties' settlement agreement.

10. In incurring the time set forth above, AW followed the detailed billing protocol circulated by Co-Lead Counsel on May 10, 2020.

11. I have provided a copy of AW's detailed time entries to Co-Lead Counsel and have authorized them to make such records available to the Court for an *in camera* review.

C. AW's Litigation Expenses

12. AW's litigation expenses are as follows as of September 30, 2022:

Expense Type	Total
Court filing fees	\$550.00
Electronic research/PACER fees	\$53.35
Postage/mailing	\$14.62
Printing/copying	\$0.40
Total	\$618.37

13. The expenses incurred by AW are reflected in the books and records of the firm. The books and records are prepared from expense vouchers, invoices, receipts, and other reasonable supporting records and are an accurate record of the expenses incurred.

14. All expenses were reasonably incurred and necessary to litigating this matter.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 20, 2022



Tina Wolfson
AHDOOT & WOLFSON, PC
2600 West Olive Avenue, Suite 500
Burbank, California 91505
Tel: (310) 474-9111
Fax: (310) 474-8585
twolfson@ahdootwolfson.com

EXHIBIT A



Ahdoot & Wolfson, PC (“AW”) is a nationally recognized law firm founded in 1998 that specializes in class action litigation, with a focus on privacy cases, unfair and anticompetitive business practices, consumer fraud, employee rights, defective products, antitrust, civil rights, and taxpayer rights and unfair practices by municipalities. The attorneys at AW are experienced litigators who have often been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In over two decades of its successful existence, AW has vindicated the rights of millions of class members in protracted, complex litigation, conferring billions of dollars to the victims, and affecting real change in corporate behavior.

Results

AW has achieved excellent results as lead counsel in numerous complex class actions.

In *Alvarez v. Sirius XM Radio Inc.*, No. 2:18-cv-08605-JVS-SS (C.D. Cal.) (Hon. James V. Selna), a breach of contract class action alleging that defendant did not honor its lifetime subscriptions, AW achieved a nationwide class action settlement conservatively valued at approximately \$420 million. The settlement extended the promised lifetime subscription for the lifetime of class members who have active accounts and provided the opportunity for class members with closed accounts to reactivate their accounts and enjoy a true lifetime subscription or recover \$100. The district court had granted the motion to compel arbitration on an individual basis, and AW appealed. AW reached the final deal points of the nationwide class action settlement minutes prior to oral argument in the Ninth Circuit.

As a member of the Plaintiffs’ Executive Committee in the *Apple Inc. Device Performance Litigation*, No. 5:18-md-2827-EJD (N.D. Cal.) (Hon. Edward J. Davila), AW helped achieve a nationwide settlement of \$310 million minimum and \$500 million maximum. The case arose from Apple’s alleged practice of deploying software updates to iPhones that deliberately degraded the devices’ performance and battery life.

In *Eck v. City of Los Angeles*, No. BC577028 (LASC) (Hon. Ann I. Jones), AW achieved a \$295 million class settlement in a case alleging that an 8% surcharge on Los Angeles electricity rates was an illegal tax. Final settlement approval was affirmed on appeal in October 2019.

As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a

settlement conservatively valued at over \$150 million. Each class member is entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian is also providing robust injunctive relief. Judge Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

As co-lead counsel in the *Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155 (N.D. Cal.) (Hon. Laurel Beeler), a nationwide class action alleging privacy violations from the collection of personal information through third-party software development kits and failure to provide end to end encryption, AW achieved an \$85 million nationwide class settlement that also included robust injunctive relief overhauling Zoom's data collection and security practices.

In *Kirby v. McAfee, Inc.*, No. 5:14-cv-02475-EJD (N.D. Cal.) (Hon. Edward J. Davila), a case arising from McAfee's auto renewal and discount practices, AW and co-counsel achieved a settlement that made \$80 million available to the class and required McAfee to notify customers regarding auto-renewals at an undiscounted subscription price and change its policy regarding the past pricing it lists as a reference to any current discount.

In *Lavinsky v. City of Los Angeles*, No. BC542245 (LASC) (Hon. Ann I. Jones), a class action alleging the city unlawfully overcharged residents for utility taxes, AW certified the plaintiff class in litigation and then achieved a \$51 million class settlement.

As co-lead counsel in *Berman v. Gen. Motors, LLC*, No. 2:18-cv-14371-RLR (S D. Fla.) (Hon. Robin L. Rosenberg) (vehicle oil consumption defect class action), AW achieved a \$40 million settlement.

Lumber Liquidators Chinese-Manufactured Flooring Durability Marketing & Sales Practices Litigation, No. 1:16-md-02743-AJT-TRJ (E.D. Va.) (Hon. Anthony J. Trenga) arose from alleged misrepresentations of laminate flooring durability, which was coordinated with MDL proceedings regarding formaldehyde emissions. As co-lead class counsel for the durability class, AW was instrumental in achieving a \$36 million settlement.

In *McKnight v. Uber Technologies, Inc.*, No. 4:14-cv-05615-JST (N.D. Cal.) (Hon. Jon S. Tigar), AW achieved a \$32.5 million settlement for the passenger plaintiff class alleging that Uber falsely advertised and illegally charged a "safe rides fee."

In *Pantelyat v. Bank of America, N.A.*, No. 1:16-cv-08964-AJN (S.D.N.Y.) (Hon. Alison J. Nathan), a class action arising from allegedly improper overdraft fees, AW, serving as sole class counsel for plaintiffs, achieved a \$22 million class settlement, representing approximately 80% of total revenues gleaned by the bank's alleged conduct.

Current Noteworthy Leadership Roles

AW was selected to serve as interim co-lead class counsel in the *StubHub Refund Litigation*, No. 4:20-md-02951-HSG (N.D. Cal.) (Hon. Haywood S. Gilliam, Jr.). This consolidated multidistrict litigation alleges that StubHub retroactively changed its policies for refunds for cancelled or rescheduled events as a result of the Covid-19 pandemic and refused to offer refunds despite promising consumers 100% of their money back if events are cancelled.

AW was appointed, after competing applications, to serve as interim co-lead class counsel in the *Ring LLC Privacy Litigation*, No. 2:19-cv-10899-MWF-RAO (C.D. Cal.) (Hon. Michael W. Fitzgerald), a consolidated class action arising from Ring's failure to implement necessary measures to secure the privacy of Ring user accounts and home-security devices, and failure to protect its customers from hackers despite being on notice of the inadequacies of its cybersecurity.

In *Clark v. American Honda Motor Co., Inc.*, No. 2:20-cv-03147-AB-MRW (C.D. Cal.) (Hon. André Birotte Jr.), AW serves as co-lead counsel in a class action arising from unintended and uncontrolled deceleration in certain Acura vehicles.

AW was appointed to serve as co-lead interim class counsel in the *Google Location History Litigation*, No. 5:18-cv-05062-EJD (N.D. Cal.) (Hon. Edward J. Davila), a consumer class action arising out of Google's allegedly unlawful collection and use of mobile device location information on all Android and iPhone devices.

AW serves on the Plaintiffs' Executive Committees in *Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 2:19-md-02921-BRM-JAD (D.N.J.) (Hon. Brian R. Martinotti), a class action alleging textured breast implants caused a rare type of lymphoma and in *ZFTRW Airbag Control Units Products Liability Litigation*, No. 2:19-ml-02905-JAK-FFM (C.D. Cal.) (Hon. John A. Kronstadt), a class action alleging a dangerous defect in car airbag component units.

As part of the leadership team in *Novoa v. The Geo Group, Inc.*, No. 5:17-cv-02514-JGB-SHK (C.D. Cal.) (Hon. Jesus G. Bernal), AW certified a class of immigration detainees challenging private prison's alleged forced labor practices.

In the *Google Digital Advertising Antitrust Litigation*, No. 1:21-md-03010-PKC (S.D.N.Y.) (Hon. P. Kevin Castel), a class action alleging monopolization of the digital advertising market, AW is serving as court appointed co-lead counsel on behalf of the advertiser class.

In the *Dental Supplies Antitrust Litigation*, No. 1:16-cv-00696-BMC-GRB (E.D.N.Y.) (Hon. Brian M. Cogan), a class action alleging an anticompetitive conspiracy among three dominant dental supply companies in the United States, AW served on the plaintiffs' counsel team that brought in an \$80 million cash settlement for the benefit of a class of approximately 200,000 dental practitioners, clinics, and laboratories.

In *Klein v. Meta Platforms, Inc.*, No. 3:20-cv-08570-JD (N D. Cal.) (Hon. James Donato), AW is serving on the Executive Committee for the digital advertiser plaintiff class in a class action alleging

that Meta (formerly Facebook) engaged in anticompetitive conduct to stifle and/or acquire competition to inflate the cost of digital advertising on its social media platform. Many of the plaintiffs' claims recently survived a motion to dismiss and are in the process of amending their complaint.

In *Robinson v. Jackson Hewitt, Inc.*, No. 2:19-cv-09066-JXN-ESK (D.N.J.) (Hon. Julien Xavier Neals), a class action alleging that a standardized “no-poach” agreement among Jackson Hewitt and its franchisees limited mobility and compensation prospects for the tax preparer employees, AW is asserting claims on behalf of consumers under both federal antitrust and California employment laws.

In *Powell Prescription Center v. Surescripts, LLC*, No. 1:19-cv-00627 (N.D. Ill.) (Hon. John J. Tharp, Jr.), AW represents pharmacies in a class action arising from Surescripts' alleged monopolies in both the routing and eligibility markets of the e-prescription industry.

Privacy Class Actions

AW has been prosecuting cutting edge data cases on behalf of consumers since the late 1990s. AW was among the first group of attorneys who successfully advocated for the privacy rights of millions of consumers against major financial institutions based on the unlawful compilation and sale of detailed personal financial data to third-party telemarketers without the consumers' consent. While such practices later became the subject of Gramm-Leach-Bliley Act regulation, at the time AW was prosecuting these cases before the Hon. Richard R. Kramer, (Ret.) in the complex department of San Francisco Superior Court, such practices were novel and hidden from public scrutiny. AW's work shed light on how corporations and institutions collect, store, and monetize mass data, leading to governmental regulation. AW has been at the forefront of data-related litigation since then.

As an invaluable member of a five-firm Plaintiffs' Steering Committee (“PSC”) in the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-cv-02633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at \$74 million.

Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), AW, as a member of the PSC, briefed and argued, in part, the granted motions to dismiss based on standing, briefed in part the successful appeal to the D.C. Circuit, and had an important role in a preliminarily approved settlement providing for a \$63 million settlement fund.

In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was instrumental in achieving a \$29 million settlement fund and robust injunctive relief for the consumer class.

AW also currently serves on the PSC in *Am. Med. Collection Agency, Inc., Customer Data Sec.*

Breach Litigation, No. 2:19-md-2904-MCA-MAH (D.N.J.) (Hon. Madeline Cox Arleo), a class action arising out of a medical data breach that disclosed the personal and financial information of over 20 million patients, as well as many other data breach class actions.

AW's efforts have shaped data privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW's attorneys successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited in every privacy case standing brief, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013) and concluded that data breach victims have standing to pursue claims based on the increased risk of identity theft and fraud, even before that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015) (reversed and remanded).

AW has also served and is serving as plaintiffs' counsel in consumer privacy rights cases involving the right to control the collection and use of biometric information, successfully opposing dispositive motions based on Article III standing and achieving settlements with a total value of over \$100 million. See, e.g., *Rivera v. Google LLC*, No. 19-CH-00990 (Ill. Cir. Ct.) (Hon. Anna M. Loftus); *Miracle-Pond v. Shutterfly, Inc.*, No. 19-CH-07050 (Ill. Cir. Ct.) (Hon. Raymond W. Mitchell); *Acaley v. Vimeo, Inc.*, No. 19-CH-10873 (Ill. Cir. Ct.) (Hon. Clare J. Quish).

In addition, AW has served and is serving as plaintiffs' counsel in class actions enforcing consumer rights under the Telephone Consumer Protection Act of 1991 ("TCPA"), such as *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120-MGC (S.D. Fla.) (Hon. Marcia G. Cooke) (class counsel in \$10 million nationwide settlement) and *Melito v. American Eagle Outfitters, Inc.*, No. 1:14-cv-02440-VEC (S.D.N.Y.) (Hon. Valerie E. Caproni) (\$14.5 million nationwide settlement).

Attorney Profiles

Tina Wolfson graduated Harvard Law School *cum laude* in 1994. Ms. Wolfson began her civil litigation career at the Los Angeles office of Morrison & Foerster, LLP, where she defended major corporations in complex actions and represented indigent individuals in immigration and deportation trials as part of the firm's *pro bono* practice. She then gained further invaluable litigation and trial experience at a boutique firm, focusing on representing plaintiffs on a contingency basis in civil rights and employee rights cases. Since co-founding AW in 1998, Ms. Wolfson has led numerous class actions to successful results. Ms. Wolfson is a member of the California, New York and District of Columbia Bars.

Recognized for her deep class action experience, Ms. Wolfson frequently lectures on numerous class action topics across the country. She is a guest lecturer on class actions at the University of California at Irvine Law School. Her recent notable speaking engagements include:

- Class Action Mastery Forum at the University Of San Diego School of Law (Consumer Class Actions Roundtable) March 2020, featuring Hon. Lucy H. Koh, Hon. Edward M. Chen, and Hon. Fernando M. Olguin.
- Class Action Mastery Forum at the University Of San Diego School of Law (Data Breach/Privacy Class Action Panel) January 16, 2019.
- Association of Business Trial Lawyers: “Navigating Class Action Settlement Negotiations and Court Approval: A Discussion with the Experts,” Los Angeles May 2017, featuring Hon. Philip S. Gutierrez and Hon. Jay C. Gandhi.
- CalBar Privacy Panel: “Privacy Law Symposium: Insider Views on Emerging Trends in Privacy Law Litigation and Enforcement Actions in California,” Los Angeles Mar. 2017 (Moderator), featuring Hon. Kim Dunning.
- American Conference Institute: “2nd Cross-Industry and Interdisciplinary Summit on Defending and Managing Complex Class Actions,” April 2016, New York: Class Action Mock Settlement Exercise featuring the Hon. Anthony J. Mohr.
- Federal Bar Association: N.D. Cal. Chapter “2016 Class Action Symposium,” San Francisco Dec. 2016 (Co-Chair), featuring Hon. Joseph F. Anderson, Jr. and Hon. Susan Y. Illston.
- Federal Bar Association: “The Future of Class Actions: Cutting Edge Topics in Class Action Litigation,” San Francisco Nov. 2015 (Co-Chair & Faculty), featuring Hon. Jon S. Tigar and Hon. Laurel Beeler.

Ms. Wolfson currently serves as a Ninth Circuit Lawyer Representative for the Central District of California, as Vice President of the Federal Litigation Section of the Federal Bar Association, as a member of the American Business Trial Lawyer Association, as a participant at the Duke Law School Conferences and the Institute for the Advancement of the American Legal System, and on the Board of Public Justice.

Henry J. Kelston, a partner at AW, graduated from New York University School of Law in 1978 and is a member of the New York and Connecticut Bars. Mr. Kelston has litigated a broad array of class actions for more than two decades, including actions challenging improperly charged bank fees, unauthorized collection of biometric data, and unlawful no-poach agreements among employers. He has been on the front lines in major data breach cases against companies such as Yahoo! and Facebook, and he has represented consumers in class actions challenging food labeling practices, including the use of “natural” claims on products containing GMOs. His work in *In re Conagra Foods, Inc.*, contributed to a groundbreaking decision by the Ninth Circuit Court of Appeals, significantly strengthening the rights of consumers to bring class actions. Mr. Kelston is also a frequent speaker and CLE presenter on electronic discovery, and a member of The Sedona Conference® Working Group 1 on Electronic Document Retention and Production.

Bradley K. King is a partner at AW and a member of the State Bars of California, New Jersey, New York, and the District of Columbia. He graduated from Pepperdine University School of Law in 2010, where he served as Associate Editor of the Pepperdine Law Review. He worked as a law clerk for the California Office of the Attorney General, Correctional Law Section in Los Angeles and was a certified law clerk for the Ventura County District Attorney's Office. Mr. King began his legal career at a boutique civil rights law firm, gaining litigation experience in a wide variety of practice areas, including employment law, civil rights, police misconduct, municipal contracts, criminal defense, and premises liability cases. During his career at AW, Mr. King has focused on consumer class actions, and privacy class actions in particular. He has served as appointed interim lead counsel and has extensive experience litigating consolidated and MDL class actions with AW, including numerous large data breach cases that have resulted in nationwide class settlements.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE SUBARU BATTERY DRAIN
PROD. LIAB. LITIG.

No. 1:20-cv-03095-JHR-JS

**DECLARATION OF
DANIEL O. HERRERA IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

I, Daniel O. Herrera, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a partner at Cafferty Clobes Meriwether & Sprengel LLP ("CCMS LLP" or the "Firm") in Chicago, Illinois. I submit this Declaration in support of Plaintiffs' Motion for motion for attorneys' fees, expenses, and service awards in connection with the class action settlement. I make this declaration based on my own personal knowledge, and if called upon to do so, could testify competently to the matters set forth herein.

A. CCMS LLP's Professional Qualifications

1. CCMS LLP has years of relevant experience in class action litigation. The Firm and its lawyers are litigators in the field of consumer protection class actions, including automotive class action.

2. A detailed description of CCMS LLP and its attorneys can be found in the Firm Resume attached as Exhibit A.

B. CCMS LLP's Lodestar

3. The lodestar incurred by each individual biller at CCMS LLP is as follows as of September 30, 2022:

Name	Position	Hours	Hourly Rate	Lodestar
Bryan L. Clobes	Partner	2.0	\$1,000	\$2,000.00
Jennifer W. Sprengel	Partner	1.1	\$1,000	\$1,100.00
Daniel O. Herrera	Partner	123.3	\$800	\$98,640.00
Kaitlin Naughton	Associate	67.7	\$500	\$33,850.00
Sharon M. Nyland	Paralegal	18.7	\$350	\$6,545.00
		212.8		\$142,135.00

4. The hours above were recorded contemporaneously and in one-tenth of an hour increments.

5. The hourly rates above are the current hourly rates for each applicable biller and are the usual and customary rates charged by each applicable biller in the Firm's cases.

6. The Firm's hourly rates are regularly accepted by courts throughout the country for purposes of class action fee awards. *See, e.g., In re TikTok Consumer Privacy Litig.*, No. 20-cv-4699 (N.D. Ill.), ECF No. 261, pp. 71-72; *Bishop v. Behr Process Corp.*, No. 17-cv-4464 (N.D. Ill.), ECF No. 118, ¶¶ 21-27.

7. All hours were reasonably incurred under the supervision of Co-Lead Counsel and necessary to litigating this matter.

8. CCMS LLP's work included: investigating the case and speaking with potential Class members; drafting and filing various complaints, including the Consolidated Class Action Complaint; working to consolidate these actions before this Court; drafting various discovery stipulations and orders; aiding in drafting Plaintiffs' opposition to Defendants' Motion to Dismiss; attending hearings; and assisting co-counsel in preparing for the hearing on Plaintiffs' motion for preliminary approval.

9. In incurring the time set forth above, the Firm followed the detailed billing protocol

circulated by Co-Lead Counsel on May 10, 2020.

10. I have provided a copy of CCMS LLP's detailed time entries to Co-Lead Counsel and have authorized them to make such records available to the Court for an *in camera* review.

C. CCMS LLP's Litigation Expenses

11. CCMS LLP's litigation expenses are as follows as of September 30, 2022:

Expense Type	Total
Reproduction Cost – In House	28.75
Computer Research	366.18
Total	394.93

12. The expenses incurred by CCMS LLP are reflected in the books and records of the Firm. The books and records are prepared from expense vouchers, invoices, receipts, and other reasonable supporting records and are an accurate record of the expenses incurred.

13. All expenses were reasonably incurred and necessary to litigating this matter.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 19, 2022



Daniel O. Herrera
Cafferty Clobes Meriwether & Sprengel LLP
135 S. LaSalle St., Ste. 3210
Chicago, IL 60603

EXHIBIT A



Cafferty Clobes Meriwether & Sprengel LLP



Successful Solutions for Complex Litigation



Firm Overview

Cafferty Clobes Meriwether & Sprengel LLP combines the talents of attorneys with a wide range of experience in complex civil litigation. The skill and experience of CCMS attorneys has been recognized on repeated occasions by courts that have appointed these attorneys to major positions in complex multidistrict or consolidated litigation. As the representative sampling of cases listed below demonstrates, these attorneys have taken a leading role in numerous important actions on behalf of investors, employees, consumers, businesses and others. In addition, CCMS attorneys are currently involved in a number of pending class actions, as described on the Firm's web page.

Consumer Class Actions

- ***Skeen v. BMW of N. Amer., LLC, No. 13-cv-1531 (D.N.J.)***

CCMS served as co-lead counsel in an action brought on behalf of owners of certain MINI Cooper-brand vehicles that contained a latent defect in a part of the engine known as the “timing chain tensioner” which caused the part to fail prematurely, eventually requiring replacement of that part or the entire engine. Following extensive discovery and mediation, the parties reached a global settlement on behalf of a nationwide class of vehicle owners. The efforts of the firm and its co-lead counsel resulted in a settlement which significantly extended warranty coverage, and reimbursed vehicle owners for tens of millions of dollars in out-of-pocket expenses incurred for repair and/or replacement.

- ***Ponzo v. Watts Regulator Company, No. 1:14-cv-14080 (D. Mass.); Klug v. Watts Regulator Company, No. 15-cv-00061 (D. Neb.)***

These consumer class cases, first brought by CCMS (D. Mass.) addressed defective water heater and “Floodsafe” branded connectors. The plaintiffs in both cases alleged that the water heater connectors were made of a material that would break down during regular use, causing leaks and ruptures that flooded class members' homes. The efforts of the firm and its co-lead counsel resulted in a settlement that provides \$14 million to affected homeowners.



- ***Hough v. Navistar, Inc., No. 20-cv-00063 (D. Colo.)***
CCMS served as co-lead counsel in action arising out of a data breach of Navistar's computer systems that resulted in a settlement that provided \$1.25 million to affected current and former employees, as well as significant non-monetary compensation.
- ***Bromley v. SXS LLC, No. 20-cv-439 (W.D. Tex.)***
CCMS served as co-lead counsel in action securing an uncapped settlement entitling class members to refunds in connection with a canceled festival.
- ***Compo v. United Airlines, Inc., et al., No. 1:20-cv-02166 (N.D. Ill.)***
CCMS serves as interim co-lead counsel in action alleging United has wrongfully refused to issue refunds for flights cancelled as a direct and proximate result of the COVID-19 crisis.
- ***Traxler v. PPG Industries, Inc., No. 15-cv-00912 (N.D. Ohio)***
CCMS served as lead counsel in this action challenging defective deck resurfacing products. The products peeled, cracked, and damaged the surfaces to which they were applied. In February 2017 the parties reached an agreement in principle to settle the case on behalf of a nationwide class. The efforts of the firm and its co-counsel resulted in a settlement that provides \$6.5 million to affected homeowners.
- ***In re Apple iPhone/iPod Warranty Litig., No. 3:10-cv-01610 (N.D. Cal.)***
This case challenged Apple's policy of denying warranty claims based on liquid contact indicators located in headphone jacks and dock connector ports of iPhones and iPod touches. Similar class actions were subsequently filed in federal courts on behalf of Apple consumers. CCMS helped negotiate and achieve a \$53 million settlement of the state and federal cases.
- ***In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Prod. Liability Litig., MDL No. 2672 (N.D. Cal.)***
CCMS worked closely with lead counsel and other class counsel in this class case challenging unlawful actions by the manufacturer defendants to mask the actual diesel emission levels in various vehicle makes and models. Judge Breyer approved a class settlement with defendants worth billions of dollars.



- ***In re Takata Airbag Prod. Liability Litig., MDL No. 2599 (S.D. Fla.)***
CCMS represents six named Class Plaintiffs and has been and continues to work closely with lead counsel on this multi-billion dollar case involving defective airbags installed in tens of millions of affected vehicles manufactured by most major manufacturers. Class settlements with Honda and BMW providing class members with hundreds of millions of dollars and substantial programmatic relief have been finally approved and are the subject of pending appeals.
- ***In re General Motors Corp. Air Conditioning Marketing and Sales Practices Litig., MDL No. 2818 (E.D. Mich.)***
After conducting a significant pre-suit investigation, CCMS filed the first class action in the Eastern District of Michigan seeking relief on behalf of owners of GM vehicles suffering from a defect in the air conditioning system which typically results in total system failure, necessitating significant repairs thereto. Since commencing the action, CCMS has communicated with dozens of affected consumers and worked with GM assess the scope and nature of an extended warranty program GM implemented in a purported effort to resolve the claims of certain vehicle owners. On April 11, 2018, the Court appointed CCMS co-lead counsel.
- ***Squires et al., v. Toyota Motor Corp., et al., No. 18-cv-00138 (E.D. Tex.)***
CCMS investigated, originated and filed the first and only consumer class action brought on behalf of owners of multi-model year Toyota Prius vehicles that suffer from a defect that causes windshields to crack and fail in ordinary and foreseeable driving conditions. Plaintiffs allege that Defendants have breached express and implied warranties, and have violated the consumer protection statutes of various States.
- ***Gonzalez, et al., v. Mazda Motor Corp., et al., No. 16-cv-2087 (N.D. Cal.)***
CCMS is lead counsel in a consumer class action brought on behalf of owners of Model Year 2010-15 Mazda3 vehicles with defective clutch assemblies that cause them to prematurely fail. Plaintiffs allege that Defendants have breached express and implied warranties, and have violated the consumer protection statutes of various states. See, e.g., *Gonzalez v. Mazda Motor Corp.*, No. 16-CV-02087-MMC, 2017 WL 345878 (N.D. Cal. Jan. 5, 2017) (denying and granting in part Defendants' motion to dismiss).



- ***Albright v. The Sherwin-Williams Company, No. 17-cv-02513 (N.D. Ohio)***

CCMS is serving as Co-Lead Counsel in this class action concerning deck resurfacing products sold under the Duckback and SuperDeck brand names. Plaintiffs allege that defendants have breached express and implied warranties, and have violated the consumer protection statutes of various states.

- ***Anderson v. Behr Process Corp., No. 1:17-cv-08735 (N.D. Ill.)***

CCMS is serving as Co-Lead Counsel in this class action brought on behalf of purchasers of various deck coating products from 2012 through the present. After many months of mediation and settlement negotiations, and successfully opposing efforts by other plaintiffs and firms to have the JPML centralize pending cases, the parties have agreed to a proposed Class settlement which will provide substantial valuable monetary relief to Class members to refund the cost of product purchased as well as compensate them for damage to their decks and the costs of restoring and repairing the same.

- ***Bergman v. DAP Products, Inc., No. 14-cv-03205 (D. Md.)***

CCMS served as lead counsel in this class action on behalf of consumers who purchased various models of “XHose” garden hoses, which were flexible outdoor hoses that were predisposed to leaking, bursting, seeping, and dripping due to design defects. The court approved a nationwide settlement providing hundreds of thousands of consumer class members with the opportunity to recover a substantial portion of their damages.

- ***In re Midway Moving & Storage, Inc.’s Charges to Residential Customers, No. 03 CH 16091 (Cir. Ct. Cook Cty., Ill.)***

A class action on behalf of customers of Illinois’ largest moving company. A litigation class was certified and upheld on appeal. See *Ramirez v. Midway Moving and Storage, Inc.*, 880 N.E.2d 653 (Ill. App. 2007). On the eve of trial, the case settled on a class-wide basis. The court stated that CCMS is “highly experienced in complex and class action litigation, vigorously prosecuted the Class’ claims, and achieved an excellent Settlement for the Class under which Class members will receive 100% of their alleged damages.”



- ***Walter Cwietniewicz d/b/a Ellis Pharmacy, et al. v. Aetna U.S. Healthcare, June Term, 1998, No. 423 (Pa. Common Pleas)***

On May 25, 2006, the court granted final approval to a settlement of a class action brought on behalf of pharmacies that participated in U.S. Healthcare's capitation program seeking to recover certain required semi-annual payments. At the final approval hearing, the court found that "this particular case was as hard-fought as any that I have participated in" and with respect to the Class's reaction to the settlement achieved as a result of our firm's work: ". . . a good job, and the reason there should be no objection, they should be very very happy with what you have done."

- ***Davitt v. American Honda Motor Co., Inc., No. 13-cv-381 (D.N.J.)***

CCMS served as plaintiffs' counsel in a class action brought on behalf of owners of 2007-09 Honda CRV vehicles that suffered from a defect that predisposed the door-locking mechanisms to premature failure. Following extensive dismissal briefing, discovery and mediation, the parties arrived at a global settlement that provided class members with extended warranty coverage for the defect and reimbursement of out-of-pocket expenses incurred in connection therewith.

- ***Sabol v. Ford Motor Company, No. 2:14-cv-06654 (E.D. Pa.)***

CCMS served as Lead Counsel in this class case brought on behalf of owners of various model 2010-2015 Ford, Volvo and Land Rover vehicles allegedly including a defect in certain Ecoboost engines. Defendant claimed it addressed and repaired the problem through a series of recalls and repairs. After briefing summary judgment and class certification, and several years of hard fought litigation, including substantial discovery, the parties entered into a settlement providing substantial monetary and other relief.

- ***Lax v. Toyota Motor Corp., No. 14-cv-1490 (N.D. Cal.)***

CCMS served as class counsel in an action brought on behalf of owners of certain Toyota-brand vehicles that contained a defect which caused vehicles to consume oil at accelerated rates, often resulting in catastrophic engine failure. Following extensive discovery and mediation, the parties reached a private settlement following Toyota's implementation of an extended warranty and reimbursement program for affected vehicles. ECF No. 82.



Antitrust Class Actions and Litigation

- ***In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663 (D.N.J.)**
CCMS served as Co-Lead Counsel for plaintiffs in this class case alleging that insurance brokers and insurers conspired to allocate customers in a complicated scheme to maximize their own revenues at the expense of class members. The litigation concluded in 2013 with final approval of the last of five separate settlements that, in total, exceeded \$270 million. Judge Cecchi observed that “Class counsel include notably skilled attorneys with experience in antitrust, class actions and RICO litigation.” *In re Insurance Brokerage Antitrust Litig.*, 297 F.R.D. 136, 153 (D.N.J. 2013); see also *In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663, 2007 WL 1652303, at *6 (D.N.J. June 5, 2007).
- ***VisaCheck/MasterMoney Antitrust Litig.*, Master File No. 96-5238 (E.D.N.Y.)**
CCMS’s client, Burlington Coat Factory Warehouse, and the other plaintiffs, alleged that Visa and MasterCard violated the antitrust laws by forcing retailers to accept all of their branded cards as a condition of acceptance of their credit cards. The parties entered into settlement agreements that collectively provided for the payment of over \$3.3 billion, plus widespread reforms and injunctive relief.
- ***In Re VisaCheck/MasterMoney Antitrust Litig.*, Master File No. 96-5238 (E.D.N.Y.)**
CCMS’s client, Burlington Coat Factory Warehouse, and the other plaintiffs, alleged that Visa and MasterCard violated the antitrust laws by forcing retailers to accept all of their branded cards as a condition of acceptance of their credit cards. The parties entered into settlement agreements that collectively provided for the payment of over \$3.3 billion, plus widespread reforms and injunctive relief.
- ***In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-md-02541 (N.D. Cal.)**
CCMS represented a former Division 1 college basketball player in this antitrust litigation challenging the cap imposed by the NCAA on grant-in-aid packages. The efforts of the firm and its co-counsel resulted in certification of an injunctive class and a settlement of \$209 million.



- ***Kamakahi v. American Society for Reproductive Medicine, No. 3:11-cv-01781 (N.D. Cal.)***

CCMS served as Co-Lead Counsel in a cutting edge antitrust case challenging the legality of ethical guidelines promulgated by two professional associations that limited the compensation members were permitted to pay to women providing donor services for in-vitro fertilization. Without the benefit of a parallel government case or investigation, CCMS achieved a groundbreaking settlement that required defendants to eliminate the compensation caps and to refrain from imposing similar caps in the future.

- ***In re New Motor Vehicles Canadian Export Antitrust Litig., MDL No. 1532 (D. Me.)***

CCMS served as Class Counsel in multidistrict litigation alleging that automobile manufacturers and other parties conspired to prevent lower priced new motor vehicles from entering the American market thereby artificially inflating prices. The court approved a \$37 million settlement with Toyota and the Canadian Automobile Dealers' Association.

- ***In re TriCor Indirect Purchaser Antitrust Litig., No. 05-360 (D. Del)***

CCMS served as Lead Counsel for consumer and third-party payor plaintiffs who alleged that defendants engaged in unlawful monopolization in the market for fenofibrate products, which are used to treat high cholesterol and high triglyceride levels. The court approved to a \$65.7 million settlement (an amount that excludes an initial payment to opt-out insurance companies).

- ***In re Prandin Direct Purchaser Antitrust Litig., Civ. No. 10-12141 (E.D. Mich.)***

CCMS served as Co-Lead counsel for a plaintiff class of direct purchasers of the prescription drug repaglinide, which is manufactured and marketed by Novo Nordisk under the brand-name Prandin. Plaintiffs alleged that Novo Nordisk blocked FDA approval of generic versions of the drug by wrongfully manipulating the language of the "use code" filed with the FDA in connection with a method of use patent. The court approved a \$19 million settlement.



- ***In Re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation, MDL No. 2819 (E.D.N.Y)***

CCMS is a member of the Executive Committee representing a putative class of indirect purchasers of Restasis, an eye-drop used to treat dry-eye syndrome, and allege that Defendant Allergan engaged in various anticompetitive activities to illegally prolong the life of its patents over Restasis, and to otherwise forestall the entry of generic competition into the cyclosporine market.

- ***In re Disposable Contact Lens Antitrust Litigation, MDL No. 2626 (M.D. Fla.)***

CCMS served on the Defendant Discovery Committee, which was tasked with overseeing all aspects of discovery pertaining to Defendants, who are alleged to have conspired to implement retail price maintenance agreements intended to inflate the prices of disposable contact lenses to supracompetitive levels. The district court certified several horizontal and vertical nationwide antitrust classes, and settlements recovering \$118 million for consumers have been reached.

- ***In re Automotive Parts Antitrust Litig., MDL No. 2311 (E.D. Mich.)***

CCMS has served as a member of Plaintiffs' Executive Committee representing the end-payor class in one of the largest civil antitrust actions in US history. As a member of the Executive Committee, CCMS has played an important role in this groundbreaking litigation in which plaintiffs have recovered over \$1 billion on behalf of end-payor consumers and businesses who allege they purchased or leased new automobiles at prices that were artificially inflated as a result of automotive component manufacturers' anticompetitive conduct.

- ***Nichols v. SmithKline Beecham Corp., No. Civ.A.00-6222 (E.D. Pa.)***

CCMS served as Co-Lead Counsel for consumers and third-party payors who alleged that the manufacturer of the brand-name antidepressant Paxil misled the U.S. Patent Office into issuing patents that protected Paxil from competition from generic substitutes. The court approved a \$65 million class action settlement for the benefit of consumers and third-party payors who paid for Paxil.



- ***In re Relafen Antitrust Litig. No. 01-12239 (D. Mass.)***
The court approved a \$75 million class action settlement for the benefit of consumers and third-party payors who paid for branded and generic versions of the arthritis medication Relafen. In certifying an exemplar class of end-payors, the court singled out our Firm as experienced and vigorous advocates. See *In re Relafen Antitrust Litig.*, 221 F.R.D. 260, 273 (D. Mass. 2004). In the opinion granting final approval to the settlement, the court commented that “Class counsel here exceeded my expectations in these respects [*i.e.*, experience, competence, and vigor] in every way.” *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85 (D. Mass. 2005); see also *id.* at 80 (“The Court has consistently noted the exceptional efforts of class counsel.”).
- ***In re Warfarin Sodium Antitrust Litig., MDL 98-1232 (D. Del.)***
Multidistrict class action on behalf of purchasers of Coumadin, the brand-name warfarin sodium manufactured and marketed by DuPont Pharmaceutical Company. Plaintiffs alleged that the defendant engaged in anticompetitive conduct that wrongfully suppressed competition from generic warfarin sodium. The Court approved a \$44.5 million settlement.
- ***In re Cardizem CD Antitrust Litig., MDL No. 1278 (E.D. Mich.)***
Multidistrict class action on behalf of purchasers of Cardizem CD, a brand-name heart medication. Plaintiffs alleged that an agreement between the brand manufacturer and a generic manufacturer unlawfully stalled generic competition. The court approved an \$80 million settlement for the benefit of consumers, third-party payors and state attorneys general.
- ***In re Synthroid Marketing Litig., MDL No. 1182 (N.D. Ill.)***
This multidistrict action arose out of alleged unlawful activities with respect to the marketing of Synthroid, a levothyroxine product used to treat thyroid disorders. The court approved a consumer settlement in the amount of \$87.4 million.



Commodities Litigation

- ***In re Cattle Antitrust Litig., No. 19-cv-01222 (D. Minn.)***
CCMS serves as interim co-lead counsel in this case involving alleged manipulation of cattle and cattle futures prices, as well as an antitrust conspiracy, by major meatpackers.
- ***In re Deutsche Bank Spoofing Litig., No. 20-cv-03638 (N.D. Ill.)***
CCMS serves as interim co-lead counsel in this case involving alleged manipulation through spoofing of Treasury and Eurodollar Futures.
- ***In re Libor-Based Financial Instruments, No. 11-md-2262 (S.D.N.Y)***
CCMS serves as class counsel for exchange trader plaintiffs in claims involving manipulation in violation of the Commodity Exchange Act against many of the world's largest financial institutions.
- ***Hershey/Kohen v. Pacific Investment Management Co. LLC, No. 05 C 4681 (N.D. Ill.)***
As liaison and class counsel in action arising from PIMCO's manipulation of 10-year treasury notes futures traded on the Chicago Board of Trade, CCMS helped secure a \$118 million settlement for the class.
- ***In re Crude Oil Commodity Futures Litig., No. 11-cv-03600 (S.D.N.Y.)***
As class counsel in action arising from manipulation of NYMEX West Texas Intermediate grade crude oil futures contracts, CCMS expended significant resources assisting the class with investigation and discovery. The collective efforts resulted in a \$16.5 million settlement for the class.
- ***In re Foreign Exchange Benchmark Rates Antitrust Litig., 13-cv-7789 (S.D.N.Y.)***
As class counsel in this action arising from manipulation of foreign exchange rates by international banks and others, CCMS has devoted significant resources toward investigation, discovery, and allocation of more than \$2 billion in settlements for the class.



- ***In re Sumitomo Copper Litig.*, 96 Civ. 4584(MP) (S.D.N.Y.)**
As class counsel in action arising out of manipulation of the world copper market, CCMS helped achieve settlements aggregating \$134.6 million. In awarding attorneys' fees, Judge Milton Pollack noted that it was "the largest class action recovery in the 75 plus year history of the Commodity Exchange Act." 74 F. Supp. 2d 393 (S.D.N.Y. Nov. 15, 1999).
- ***In re Soybean Futures Litig.*, No. 89 C 7009 (N.D. Ill.)**
As class counsel in this action against Ferruzzi Finanziaria SpA and related companies for unlawfully manipulating the soybean futures market, CCMS helped recover a \$21.5 million settlement.
- ***Lawrence E. Jaffe Pension Plan v. Household International, Inc.*, No. 1:02-cv-05893 (N.D. Ill.)**
Securities fraud class action. CCMS served as local counsel and helped recover a settlement of approximately \$1.6 billion.
- ***In re Kaiser Group International*, Case No. 00-2263 (Bankr. D. Del.)**
On December 7, 2005, Chief Judge Mary F. Walrath of the United States Bankruptcy Court for the District of Delaware granted final approval to a settlement that produced 175,000 shares of common stock for a class of former shareholders of ICT Spectrum Constructors, Inc. (a company that merged with ICF Kaiser Group International and ICF Kaiser Advanced Technology in 1998). The settlement followed Judge Joseph J. Farnan's ruling which upheld the Bankruptcy Court's decision to award common stock of the new Kaiser entity (Kaiser Group Holdings, Inc.) to the Class of former Spectrum shareholders based on contractual provisions within the merger agreement. See *Kaiser Group International, Inc. v. James D. Pippin* (*In re Kaiser Group International*), 326 B.R. 265 (D. Del. 2005).
- ***Danis v. USN Communications, Inc.*, No. 98 C 7482 (N.D. Ill.)**
Securities fraud class action arising out of the collapse and eventual bankruptcy of USN Communications, Inc. On May 7, 2001, the court approved a \$44.7 million settlement with certain control persons and underwriters. Reported decisions: 73 F. Supp. 2d 923 (N.D. Ill. 1999); 189 F.R.D. 391 (N.D. Ill. 1999); 121 F. Supp. 2d 1183 (N.D. Ill. 2000).



Individual Biographies

PARTNERS



PATRICK E. CAFFERTY graduated from the University of Michigan, with distinction, in 1980 and obtained his J.D., *cum laude*, from Michigan State University College of Law in 1983. From 1983 to 1985, he served as a prehearing attorney at the Michigan Court of Appeals and as a Clerk to Judge Glenn S. Allen, Jr. of that Court. Mr. Cafferty is an experienced litigator in matters involving antitrust, securities, commodities, and the pharmaceutical industry. In 2002, Mr. Cafferty was a speaker at a forum in Washington

D.C. sponsored by Families USA and Blue Cross/Blue Shield styled “Making the Drug Industry Play Fair.” At the Health Action 2003 Conference in Washington D.C., Mr. Cafferty was a presenter at a workshop titled “Consumers’ Access to Generic Drugs: How Brand Manufacturers Can Derail Generic Drugs and How to Make Them Stay on Track.” In 2010, Mr. Cafferty made a presentation on indirect purchaser class actions at the American Antitrust Institute’s annual antitrust enforcement conference. See *Indirect Class Action Settlements* (Am. Antitrust Inst., Working Paper No. 10-03, 2010). Mr. Cafferty is admitted to the state bars of Michigan and Illinois, and holds several federal district and appellate court admissions. Mr. Cafferty has attained the highest rating, AV®, from Martindale-Hubbell and is a top rated SuperLawyer®.



BRYAN L. CLOBES is a 1988 graduate of the Villanova University School of Law and received his undergraduate degree from the University of Maryland. Mr. Clobes clerked for Judge Arlin M. Adams of the United States Court of Appeals for the Third Circuit, Judge Mitchell H. Cohen of the United States District Court for the District of New Jersey, and Judge Joseph Kaplan of the Maryland Circuit Court in Baltimore. From 1989 through June, 1992, Mr. Clobes served as Trial Counsel to the Commodity Futures Trading Commission in Washington, D.C.



Mr. Clobes has served as lead counsel in many of the firm's class cases covering all areas of the firm's practice, and is widely recognized as an expert in class action litigation. Mr. Clobes has authored briefs filed with the Supreme Court in a number of class cases, served as a panelist for class action, consumer and antitrust CLE programs, has sustained and maintained the highest rating, AV®, from Martindale-Hubbell, and has been named a "Super Lawyer" for the past twelve years. Mr. Clobes is admitted to the bar in New Jersey and Pennsylvania, and admitted to practice in several federal district and appellate court admissions.



DANIEL O. HERRERA received his law degree, *magna cum laude*, and his MBA, with a concentration in finance, from the University of Illinois at Urbana-Champaign in 2008. Mr. Herrera received his bachelor's degree in economics from Northwestern University in 2004. Mr. Herrera joined CCMS as an associate in 2011 and is resident in its Chicago, Illinois Office. Since joining CCMS, Mr. Herrera has successfully prosecuted a wide range of antitrust, consumer and commodities class action. Prior to joining CCMS, Mr. Herrera was an associate in the trial practice of Mayer Brown LLP, a Chicago-based national law firm, where he defended corporations in securities and antitrust class actions, as well as SEC and DOJ investigations and enforcement actions. Mr. Herrera also routinely handled commercial matters on behalf of corporate clients. Mr. Herrera is licensed to practice in Illinois and holds several federal district and appellate court admissions.



ELLEN MERIWETHER received her law degree from George Washington University, *magna cum laude*, in 1985. She was a member of the *George Washington Law Review* and was elected to the Order of the Coif. Ms. Meriwether received a B.A. degree, *with highest honors*, from LaSalle University in 1981. Ms. Meriwether is on the Board of Directors of the American Antitrust Institute (AAI), is Editorial Board Co-Chair of ANTITRUST, a publication by the section of Antitrust Law of the American Bar Association and serves as Vice-Chair of the Board of Directors of the Public Interest Law Center, in Philadelphia. Since 2010, Ms. Meriwether has been included in the US News and World Report Publication of "Best Lawyers in America" in the field of Antitrust.



She has been named a “Pennsylvania Super Lawyer” since 2005 and has attained the highest rating, “AV”, from Martindale-Hubbell. She is a frequent presenter on topics relating to complex, class action and antitrust litigation and has published a number of articles on subjects relating to class actions and antitrust litigation, including, among others: “The Fiftieth Anniversary of Rule 23: Are Class Actions on the Precipice?,” *Antitrust*, (Vol. 30, No. 2, Spring 2016); “Motorola Mobility and the FTAIA: If Not Here, Then Where?,” *Antitrust*, Vo. 29, No.2 Spring 2015); “Comcast Corp. v. Behrend: Game Changing or Business as Usual?,” *Antitrust*, (Vol. 27, No. 3, Summer 2013). Links to these articles and others authored by Ms. Meriwether can be found on the firm’s website. Ms. Meriwether is admitted to the bar of Supreme Court of Pennsylvania and is admitted in a number of federal district court and appellate court jurisdictions.



NYRAN ROSE RASCHE received her undergraduate degree *cum laude* from Illinois Wesleyan University in 1995, was awarded a graduate teaching fellowship for law school, and earned her law degree from the University of Oregon School of Law in 1999. Following law school, Ms. Rasche served as a law clerk to the Honorable George A. Van Hoomissen of the Oregon Supreme Court. She is the author of *Protecting Agricultural Lands: An Assessment of the Exclusive Farm Use Zone System*, 77 Oregon Law

Review 993 (1998) and *Market Allocation through Contingent Commission Agreements: Strategy and Results in In re Insurance Brokerage Antitrust Litigation* (with Ellen Meriwether), *The Exchange: Insurance and Financial Services Developments* (Spring 2015). Since joining CCMS, Ms. Rasche has successfully prosecuted a wide range of antitrust, consumer class, securities and commodities class actions. Ms. Rasche has been admitted to practice in the state courts of Oregon and Illinois, as well as the United States District Courts for the Northern District of Illinois, the Southern District of Illinois, and the District of Colorado. She is also a member of the American and Chicago Bar Associations.



JENNIFER WINTER SPRENGEL received her law degree from DePaul University College of Law, where she was a member of the DePaul University Law Review. Her undergraduate degree was conferred by Purdue University. Ms. Sprengel is an experienced litigator in matters involving commodities, antitrust, insurance and the financial industries. In addition, Ms. Sprengel is a committee member of the Seventh Circuit Electronic eDiscovery Pilot Program and is a frequent speaker regarding issues of discovery. Links to some of her presentations and articles can be found on the firm's website. She also serves as co-chair of the Antitrust Law subcommittee of the ABA Class Action and Derivative Suits committee. She is admitted to practice law in Illinois, holds several federal district and appellate court admissions, and has attained the highest rating, AV®, from Martindale-Hubbell. Ms. Sprengel serves as the managing partner of the Firm.

ASSOCIATES



NICKOLAS J. HAGMAN received his undergraduate degree, *magna cum laude*, from the University of Minnesota in 2008. Mr. Hagman earned his law degree from Marquette University Law School, *cum laude*, in 2013, with a Certificate in Litigation. During law school, Mr. Hagman served as an associate editor of the Marquette Law Review, was a member of the Pro Bono Society, and worked as an intern for the late Wisconsin Supreme Court Justice N. Patrick Crooks, and current Wisconsin Supreme Court Justice Rebecca Dallet. Following law school, Mr. Hagman served as a judicial clerk in the Milwaukee County Circuit Court for two years. Prior to joining CCMS in 2019, Mr. Hagman was an associate at a plaintiff-side consumer class action firm for five years. Mr. Hagman is licensed to practice in Illinois and Wisconsin, and before the United State District Courts for the Northern District of Illinois, the Eastern District of Wisconsin, and the District of Colorado. He is also a member of the Wisconsin Bar Association and Chicago Bar Association, where he is a member of the Class Action and Consumer Committees.



EDWARD KHATSKIN earned his law degree from Washington University School of Law in St. Louis in 2012, where he served as the Executive Articles Editor for the Washington University *Journal of Law and Policy*. While in Law School, Mr. Khatskin served as the Judicial Extern for the Honorable William Stiehl in the United States District Court for the Southern District of Illinois and interned at the St. Louis County Prosecuting Attorney's Office. Mr. Khatskin graduated from St. Louis University with a bachelor's degree in Finance.

He is fluent in Russian. Prior to joining CCMS in 2021, Mr. Khatskin practiced in the St. Louis and Chicago Offices of a firm representing clients in a wide array of matters including: general and commercial litigation, personal injury, consumer protection and civil rights litigation. Mr. Khatskin is admitted to practice in the States of Illinois and Missouri, and before the District Courts for the Northern District of Illinois and the Southern District of Illinois.



OLIVIA LAWLESS received her law degree from the University of Denver Sturm College of Law in 2020, with a Certificate of Specialization in Workplace Law. At Sturm, Ms. Lawless served as senior staff editor for the University of Denver Water Law Review and was a Teaching Assistant for Legal Writing and Constitutional Law. She also received the Scholastic Excellence Award and became the first Sturm Law Scholar to graduate from the University of Denver. Ms. Lawless is licensed to practice in Illinois.



KAITLIN NAUGHTON received her law degree from the George Washington University Law School in 2019, where she served as managing editor for the *George Washington Journal of Energy & Environmental Law*. Ms. Naughton earned her bachelor's degree in political science and sociology with distinction from Purdue University in 2015. Ms. Naughton joined CCMS in 2019 and is resident in its Chicago, Illinois office. She is licensed to practice in Illinois and before the United State District Court for the Northern District of Illinois.



ALEXANDER SWEATMAN earned his law degree from the University of Notre Dame Law School in 2019, where he served as Managing Notes Editor for the *Notre Dame Journal of Legislation*. While in law school, Mr. Sweatman served as a judicial extern for the Honorable Thomas Donnelly in the Circuit Court of Cook County and participated in Notre Dame's Public Defender Externship where he represented juveniles in initial hearings, sentencing proceedings, and probation modification hearings. Mr. Sweatman graduated *summa cum laude* from Wheaton College in 2016. Mr. Sweatman joined CCMS in 2021. He is a member of the Chicago Bar Association and is involved in its Antitrust Law Section and Civil Practice and Procedure Committee. Mr. Sweatman is licensed to practice in Illinois.

SENIOR COUNSEL



DOM J. RIZZI received his B.S. degree from DePaul University in 1957 and his J.D. from DePaul University School of Law in 1961, where he was a member of the *DePaul University Law Review*. From 1961 through 1977, Judge Rizzi practiced law, tried at least 39 cases, and briefed and argued more than 100 appeals. On August 1, 1977, Judge Rizzi was appointed to the Circuit Court of Cook County by the Illinois Supreme Court. After serving as circuit court judge for approximately one year, Judge Rizzi was elevated to the Appellate Court of Illinois, First District, where he served from 1978 to 1996. Judge Rizzi became counsel to the firm in October 1996.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE SUBARU BATTERY DRAIN
PROD. LIAB. LITIG.

No. 1:20-cv-03095-JHR-JS

**DECLARATION OF
[NAME] IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES,
EXPENSES, AND SERVICE AWARDS**

I, Todd Garber, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a partner at Finkelstein, Blankinship, Frei-Pearson & Garber, LLP in White Plains, New York. I submit this Declaration in support of Plaintiffs' Motion for motion for attorneys' fees, expenses, and service awards in connection with the class action settlement. I make this declaration based on my own personal knowledge, and if called upon to do so, could testify competently to the matters set forth herein.

A. Finkelstein, Blankinship, Frei-Pearson & Garber, LLP's Professional Qualifications

1. Finkelstein, Blankinship, Frei-Pearson & Garber, LLP has years of relevant experience in class action litigation. The Firm and its lawyers are litigators in the field of consumer protection class actions, including data breach class actions.

2. A detailed description of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and its attorneys can be found in the Firm Resume attached as Exhibit A. [OR "can be found on the Finkelstein, Blankinship, Frei-Pearson & Garber, LLP's website at www.FBFGlaw.com"]

B. Finkelstein, Blankinship, Frei-Pearson & Garber, LLP's Lodestar

3. The lodestar incurred by each individual biller at Finkelstein, Blankinship, Frei-

Pearson & Garber, LLP is as follows as of September 30, 2022:

Name	Position	Hours	Hourly Rate	Lodestar
Greg Blankinship	Partner	3.7	950	\$3,515.00
Todd Garber	Partner	20.50	950	\$19,475.00
Brad Silverman	Of Counsel	3	675	\$2,025.00
Chantal Khalil	Associate	.2	525	\$105.00
Earl Kirkland	Associate	91.00	450	\$40,950.00
		118.4		\$66,070.00

4. The hours above were recorded contemporaneously and in one-tenth of an hour increments

5. The hourly rates above are the current hourly rates for each applicable biller and are the usual and customary rates charged by each applicable biller in the Firm's cases.

6. The Firm's hourly rates are regularly accepted by courts throughout the country for purposes of class action fee awards. *See, e.g., Stanley v. Direct Energy Services*, No. 19-03759, ECF No. 82 (S.D.N.Y. April 5, 2022) (Karas, J.). *See also* sampling of cases approving then current hourly rates, *Hamlen v. Gateway Energy Services Corp.*, No. 16-3526, ECF No. 141 (S.D.N.Y. Sept. 13, 2019) (Briccetti, J.); *Tardibuono-Quigley v. HSBC Mortgage Corp.*, No. 15-06940, ECF No. 176 (S.D.N.Y. May 20, 2020) (Karas, J.); *Coleman v. Railworks Corp.*, No. 20-02428 ECF No. 41 (S.D.N.Y. May 13, 2021) (Daniels, J.); *Villanueva v. Wells Fargo Bank, N.A.*, No. 13-5429 (S.D.N.Y. Feb. 13, 2017) (Smith, J.), ECF No. 116; *Bowman v. Wells Fargo Bank, N.A.*, No. 14-648 (S.D.N.Y. Feb. 13, 2017) (Smith, J.), ECF No. 126; *Whittenburg v. Bank of America, N.A.*, No. 14-947 (S.D.N.Y. July 20, 2016) (Briccetti, J.), ECF No. 119; *In re HIKO Energy LLC Litigation*, No. 14-1771 (S.D.N.Y. May 9, 2016) (Briccetti, J.), ECF No. 93; *Adler*

v. Bank of America, N.A., No. 13-4866 (S.D.N.Y. Jan. 29, 2016) (Briccetti, J.), ECF No. 89-1; *Farruggio v. 918 James Receiver, LLC*, No. 003831/2017 (N.Y. Sup. Ct. Apr. 23, 2021); *Dumay v. Episcopal Health Serv., Inc.*, No. 715629/2019 (N.Y. Sup. Ct. July 21, 2021); *Yoeckel v. Marriott International, Inc.*, No. 703387/2015 (N.Y. Sup. Ct. May 3, 2017) all approving FBFG’s then current hourly rates.

7. All hours were reasonably incurred under the supervision of Co-Lead Counsel and necessary to litigating this matter.

8. The Finkelstein, Blankinship, Frei-Pearson & Garber, LLP’s work included work on the complaint, motion to dismiss, and discovery.

9. In incurring the time set forth above, the Firm followed the detailed billing protocol circulated by Co-Lead Counsel on May 10, 2020.

10. I have provided a copy of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP’s detailed time entries to Co-Lead Counsel and have authorized them to make such records available to the Court for an *in camera* review.

C. Finkelstein, Blankinship, Frei-Pearson & Garber, LLP’s Litigation Expenses

11. The Finkelstein, Blankinship, Frei-Pearson & Garber, LLP’s litigation expenses are as follows as of September 30, 2022:

Expense Type	Total
PACER	\$6.60
Research	\$0.80
Copies	\$22.32
Westlaw	\$42.58
Total	\$72.30

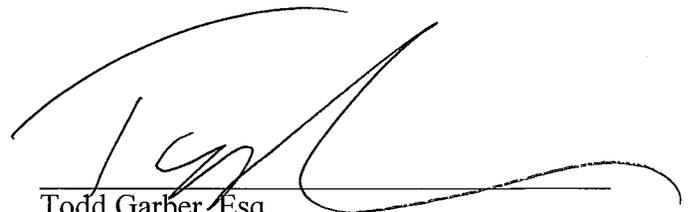
12. The expenses incurred by Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

are reflected in the books and records of the Firm. The books and records are prepared from expense vouchers, invoices, receipts, and other reasonable supporting records and are an accurate record of the expenses incurred.

13. All expenses were reasonably incurred and necessary to litigating this matter.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: Oct. 21, 2022

A handwritten signature in black ink, appearing to read 'Todd Garber', is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Todd Garber, Esq.
Finkelstein, Blankinship, Frei-Pearson &
Garber, LLP
1 N. Broadway, Suite 900
White Plains, N.Y. 10601

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE SUBARU BATTERY DRAIN
PROD. LIAB. LITIG.

No. 1:20-cv-03095-JHR-JS

**DECLARATION OF
BRUCE D. GREENBERG IN SUPPORT
OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES,
AND SERVICE AWARDS**

I, Bruce D. Greenberg, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a Member of the Firm of Lite DePalma Greenberg & Afanador, LLC (“LDGA”) in Newark, NJ. I submit this Declaration in support of Plaintiffs’ Motion for attorneys’ fees, expenses, and service awards in connection with the class action settlement. I make this Declaration based on my own personal knowledge, and if called upon to do so, could testify competently to the matters set forth herein.

A. LDGA’s Professional Qualifications

1. LDGA has years of relevant experience in class action litigation. The Firm and a number of its lawyers are litigators in the field of consumer protection class actions and class actions of other types.

2. A detailed description of LDGA and its attorneys can be found on LDGA’s website at www.litedepalma.com.

B. LDGA's Lodestar

3. The lodestar incurred by each individual biller at LDGA is as follows as of September 30, 2022:

Name	Position	Hours	Hourly Rate	Lodestar
Bruce D. Greenberg	Member	44.8	800	\$35,840.00
Catherine B. Derenze	Associate	39.7	375	\$14,887.50
Elvira Palomino	Paralegal	3.2	250	\$800.00
Eric Henley	Paralegal	9.3	250	\$2,325.00
TOTAL		97.0		\$53,852.50

4. The hours above were recorded contemporaneously and in one-tenth of an hour increments

5. The hourly rates above are the current hourly rates for each applicable biller and are the usual and customary rates charged by each applicable biller in the Firm's cases.

6. The Firm's hourly rates are regularly accepted by courts in New Jersey and throughout the country for purposes of class action fee awards. *See, e.g., In re Blue Cross Blue Shield Antitrust Litig.*, MDL No. 2406, Master File No. 2:13-CV-20000-RDP, ECF No. 2932 (N.D. Ala. Aug. 9, 2022); *In re Broiler Chicken Antitrust Litig.*, No. 16 C 1837, ECF No. 5225 (N.D. Ill. Nov. 30, 2021); *Conover v. Patriot Land Transfer, LLC*, No. 1:17-cv-04625-RMB-JS, ECF No. 121 (D.N.J. Sept. 21, 2020); *In re Liquid Aluminum Sulfate Antitrust Litig.*, No. 2:16-md-02687-MCA-MAH, ECF No. 1420 (D.N.J. Nov. 21, 2019).

7. All hours were reasonably incurred under the supervision of Co-Lead Counsel and necessary to litigating this matter.

8. LDGA's work included representation of plaintiff Walter Gill in all aspects of this matter from inception through the present. That work included, among other things, interviewing Mr. Gill, preparing and filing a Complaint on his behalf in this Court, working with Mr. Gill to complete the client questionnaire forwarded by Co-Lead Counsel and dealing with follow-up issues as to that questionnaire, preparing (at the direction of Co-Lead Counsel) a preservation of documents letter to all plaintiffs, providing Mr. Gill with copies of key case documents, including the Consolidated Amended Complaint, the Settlement Agreement, and other documents, for his review, and answering any questions he had regarding them, researching and preparing (at the direction of Co-Lead Counsel) a portion of plaintiffs' brief in opposition to defendants' motion to dismiss the Consolidated Amended Complaint, coordinating with Mr. Gill his search for and production of documents (in coordination with and at the direction of Co-Lead Counsel), communicating with Mr. Gill regarding the progress of the case, including settlement mediation, the results of mediation, and the terms of the settlement achieved, for his approval, participating in conferences with co-counsel (at the direction of Co-Lead Counsel) regarding strategy, and staying apprised of case developments and advising Mr. Gill as to those developments.

9. In incurring the time set forth above, the Firm followed the detailed billing protocol circulated by Co-Lead Counsel on May 10, 2020.

10. I have provided a copy of LDGA's detailed time entries to Co-Lead Counsel and have authorized them to make such records available to the Court for an *in camera* review.

C. LDGA's Litigation Expenses

11. LDGA's litigation expenses are as follows as of September 30, 2022:

Expense Type	Total
Filing fee for Complaint	\$400.00
Total	\$400.00

12. The expenses incurred by LDGA are reflected in the books and records of the Firm. The books and records are prepared from expense vouchers, invoices, receipts, and other reasonable supporting records and are an accurate record of the expenses incurred.

13. All expenses were reasonably incurred and necessary to litigating this matter.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 20, 2022



Bruce D. Greenberg
Lite DePalma Greenberg & Afanador, LLC
570 Broad Street, Suite 1201
Newark, NJ 07102

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE SUBARU BATTERY DRAIN
PROD. LIAB. LITIG.

No. 1:20-CV-03095-JHR-MJS

HON. JOSEPH H. RODRIGUEZ

**[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION
FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

WHEREAS, Plaintiffs and Defendant Subaru of America, Inc. and Subaru Corporation (together, "Subaru") executed an agreement to settle this matter, subject to Court approval;

WHEREAS, the Court reviewed the parties' Settlement Agreement and issued an order granting preliminary approval to it on June 23, 2022 (ECF No. 75);

WHEREAS, through arms'-length negotiations, including several mediation sessions with the Hon. Joel Schneider, U.S.M.J. (Ret.), Defendants have agreed to pay (1) \$4,100,000.00 in attorneys' fees and expenses to Class Counsel, and (2) \$4,000.00 in service awards to each of the thirteen Plaintiffs (\$52,000.00 total);

WHEREAS, after considering Plaintiffs' motion, memorandum of law and supporting materials (including the declarations from counsel) as well as any material(s) that may be filed in opposition thereto, the Court having concluded that

Plaintiffs' request for fees, expenses, and the payment of service awards is reasonable and permissible under the applicable law;

IT IS ORDERED AS FOLLOWS:

1. The Court finds the attorney fees and costs requested by Class Counsel are fair and reasonable, given Plaintiffs' counsel's lodestar of \$2,923,825.00 at the time of filing their motion. The Court has reviewed the Joint Declaration submitted by Class Counsel and finds that Plaintiffs' counsel reasonably spent over 4,474 hours representing the interests of the Class through this litigation, that Plaintiffs' counsel hourly rates are reasonable and in line with the prevailing rates in the community for complex class action litigation, and that the costs incurred to prosecute the litigation were reasonable.

2. Plaintiffs' counsel also submitted—and the Court considered—their detailed billing records, which further demonstrate that the time incurred by Plaintiffs' counsel was reasonable and necessary to the successful resolution of this complex class action litigation.

3. The Court finds that the factors enumerated in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190 (3d Cir. 2000) support Class Counsel's request. Specifically:

- a. The size of the fund and number of persons benefitted supports Class Counsel's fee request, as the settlement provides substantial relief to owners and lessees of 2,846,483 Settlement Class Vehicles.
- b. The absence of objections by Settlement Class Members supports Class Counsel's fee request, as only a small percentage of objections to the settlement have been received.
- c. The skill and efficiency of the attorneys involved supports Class Counsel's fee request, as the settlement provides substantial benefits to the Settlement Class Members in the face of significant risk of further litigation.
- d. The complexity and duration of the litigation supports Class Counsel's fee request, as this complex class action litigation has been pending for over a year and has required extensive work by Class Counsel to reach a successful conclusion.
- e. The risk of nonpayment supports Class Counsel's fee request, as Class Counsel brought this litigation on a contingency basis and risked non-payment as a result.
- f. The amount of time devoted by Plaintiffs' counsel supports Class Counsel's fee request, as over 4,474 hours of contingent work was performed in this matter as of September 30, 2022. This work included

discovery, settlement negotiations, class member interviews, mediation, the 30(b)(6) deposition of Subaru's Director of Field Quality, and Class Counsel's own independent investigation into the alleged defect.

- g. The fee awards in similar cases supports the fee request, as the fee request in this case is on the low end of similar automotive class action settlements in the District of New Jersey. Further, the lodestar multiplier of 1.38 is on the low end of multipliers awarded in the District of New Jersey.

4. In light of the foregoing, and upon the Court's consideration of the briefing and declarations submitted, Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards is **GRANTED**.

5. Defendants Subaru of America, Inc. and Subaru Corporation shall pay Class Counsel \$_____ for their attorneys' fees and expenses, in accordance with the Settlement Agreement.

6. Defendants Subaru of America, Inc. and Subaru Corporation shall also make an additional payment totaling \$_____ to Class Counsel for the service awards of the thirteen Plaintiffs, which amounts shall then be remitted by Class Counsel to the Plaintiffs.

7. All other payments and costs shall be borne as set forth in the Settlement Agreement or as agreed to by the parties.

IT IS SO ORDERED.

Dated: _____

Hon. Joseph H. Rodriguez
United States District Judge