UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

In re: **HYUNDAI AND KIA FUEL ECONOMY LITIGATION**	No. MDL 13-02424-GW (FFMx)
THIS DOCUMENT RELATES TO: **ALL ACTIONS**	

EXPERT DECLARATION OF PROFESSOR WILLIAM B. RUBENSTEIN

1. I am the Sidley Austin Professor of Law at Harvard Law School and a leading national expert on class action law and practice. By the settlement agreement in this matter, defendants have agreed to pay "reasonable attorneys' fees" to Class Counsel. One of two Class Counsel, the law firm of McCuneWright LLP, herein seeks approximately $6 million in fees. McCuneWright has retained me to provide my expert opinion as to whether this request is reasonable in the context of this multi-district litigation. After setting forth my qualifications to serve as an expert (Part I, *infra*), and briefly describing the underlying litigation (Part II, *infra*), I conclude that the requested fee is reasonable for three inter-related sets of reasons:

- ***McCuneWright's lodestar reflects both a reasonable billing rate based on the market for attorneys in this community and a reasonable quantity of hours for the work done in this matter***. (Part III(A), *infra*). For purposes of providing this Declaration to the Court, I reviewed fee awards in the Central District for the past five years and developed a data base of hourly rates that have been approved. Basing my opinion on that empirical data, I can testify that McCuneWright's hourly rates are fully consistent with the rates that Courts in this District have regularly approved over the past five years. Two of the cases from the previous five years involve one of the present defendants (Hyundai) and the rates that the Central District courts approved in these prior Hyundai cases are

consistent with the rates counsel proposes here. The proposed rates are also lower than the billing rates charged by opposing counsel, who contest this motion. Moreover, the total number of hours the firm billed for its work on this case – roughly 3,000 in nearly three years – is the equivalent of one attorney working half time on the case throughout those three years. When the complexity of the case, the adversarial litigation undertaken by McCuneWright prior to the MDL, and then the firm's involvement in the settlement process are all taken into account, this is an eminently reasonable quantity of time.

- ***McCuneWright is entitled to a fee enhancement because of the risk the firm undertook and the results that it achieved for the class***. (Part III(B), *infra*). McCuneWright undertook a significant risk by taking on a contingent case concerning a notoriously murky factual issue (fuel economy standards), in a field devoid of significant precedent, against a well-funded adversary that employed a large and highly skilled law firm to contest the claims. Unlike the vast majority of lawyers in this case, McCuneWright initiated this case prior to the EPA's settlement with the defendants and without the benefit of that prior government action upon which to piggyback. The firm invested significant amounts of its own money pursuing the class's claims without any promise the investment would pay off. The firm then helped settle the case without securing a fee for itself, risking this adversarial contest over its fee. While shouldering significant risk, the firm helped secure important monetary relief for the class – nearly $400 million of available relief in total, with individual awards ranging from hundreds to thousands of dollars. The legitimacy of this large settlement ultimately rests especially upon McCuneWright's unique adversarial efforts in this matter. These critical contributions support the requested 3 multiplier.

- ***McCuneWright's requested fee, when cross-checked as a percentage of the class's recovery, fits easily within the Ninth Circuit's 25% benchmark*** (Part III(C), *infra*). In common fund cases, class counsel are entitled to a percentage of the fund they created for the class**.** In the Ninth Circuit, 25% is the benchmark for such awards. This settlement did not create a formal fund and counsel is not taking a fee directly from their clients. Nonetheless, the 25% benchmark is a helpful guide in assessing the reasonableness of a fee request. The 25% benchmark can be viewed both in the aggregate and in regard to a bonus that McCuneWright's *Espinosa* class received in this settlement. In the aggregate, two factors make it difficult to identify the percentage of McCuneWright's request with precision: *first*, this case did not culminate with a fix fund; and *second*, McCuneWright's is not the only fee that defendants will pay. The first problem – putting a value on the relief – is easily addressed: the defendants themselves advertise the Hyundai and Kia settlements as being worth $210 million and $185 million, respectively. This means the full value of the two settlements nears $400 million. 25% of that would constitute $100 million. Although McCuneWright is not the only plaintiffs' counsel that defendants will pay, its $6 million request is such a minute portion of the $100 million/25% benchmark that there is little doubt that the firm's request, as its share of all fees defendants will pay, is well short of that benchmark. This is particularly evident in that McCuneWright is only one of two firms defendants agreed to pay through the Settlement Agreement and in that the firm undertook a significant portion of the work in these matters. That means

> that the defendants will likely pay far less than 25% of the value that they themselves put on the settlement to all of the plaintiffs' counsel combined and that each of those counsel's fee is therefore a reasonable percentage of the results obtained for the class. Moreover, the settlement provides an estimated minimum $40 million bonus to the *Espinosa* class because of the false advertising claims uniquely pursued in that matter. As McCuneWright alone pursued those claims, this $40 million is largely, if not exclusively, attributable to its work. That work alone renders a $10 million fee (25% of $40 million) reasonable; the requested $6 million fee is but 15% of the $40 million.

In sum, the rates and hours contained in McCuneWright's fee request are fully justified, as is the firm's entitlement to a fee multiplier, and, when cross-checked, the requested fee represents far less than 25% of the value the firm created for the class. The requested fee is, as the settlement agreement requires it must be, "reasonable."

I.
BACKGROUND AND QUALIFICATIONS[1]

2. I am the Sidley Austin Professor of Law at Harvard Law School. I graduated from Yale College, *magna cum laude*, in 1982 and from Harvard Law School, *magna cum laude*, in 1986. I clerked for the Hon. Stanley Sporkin in the U.S. District Court for the District of Columbia following my graduation from law school. Before joining the Harvard faculty as a tenured professor in 2007, I was a law professor at UCLA School of Law for a decade, and an adjunct faculty member at Harvard, Stanford, and Yale Law Schools while a litigator in private practice during the preceding decade. I am admitted to practice law in the Commonwealth of Massachusetts, the State of California, the Commonwealth of Pennsylvania (inactive), the District of Columbia (inactive), the U.S. Supreme Court, five U.S. Courts of Appeals, and four U.S. District Courts.

3. My principal area of scholarship is complex civil litigation, with a special emphasis on class action law. I am the author, co-author, or editor of five books and more than a

[1] My full c.v. is attached as Exhibit A.

dozen scholarly articles, as well as many shorter publications (a fuller bibliography appears in my c.v., Exhibit A). Much of this work concerns various aspects of class action law. I am the sole author of the leading national treatise on class action law, *Newberg on Class Actions*. For five years (2007-2011), I published a regular column entitled "Expert's Corner" in the publication *Class Action Attorney Fee Digest*. My work has been excerpted in casebooks on complex litigation, as noted on my c.v.

4. My expertise in complex litigation has been recognized by judges, scholars, and lawyers in private practice throughout the country for whom I regularly provide consulting advice and educational training programs. For the last five years, the Judicial Panel on Multidistrict Litigation has invited me to give a presentation on the current state of class action law at the annual MDL Transferee Judges Conference. The American Law Institute selected me to serve as an Adviser on a Restatement-like project developing the *Principles of the Law of Aggregate Litigation*. In 2007, I was the co-chair of the Class Action Subcommittee of the Mass Torts Committee of the ABA's Litigation Section. I am on the Advisory Board of the publication *Class Action Law Monitor*. I have often presented continuing legal education programs on class action law at law firms and conferences.

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

2001-2002 school year; and the John Bingham Hurlbut Award for Excellence in Teaching, as the best teacher at Stanford Law School during the 1996-1997 school year.

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

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

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

9. In analyzing these issues, I have discussed the case with the counsel who retained me. I have also reviewed documents from this and related litigations, a list of which is attached

as Exhibit B. I have also reviewed the applicable case law and scholarship on the topics of this Declaration.

II.
THIS LITIGATION[2]

10. Defendants Hyundai Motor America (hereafter "Hyundai") and Kia Motors America (hereafter "Kia") are wholly owned American subsidiaries of South Korean automobile manufacturers Hyundai Motor Company and Kia Motors Corporation (respectively), both of which, in turn, share a common parent, Hyundai Motor Group. Plaintiffs in this litigation allege, generally, that Defendants falsely advertised the fuel economy capabilities of many of their vehicles. Plaintiffs also allege that Defendants used inappropriate testing procedures to calculate the fuel economy capabilities of many of those vehicles.

11. Defendants deny these allegations.

12. McCuneWright LLP initially pursued these allegations against Hyundai by filing a putative class action in California state court on January 5, 2012, on behalf of named Plaintiff Kehlie Espinosa. The complaint alleged violations of California's Unfair Business Practices Act (Cal. Bus. & Prof. Code § 17200, *et seq.*), violations of California's False Advertising Laws (Cal Bus. & Prof. Code § 17500, *et seq.*), violations of California's Consumer Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*), and common law causes of action including fraud, negligent misrepresentation, and deceit.

13. Espinosa specifically alleged that she purchased a 2012 Hyundai Elantra in reliance upon Hyundai's advertisements that the Elantra would get 40 miles per gallon of

[2] The facts in this section are culled from the documents listed in Exhibit B.

gasoline, but that the Elantra she purchased in fact got substantially less than 40 miles per gallon of gasoline.

14. On January 30, 2012, Hyundai removed the case to the United States District Court for the Central District of California, where the case was assigned to this Court.

15. Over the next nine months, the parties adversarily litigated this matter:

- Plaintiff filed a First Amended Complaint on February 23, 2012.
- Hyundai filed a Motion to Dismiss the First Amended Complaint on March 12, 2012.
- After further briefing and oral argument, this Court denied Hyundai's Motion to Dismiss on April 24, 2012.
- On May 8, 2012, Hyundai filed its answer to the First Amended Complaint.
- From May 8, 2012 to October 26, 2012, the parties engaged in significant factual discovery.
- On August 1, 2012, Plaintiff filed her Second Amended Complaint.
- On August 23, 2012 Hyundai filed its answer to the Second Amended Complaint.
- Proposing three class representatives, Plaintiffs moved for class certification on September 14, 2012.
- The parties then engaged in class certification expert discovery
- Hyundai filed its opposition to class certification on October 26, 2012.

16. On November 2, 2012, Hyundai and Kia published a joint press release detailing a voluntary program to adjust fuel economy ratings on select Hyundai and Kia vehicles (including the Hyundai Elantra). The program followed an audit undertaken by the federal Environmental Protection Agency (EPA). In its audit, the EPA had found that Hyundai and Kia made procedural errors during the "coast down" testing portion of its fuel economy tests. By

agreement with the EPA, Hyundai and Kia both adjusted their fuel economy ratings and established reimbursement programs for purchasers of affected vehicles.

17. Following the November 2, 2012 press release, Hyundai and Kia drivers filed a flood of lawsuits throughout the United States against the companies.

18. On February 6, 2013, the Judicial Panel on Multidistrict Litigation established a multi-district litigation (MDL) in this Court, entitling it, *In Re: Hyundai and Kia Fuel Economy Litigation*, MDL No. 2424, and ordering this Court to conduct consolidated pre-trial proceedings in these matters. The JPML's original order centralized 12 actions here. The Panel's website reports that as of November 17, 2014, 56 cases in total have been consolidated through this MDL.

19. One of those consolidated cases was the previously-pending *Espinosa* matter. In its original order, the Panel noted that *Espinosa* was more procedurally advanced than any of the other cases and that, because it was filed before the Defendants' press release, its core claims were distinguishable from those of the post-announcement cases. The JPML nonetheless included *Espinosa* in the MDL, and, indeed, cited *Espinosa* as one of the reasons to centralize the fuel economy MDL in this court ("By presiding over *Espinosa* for over a year, Judge Wu has become familiar with the contours of this litigation and is uniquely situated to steer this litigation on a prudent course.").

20. Shortly after the November 2012 announcement of the EPA audit, and prior to the formation of the MDL, lawyers from Hagens Berman Sobol Shapiro LLP (hereafter "Class Counsel"), began settlement negotiations with Hyundai. McCuneWright joined those negotiations in January 2013. Plaintiffs reached an agreement in principle with Hyundai after a formal mediation session on February 14, 2013. Plaintiffs reached an agreement in principle

with Kia after a formal mediation session on March 21, 2013. This Court appointed a Liaison Counsel for the non-settling plaintiffs. Over the next eight months, as part of the confirmatory discovery process overseen by this Court, Liaison Counsel and Class Counsel interviewed 11 witnesses, reviewed more than 28,000 documents, and inspected Hyundai Motor Group's test track facility in Namyang, South Korea

21. On December 23, 2013, the settling parties – McCuneWright LLP for the *Espinosa* Plaintiffs, Hagens Berman Sobol Shapiro LLP for their own plaintiffs in the so-called *Hunter* and *Brady* actions, Hyundai, and Kia — announced a formal Settlement Agreement and moved for preliminary approval of said Settlement Agreement. The agreement provides plaintiffs monetary and injunctive relief. The monetary, lump sum, payments range between $90 and $1,420. The average lump sum payments will be approximately $353 to Hyundai customers $667 to Kia customers. Because of the claims-made nature of the Settlement Agreement, and because some customers will opt for options other than lump sum payments, the exact value of the Settlement Agreement is not known. However, the defendants issued media releases announcing that the value of Hyundai's portion of the Settlement Agreement is approximately $210 million and Kia's portion approximately $185 million.

22. Most of the plaintiffs from related actions have voiced their support for the proposed settlement, although several others opposed it.

23. After considering those objections and suggesting changes to the proposed settlement, on August 29, 2014, this Court granted preliminary approval to the settlement. The Court has scheduled a fairness hearing for June 11, 2015.

III.
COUNSEL'S $6 MILLION FEE REQUEST IS REASONABLE

24. Class counsel are typically paid one of two ways in class action lawsuits:

- If a ***common fund*** is created, class counsel are entitled to a ***percentage*** of that fund and are thus reimbursed for their services by their clients. The Ninth Circuit has held that 25% is the benchmark percentage-of-the-fund fee award in this Circuit.[3] The 25% benchmark is a "starting point" – higher or lower percentages may be appropriate based on all the circumstances in a given case.[4] A court may consider counsel's lodestar – their hours multiplied by their hourly rates – as a "***lodestar cross-check***" on the reasonableness of a given percentage award.[5]

- In the absence of the creation of a common fund, a defendant might be liable for the plaintiffs' fees under ***fee shifting statutes*** that entitle a prevailing party to fees paid by its adversary. Courts typically utilize a ***lodestar*** (or hourly) approach to fee-shifting awards. A court may consider how counsel's requested lodestar award compares to the value of the settlement achieved for the class, thereby undertaking a "***percentage cross-check***" in a lodestar case,[6] though such a check is not appropriate in all lodestar cases.[7]

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[3] *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-48 (9th Cir. 2002).

[4] *Id*. at 1048.

[5] *Id.* at 1050.

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

[7] Percentage cross-checks are often unhelpful because courts may employ the lodestar fee approach precisely because a percentage approach would be inapplicable. Indeed, many fee-shifting cases yield non-monetary relief, making a percentage cross-check impossible. Even if a class does recover money, monetary relief may be nominal and hence counsel's lodestar can outstrip the amount of recovery that the class receives. In *City of Riverside v. Rivera*, 477 U.S. 561 (1986), for example, the Supreme Court affirmed a fee award of $245,456.25 for counsel who had recovered $33,350 in damages. Had a percentage cross-check been undertaken, it

In either circumstance, class counsel is entitled to apply for a fee "multiplier," that is, an award greater than their hourly rate; fee multipliers acknowledge the risks counsel take in pursuing their clients' cases on a contingent fee basis, and, if the results warrant it, entitle counsel to a fee greater than their hourly rate.[8]

25. Regardless of whether the percentage or lodestar method is used, "the critical inquiry is whether the fees and expenses ultimately awarded [are] reasonable in relation to what the plaintiffs recovered."[9] Courts in the Ninth Circuit have established a non-exhaustive list of factors to determine the reasonableness of a fee request, including: "(1) the results achieved; (2) the risk involved in the litigation; (3) incidental or nonmonetary benefits conferred by the litigation; and (4) financial burden of the case on counsel."[10]

26. In this case, the parties have agreed to fee by contract, with the settlement agreement stating that the defendants will pay "reasonable attorneys' fees" subject to this Court's

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would have shown the lodestar to be 88% of the defendant's total payout (the damages and fees combined). Thus, percentage cross-checks are sometimes unhelpful in that the numbers they yield may not be pertinent to the questions of whether the amount of time counsel expended, and the billing rates they employed, are in the realm of reason.

[8] *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011) ("Though the lodestar figure is presumptively reasonable, the court may adjust it upward or downward by an appropriate positive or negative multiplier reflecting a host of "reasonableness" factors . . .") (internal citation omitted). The rationale for multipliers is set forth in greater detail below. *See* ¶¶ 35, *infra.*

[9] *Koumoulis v. LPL Financial Corp.*, 2010 WL 4868044 at *5 (S.D. Cal. Nov. 19, 2010) (quoting *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000)).

[10] *In re Hydroxycut Mktg. & Sales Practices Litig.*, 2014 WL 6473044, at *9 (S.D. Cal. Nov. 18, 2014) (citing *Vizcaino*, 290 F.3d at 1049-50).

approval. Thus, the parties' contract leaves it to this court's discretion to determine what fee is reasonable.[11]

27. In the following three sections, I examine the reasonableness of McCuneWright's $6 million request in light of both quantitative and qualitative factors: the first section (Part III(A), *infra*) examines McCuneWright's lodestar, assessing both the hourly rates that are employed and the number of hours charged; the second section (Part III(B), *infra*) examines the firm's entitlement to a multiplier by considering the risks the firm undertook and the rewards it garnered for the class; and the third section (Part III(C), *infra*) undertakes a percentage cross-check, examining the requested fee as a percentage of the settlement's value. Together, the three sections attest to the reasonableness of the requested $6 million fee.

(A)
The Requested Lodestar Rates and Hours Are Reasonable

The Requested Rates Are Reasonable

28. The *Manual for Complex Litigation* states:

> What constitutes a reasonable hourly rate varies according to geographic area and the attorney's experience, reputation, practice, qualifications, and customary charge. The rate should reflect what the attorney would normally command in the relevant marketplace.[12]

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

[12] FEDERAL JUDICIAL CENTER, MANUAL FOR COMPLEX LITIGATION, FOURTH, § 14.122 (2004) (hereafter "*Manual for Complex Litigation*") (citing *Blum v. Stenson*, 465 U.S.886, 895 (1984) ("'[R]easonable fees' . . . are to be calculated according to the prevailing market rates in the relevant community . . . ."); *Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167 (3d Cir. 1973)).

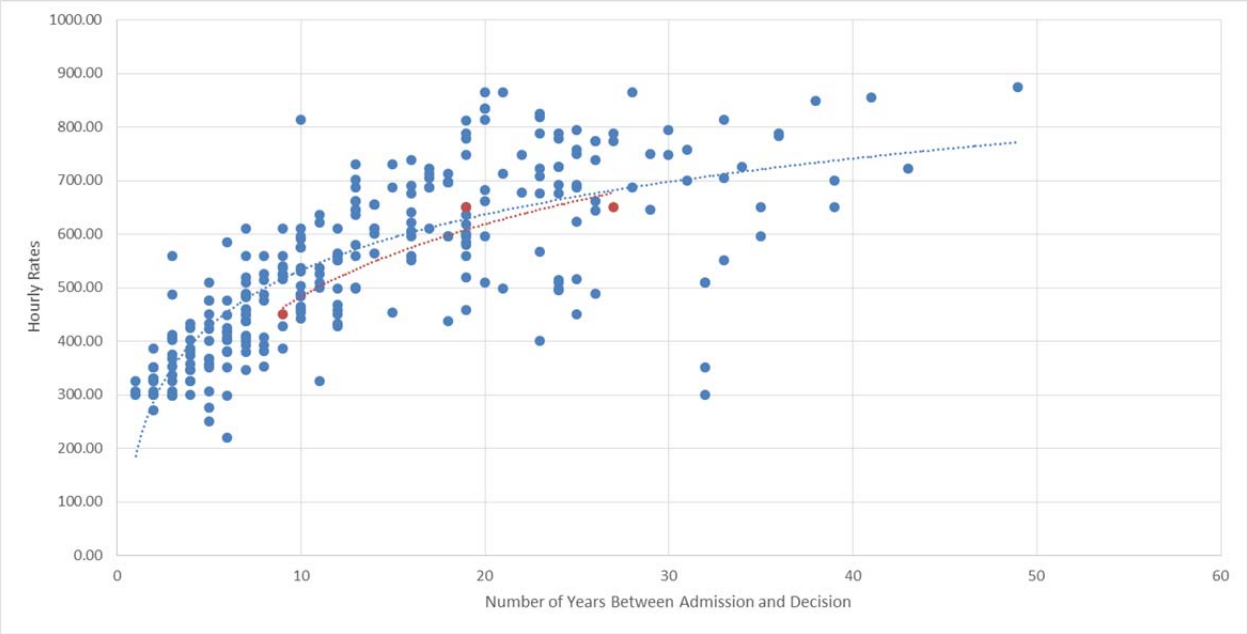
Four data points demonstrate the reasonableness of the requested rates: a comparison of the rates sought to the rates approved by courts in the Central District in the past few years (¶ 29, *infra*); a comparison of the firm's blended lodestar to rates approved by courts in the Central District in the past few years (¶ 30, *infra*); a comparison of the rates in this case to the rates that Central District courts have approved in two prior cases involving one of these very defendants, Hyundai, in the past five years (¶ 31, *infra*); and finally, a comparison of the rates sought to the rates charged by defendants' own chosen counsel (Quinn Emmanuel) in other matters (¶ 32, *infra*).

29. For purposes of this Declaration, I searched for reported Central District of California decisions that approve specific fee rates in class action cases in the past five years. My searches identified 16 such decisions, which are listed in Exhibit C. These 16 decisions affirm 280 individual hourly rates. I adjusted all these rates to 2014 dollars using the American Institute for Economic Research's cost-of-living calculator.[13] Once the dollars were all set at 2014 levels, I plotted the rates on an x-y axis, with the x-axis representing the years out of law school (or from admission to the bar) and the y-axis representing the hourly rate. The resulting scatter plot, set forth in Graph 1, below, provides a graphic picture of recent fee rates in the Southern California area. Onto that scatter plot, I then placed the rates sought by the three time-keeping counsel in this case, represented as red circles (from left to right, these are: Jae (Eddie) K. Kim (admitted 2005, 9 years out): $450; Elaine S. Kusel (admitted 1995, 19 years out): $650; Richard D. McCune (admitted 1987, 27 years out): $650). As the Court can see, the McCuneWright rates (represented by the red dots and red logarithmic trendline) are fully within

[13] This can be found at: https://www.aier.org/cost-living-calculator.

– typically below – the court-approved rates (represented by the blue dots and the blue logarithmic trendline). In other words, the fees are completely standard.

GRAPH 1
PREVAILING HOURLY RATES IN SOUTHERN CALIFORNIA

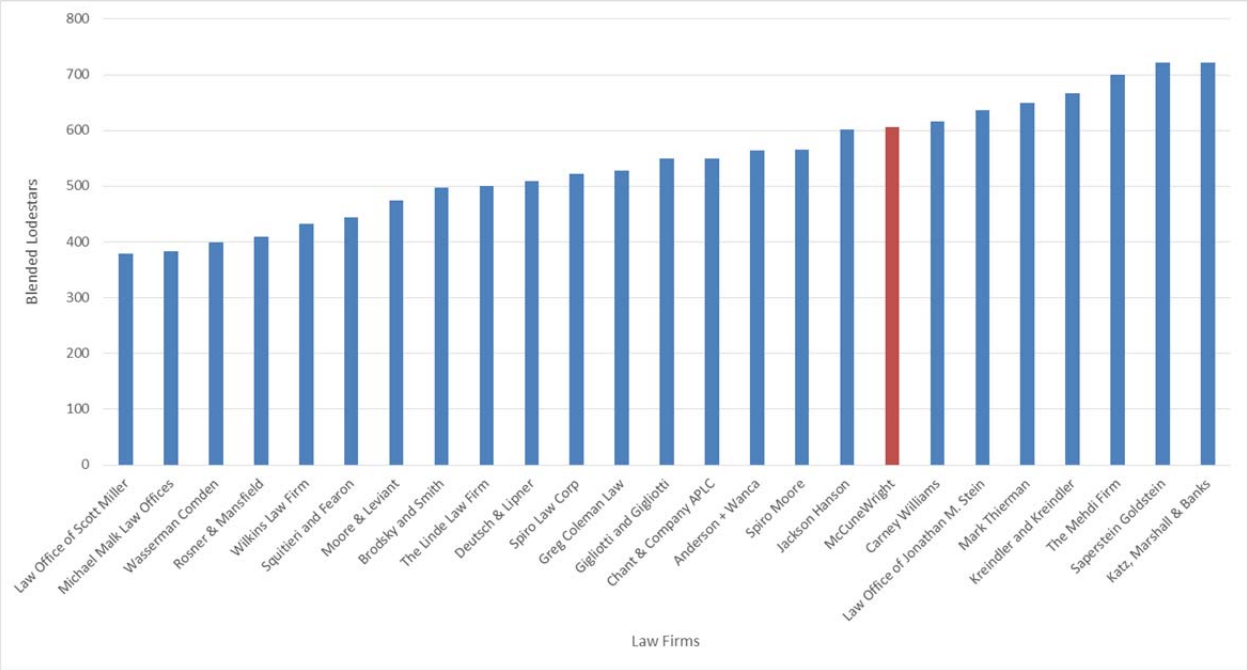


30. In addition to assessing the hourly rates of each lawyer, I also review the blended lodestar rate of the McCuneWright firm. The "blended lodestar" is calculated by taking the total fee sought and dividing it by the total number of hours of all of the time-keepers (partners, associates, paralegals, etc.) in the case; it gives a snapshot of the lodestar level of the full firm. I reviewed the blended lodestar here (approximately $600/hr) by comparing it to firms of comparable size in other relevant cases. Specifically, I utilized the blended billing rates of firms in the 16 cases identified in the preceding paragraph where the firm billed three or fewer professionals to the case; this is a total of 24 blended rates.[14] The blended lodestar rate (again

[14] I limited the sample to firms billing three or fewer professionals because I used that measurement as a rough proxy of the firm's actual size. I compared McCuneWright's blended

adjusted to 2014 dollars) in these cases ranges from a low of $383/hr to a high of $721/hr. This is reflected in the following Graph 2, below, with the McCuneWright requested fee highlighted in red.

GRAPH 2
BLENDED LODESTARS IN RECENT CENTRAL DISTRICT FEE APPROVALS



As is visually evident, the requested blended lodestar rate is higher than the median (by about 10%, at $606 compared to $550), but nonetheless comfortably within the range of rates approved by courts in the Central District in the past few years.

31. In two recent cases in the Central District, courts have overseen class action fee awards in matters involving defendant Hyundai. In one of the cases, class counsel and Hyundai

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lodestar to firms of similar size because the mix of partner, associate, and paralegal time is most likely comparable across such firms, making the blended lodestar comparisons more relevant. For purposes of the blended rate analysis, I omitted the results from one case where the firm's billing rates were inexplicably low. *See Vandervort v. Balboa Capital Corp.*, 8 F.Supp.3d 1200, 1210 (C.D. Cal. 2014) (reporting rates between $300-$400 for lawyers with more than 20 years of experience).

agreed, through mediation, upon an amount of fees that class counsel would seek and that Hyundai would not oppose; [15] in the second case, the fee petition was contested.[16] In graph 3, below, I plot the Central District-approved rates in these earlier Hyundai cases on the same x-y axis that I had used to compare the McCuneWright rates to rates approved in the Central District in the last five years (in Graph 1, above). The rates approved in the earlier Hyundai cases, and the logarithmic trendline joining them, are in blue. Onto that scatter plot, I then placed the rates sought by the three time-keeping counsel in this case, represented as red circles and a red logarithmic trendline. As the Court can see, the rates that McCuneWright seeks from the defendants in this matter are fully consistent with the rates that Courts in the Central District have approved in the recent prior Hyundai cases. These data further testify to the reasonableness of McCuneWright's rates.

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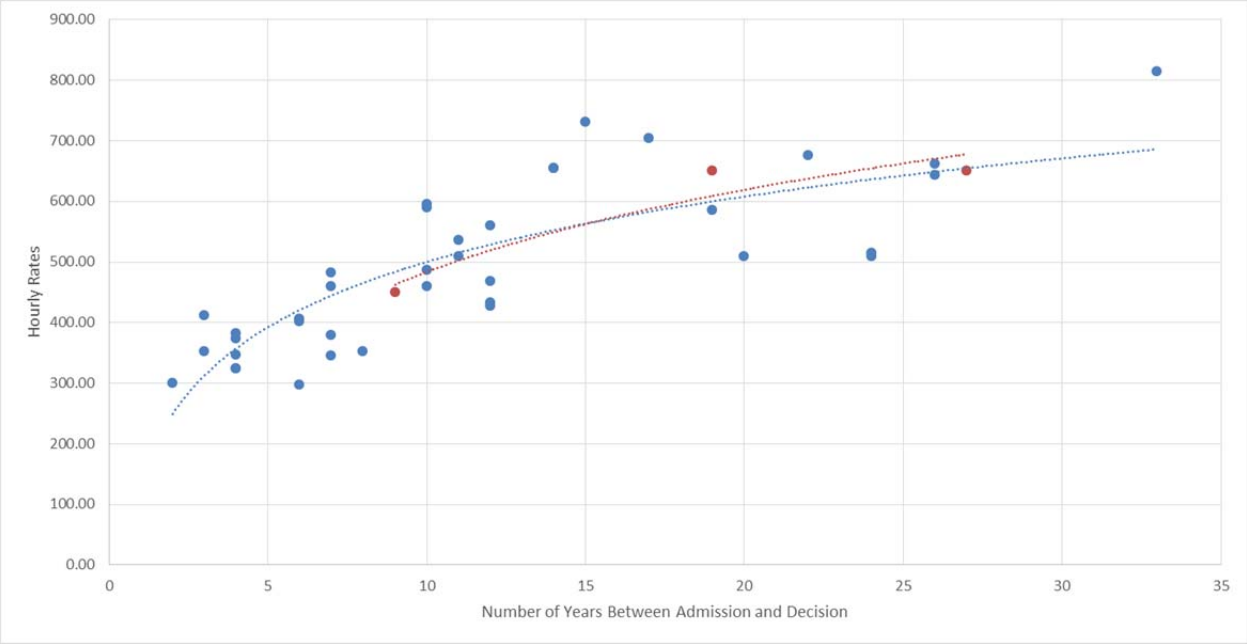
[15] *Kearney v. Hyundai Motor America*, 2013 WL 3287996, at *7 (C.D. Cal. June 28, 2013).

[16] *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160 (C.D. Cal. 2010). I was class counsel's expert witness in the *Parkinson* case.

GRAPH 3
McCUNEWRIGHT'S RATES COMPARED TO RATES APPROVED IN RECENT CENTRAL DISTRICT CASES INVOLVING HYUNDAI



32. A final set of data that support the rates employed here are the rates charged by defendants' own counsel – Quinn Emmanuel – in similar circumstances.[17] Specifically, I have culled data on rates that Quinn Emmanuel charges from two fee affidavits that the firm submitted to federal courts in 2014.[18] Both cases were antitrust class actions in which Quinn Emmanuel

[17] The Ninth Circuit has cautioned that in considering an adversary's rates, a court should ensure that such rates are relevant, that is, that they are rates for the same type of work and are rates that have not been discounted for other reasons. *See Trevino v. Gates*, 99 F.3d 911, 925 (9th Cir. 1996). The Quinn Emmanuel rates considered here – billed for plaintiff class action work and represented to courts as the normal rates the firm bills to private clients, as discussed in the succeeding text and notes – meet the relevancy test.

[18] *See* Declaration of Stephen R. Neuwirth, Esq. in Support of Plaintiffs' Application for An Award of Attorneys' Fees and Reimbursement of Expenses, *Marchbanks Truck Service, Inc. v. Comdata Network, Inc*., 2:07-cv-01078-JKG (E.D. Pa.) (DE 707-3) (filed May 5, 2014) (hereafter "*Neuwirth* Marchbanks *Declaration*); Declaration of Stephen R. Neuwirth, Esq. in Support of Class Counsels' Application for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Quinn Emmanuel Urquhart & Sullivan, LLP, *Four in One Company, Inc. v. SK Foods, L.P., et al.*, 2:08-cv-03017-KJM-EFB (E.D. Ca.) (DE 224-3) (filed March 10, 2014) (hereafter "*Neuwirth* Four in One *Declaration*).

served as co-counsel for a plaintiff class and in both cases the firm submitted its billing rates in support of a motion seeking judicial approval of a fee request. The firm represented that the hourly rates it used in those cases "are the usual and customary standard hourly rates charged by Quinn Emmanuel to clients for these services in non-contingent matters."[19] I therefore assume that the Quinn Emmanuel rates charged to the classes in these 2014 class action settlements are similar to the rates charged for defending non-contingent clients in this class action. In graph 4, below, I plotted the Quinn Emmanuel rates on the same x-y axis that I had used to compare the McCuneWright rates to rates approved in the Central District in the last five years (in Graph 1, above).[20] The Quinn Emmanuel rates, and the logarithmic trendline joining them, are in green. As the Court can see, the Quinn Emmanuel rates are far higher than both the rates regularly approved in the Central District in the past five years (blue dots and blue logarithmic trendline) and the rates that McCuneWright seeks from the defendants in this matter (red dots and red logarithmic trendline). These data further testify to the reasonableness of McCuneWright's rates.

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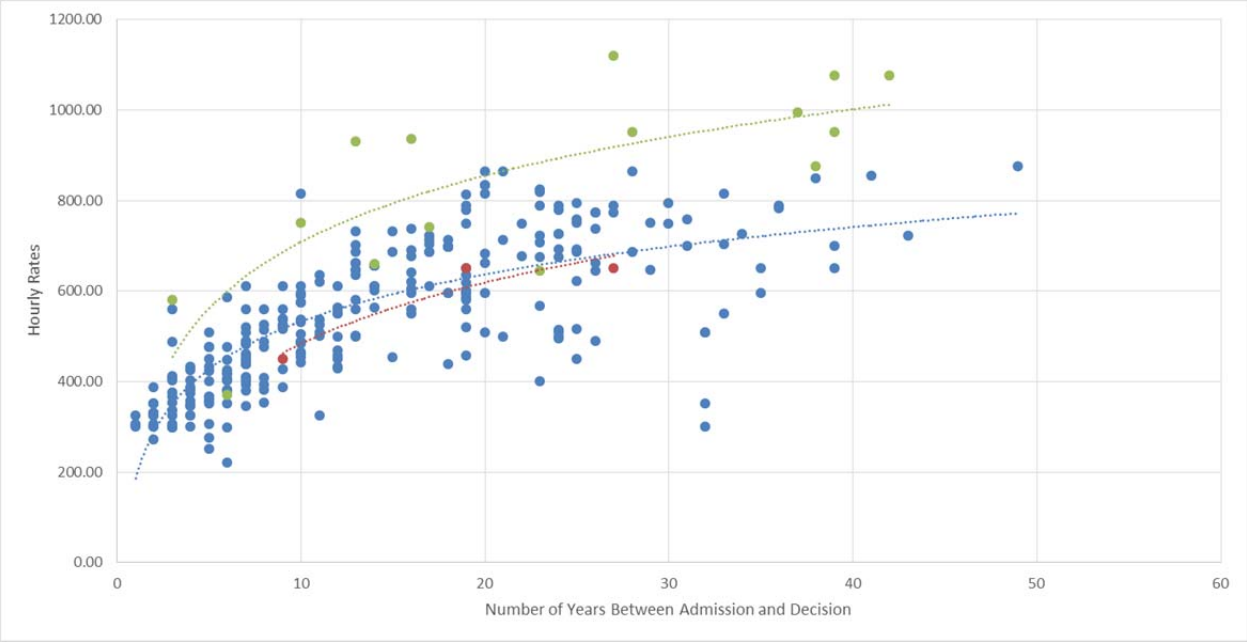
[19] *Neuwirth* Marchbanks *Declaration, supra* note 18, at 5. *See also Neuwirth* Four in One *Declaration, supra* note 18, at 6 ("The hourly rates for the partners, attorneys and professional support staff in my firm included in Exhibit 1 are the same as the usual and customary hourly rates charged for their services in complex litigation").

[20] As the documents reflected different rates for attorneys in different time periods, and some of the attorneys had subsequently left the firm, I utilized only the most recent rates and only rates for those attorneys still at the firm.

GRAPH 4
McCUNEWRIGHT'S RATES COMPARED TO QUINN EMMANUEL RATES



The Hours Expended Are Reasonable

33. Counsel are entitled to be compensated for reasonable time spent at all points in the litigation. Courts are cautioned to avoid engaging in an "*ex post facto* determination of whether attorney hours were necessary to the relief obtained."[21] The issue "is not whether hindsight vindicates an attorney's time expenditures, but whether at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures."[22]

34. McCuneWright's involvement in these cases dates back to its initial filing of a state court action on January 6, 2012. Given the research that preceded the filing of that

[21] *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992), *cert. denied*, 506 U.S. 1053 (1993).

[22] *Id. Accord League of Residential Neighborhood Advocates v. City of Los Angeles,* 633 F. Supp. 2d 1119, 1133 (C.D. Cal. 2009) (noting that brief quoted language of Second Circuit decision and approving time expended).

complaint, this means that the firm has been working on these matters for three full years. In that time, the firm has logged about 3,000 of time, or 1,000 hours/year. 1,000 hours/yr is, roughly speaking, about the number of hours of one lawyer working on this case for half of her time each year for three years. A review of all of the various aspects of McCuneWright's work in this case supports the conclusion that these would (easily) have kept one lawyer busy for half of her time for 3 years. These activities included:

- Initially learning about the fuel economy issue and undertaking all the factual investigation required to substantiate filing a complaint in court;
- Linking that factual investigation to the proper legal claims by researching relevant legal precedents under California and federal law;
- Meeting with the clients and securing retainer agreements with them;
- Preparing, filing, and serving an initial complaint;
- Responding, successfully, to an initial motion to dismiss the case;
- Undertaking initial discovery, "pursuant to which plaintiffs reviewed more than thirty thousand pages of written documents;"[23]
- Research, drafting, filing, and serving a second amended complaint;
- Research, drafting, filing, and litigating a motion for class certification;
- Identifying experts and working with the experts to produce expert reports in conjunction with the class certification motions, including taking and defending expert depositions;
- Defending the class representatives depositions in conjunction with the class certification motion;
- Arguing the class certification motion before this Court;

[23] Dec. of Richard D. McCune in Support of Joint Motion for Preliminary Approval of Class Settlement 3 ¶ 8 (DE 185-4).

- Undertaking supplemental briefing of the class certification motion;
- Engaging in extensive settlement negotiations, including the full-day mediation sessions leading to settlement terms;
- Participating in extensive confirmatory discovery "which consisted of review of thousands of additional documents and taking the lead on half of the interviews with key employees of [the defendants] in the U.S. and in Korea;"[24]
- Helping transform the settlement terms into a final settlement agreement;
- Assisting in shepherding the settlement agreement through a contested preliminary approval process;
- Assisting in obtaining final approval of the settlement.

This partial list substantiates the conclusion that the firm's 1,000 hours/year of time billed to this case is reasonable.

(B)
A Lodestar Enhancement is Appropriate

35. Courts often award class action attorneys a multiplied fee award to take account of the contingent nature of their provision of legal services. Class action attorneys serve a critical social function in pursuing legal claims worth less than the cost of litigation (so-called "negative value claims"),[25] a function captured by the title "private attorneys general."[26] Fees are what incentivizes an attorney to set up an entire legal practice around the pursuit of such negative value claims. Yet if the contingent fee attorney were only paid at her hourly rate, she would have no incentive to invest her time and money in a clients' case – she would take the far

[24] *Id.*

[25] For a discussion, see William B. Rubenstein, *Why Enable Litigation? A Positive Externalities Theory of the Small Claims Class Action*, 74 U.M.K.C. L. REV. 709 (2006).

[26] For a discussion, see William B. Rubenstein, *On What a "Private Attorney General" Is – And Why It Matters*, 57 VAND. L. REV. 2129 (2004) [hereafter "*Private Attorney General*"].

less risky path of representing clients who could presently pay her on an hourly basis, as most defendant's counsel are paid. The California Supreme Court has summarized the point by quoting two commentators:

> A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.[27]
>
> A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.[28]

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

> [C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases. This mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases. In common fund cases, attorneys whose compensation depends on their winning the case must make up in compensation in the cases they win for the lack of compensation in the cases they lose.[29]

36. Counsel's requested multiplier of approximately three times its lodestar is consistent with multipliers courts approve in appropriate circumstances.

- The Ninth Circuit, in the case that established 25% as the bench mark percentage fee, approved a multiplier of 3.65, writing that this number "was within the range

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[27] *Ketchum v. Moses* 17 P.3d 735, 742 (Cal. 2001) (quoting RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 534, 567 (4th ed.1992))

[28] *Id.* (quoting (John Leubsdorf, *The Contingency Factor in Attorney Fee Awards* 90 YALE L.J. 473, 480 (1981)).

[29] *Vizcaino*, 290 F.3d at 1051 (internal quotations and citations omitted).

of multipliers applied in common fund cases"[30] and appending a list of such cases to its decision.

- The three leading empirical studies of class action attorney's fees found the mean multipliers in all cases to be 1.65,[31] 1.81,[32] and 4.97.[33]

- These studies also show that multipliers are higher in cases with larger returns, such as this case, with the mean multipliers rising (in cases with recoveries greater than $175.5 million) to 3.18 in one study[34] and (in cases with recoveries greater than $100 million) to 6.20 in another study.[35]

- Beyond these statistics, case reports demonstrate that, in appropriate cases, courts have often approved percentage awards embodying lodestar multipliers in the range sought here. In Exhibit D, I provide a list of 54 cases with multipliers over

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[30] *Vizcaino*, 290 F.3d at 1051. *See also Dyer v. Wells Fargo Bank, N.A.*, No. 13-CV-02858-JST, 2014 WL 5369395, at *6 (N.D. Cal. Oct. 22, 2014) ("A 2.83 multiplier falls within the Ninth Circuit's presumptively acceptable range of 1.0–4.0. Given the complexity and duration of this litigation, the results obtained for the class, and the risk counsel faced in bringing the litigation, the Court finds the 2.83 multiplier appropriate.") (internal quotations and citations omitted).

[31] Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811, 833-34 (2010). These multiplier cases include those using POF *with* a lodestar cross-check, *i.e.* no pure lodestar cases included.

[32] *See* Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIRICAL LEGAL STUD. 248, 272 (2010) [hereafter "Eisenberg & Miller II"]. This multiplier data set excludes those cases that report a multiplier of 1. It is unclear if that data set includes only POF cases with lodestar cross-check, or also pure lodestar cases.

[33] Stuart J. Logan, Beverly C. Moore & Jack Moshman, *Attorney Fee Awards in Common Fund Class Actions*, 24 CLASS ACTION REP. 167, 169 (2003) [hereafter "Logan"]. This multiplier data set includes cases that only utilized a POF method for calculating fees. The study is unclear on how it calculated multipliers these cases, as these did not include cases that applied a mixed lodestar-percentage method.

[34] *Eisenberg & Miller II*, *supra* note 32, at 274 (reporting on 33 cases with recoveries greater than $175.5 million).

[35] *Logan*, *supra* note 33, at 170 (reporting on 35 cases with recoveries of $100 million or higher).

3.5, 48 of which have multipliers of 4 or more, and 31 of which have multipliers of 5 or more.[36]

The requested multiplier is therefore above the mean for *all* cases but consistent with the mean for *large* cases and fully within the range of approved multipliers in the Ninth Circuit and elsewhere.

37. As courts will award a multiplier of 3 in appropriate circumstances, the sole question is whether counsel's work in *this* case justifies this multiplier. That inquiry focuses in on the risks counsel took and the results that they achieved for the class.[37]

The Risks Counsel Undertook

38. Six points demonstrate the riskiness of this matter.

39. ***Risk 1: McCuneWright was the first-mover***. Many lawyers are currently involved in these cases but almost all only became involved after the EPA's audit was disclosed. McCuneWright filed its lawsuit nearly a year earlier and its case was the only lawsuit filed and

[36] This list is not meant to be either exhaustive or representative of all multipliers. Rather, the list demonstrates that courts approve percentage awards that embody multipliers in the range of the multiplier sought here in appropriate circumstances.

[37] *See, e.g., In re Ferrero Litig.*, No. 12-56469, 2014 WL 3465685, at *1 (9th Cir. July 16, 2014) (identifying "multiplier factors" as the "contingent representation or quality of work"); *In re Bluetooth.*, 654 F.3d at 941-42 ("Though the lodestar figure is presumptively reasonable, the court may adjust it upward or downward by an appropriate positive or negative multiplier reflecting a host of "reasonableness" factors, including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment. Foremost among these considerations, however, is the benefit obtained for the class.") (internal quotations and citations omitted); *Wing*, 114 F.3d at 988-89 (affirming district court multiplier decision that "considered a variety of factors, including the risk the plaintiffs' attorneys took in taking the case on a contingency basis, the quality of the [defendant] opposition, the ongoing and continuing responsibilities class counsel would have in the case, the quality of the work of class counsel, and the results obtained").

litigated before the EPA audit disclosure.[38] Moreover, in that year, McCuneWright poured money into actually engaging in significant adversarial litigation. The risks it took are far greater than any other firm involved in this matter.

40. ***Risk 2: McCuneWright filed before the EPA audit, so for it, the case was novel, not piggy-backing***. Fuel economy standards are not the subject of significant quantities of litigation; I could identify only one other MDL on point[39] and almost no reported cases. McCuneWright has been involved in automobile defect cases before this one, but the specific issues in this case were as novel to it as to American law generally. The novelty and skill required becomes evident when this case is compared to a standard contingent fee case, even a complex class action matter. Many contingent fee lawyers specialize in particular types of harms, a practice that enables them to significantly lower their investment in each new case. An asbestos lawyer, for example, has done many asbestos cases in the past; while the facts of asbestos itself may be difficult to learn for the first case, these facts are generally the same for the hundredth or thousandth case, varied only by the particular client's specific situation. Often, the lawyers can therefore re-use information, pleadings, parts of briefs, etc. from prior actions. These same attributes characterize the class action bar – most class actions involve single events or types of injuries, many lawyers specialize, and thus many cases, even those involving millions

[38] An action was filed in California state case some months after *Espinosa*, but my review of the Docket in that action shows that little or no adversarial activity took place in it through the EPA audit disclosure. *See Bird v. Hyundai Motor America*, Case Number 34-2012-00127249-CU-BT-GDS, California Superior Court (filed July 3, 2012).

[39] *In re Ford Fusion & C-Max Fuel Econ. Litig.*, 949 F. Supp. 2d 1368, 1369 (U.S. Jud. Pan. Mult. Lit. 2013) (centralizing cases concerning "the marketing, sale and advertising of the mileage estimates of Ford Fusion Hybrid and C–Max Hybrid vehicles" in the Southern District of New York before Judge Karras).

of claimants and hundreds of millions of dollars, can be done relatively efficiently and with some work product borrowed from earlier efforts. Further, many class actions are brought on the heels of government enforcement actions, such as class actions that follow SEC enforcement actions or Department of Justice anti-trust actions.[40] In such "piggy-back" cases, the class lawyers can often employ issue preclusion to estop the defendants from re-litigating liability;[41] all they must do, therefore, is litigate damages for the class.[42] In fact, that characterization applies to some extent to many of the lawyers that filed cases here following the EPA audit – but not to McCuneWright. Its initial case piggy-backed on nothing. The firm was required to master the details of this novel area from scratch. It should be especially rewarded for its investment in such a novel case precisely so as to encourage class action attorneys to do more than simply invest in cases following on government enforcement actions.

41. ***Risk 3: For McCuneWright, the case was riskier than a standard contingent fee case***. Not only did McCuneWright not follow on a government enforcement action, it tackled a new area of law where the possibilities of a quick settlement were unlikely. The vast majority of lawsuits settle. A lawyer bringing a basic contingent fee tort case has a high likelihood of assuming the case will settle. Class action lawsuits that survive motions to dismiss or class certification fall into the same category, as do cases brought on the heels of government enforcement actions. At the outset of this case, McCuneWright had no way of knowing that the

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[40] *See* Rubenstein, *Private Attorney General, supra* note 26, at 2150-152 (describing practice of "piggy-back" cases and analyzing extent of such practices).

[41] *See Parkland Hosiery v. Shore*, 439 U.S. 322 (1979).

[42] This is not to suggest that piggy-back cases lack value: the private class actions often secure compensatory relief for injured parties, where the government actions upon which they are based may have achieved only deterrent relief in the form of fines or injunctions. *See* Rubenstein, *Private Attorney General, supra* note 26, at 2150-153.

EPA would audit the defendants nor that the audit would substantiate the claims in the complaint. The firm invested in a far riskier proposition in pursuing this case than many class action lawyers do in joining in on-going cases or matters that are, from the start, likely to settle.

42. ***Risk 4: McCuneWright invested millions of dollars in this case***. McCuneWright's team worked nearly 3,000 hours on this case, generating a lodestar of about $2 million. In addition to that, McCuneWright had out-of-pocket expenses totaling approximately $100,000. What this means, quite simply, is that McCuneWright loaned the class about $2 million of its money. The firm risked losing all of that money on the outcome of this case and invested much of it when the case's outcome was uncertain.

43. ***Risk 5: McCuneWright bore the initial risk of this case itself***. In most class action matters, particularly of this magnitude, the class is represented by a collection of plaintiffs' firms.[43] This means that the lawyers are able to spread the risk among the various firms. McCuneWright single-handedly shouldered the initial risk in this complicated, novel, and expensive matter.

44. ***Risk 6: McCuneWright was precluded from taking other, simpler, paying work by virtue of its investment in this matter***. Given the amount of time McCuneWright invested here, there is little doubt that this case precluded the firm from working on others. The firm could have invested in other cases with easier returns, such as this case became after the EPA

[43] *See, e.g.*, *Manual for Complex Litigation*, *supra* note 12, at § 10.22 (discussing presence of multiple counsel in complex litigation and advising judges on how to manage); Judith Resnick et al., *Individuals Within the Aggregate: Relationships, Representation and Fees*, 71 N.Y.U. L. REV. 296, 321 n.74 (1996) (describing a class action "in which some 60 firms are reportedly involved").

audit, as evidenced by the flood of law firms that filed at that point. McCuneWright chose to invest its money in a risky, not safe, matter.

45. These six points demonstrate what seems incontestable: McCuneWright took significant risk in being the sole first-mover in this non-piggy-back, unique case *before* the EPA audit, investing its capital and labor in significant early adversarial litigation without the promise of any easy return on its investment. Like any investor that takes large risks, these risks entitle the firm to a higher-than-average rate of return on their investment – but only if the risks it took paid off. I will now turn to that analysis.

The Results Counsel Achieved

46. The most important factor in determining a fee award is the result counsel achieved, the value they produced for their clients.[44] Seven components of this situation's outcome speak to the results McCuneWright obtained in this matter – three concern the settlement generally, four concern McCuneWright's unique contributions.

47. ***Result 1: Counsel obtained significant monetary relief for the class***. The defendants characterize this settlement as being worth nearly $400 million. This is an enormous amount of money made available to the class. Moreover, the size of each class member's recovery is not insubstantial – "eligible class members receive benefits worth hundreds and sometimes thousands of dollars."[45]

48. ***Result 2: Many class members are likely to take advantage of the relief offered***. The claiming process in this case is relatively straightforward and provides class members with a

[44] *In re Bluetooth*, 654 F.3d at 942 (characterizing "the benefit obtained for the class" as the "foremost" consideration in the multiplier analysis).

[45] Reply in Support of Plaintiff's Motion for Preliminary Approval (DE 253) at 11 (hereafter "Preliminary Approval Reply Brief").

number of options so that they may select one most suited to their particular needs.[46] Although the settlement is a claims-made settlement, the nature of the relationship of the car owners to the car dealers and the particular forms of relief offered suggest that claiming should be more significant than in a run-of-the-mill consumer claims-made settlement.[47] Class Counsel report that "more than half of the class is estimated to be participating"[48] in the defendants' Reimbursement Program, which this settlement augments. If but 10% of the available $400 million settlement monies are claimed, the class will have garnered tens of millions of dollars of relief.

49. ***Result 3: The relief was achieved in a short time frame, although the firm jumped into a complex factual and legal setting***. McCuneWright litigated this case for nearly a year before the EPA audit was disclosed and, following that disclosure, the parties were able to reach a settlement agreement expeditiously. This will benefit the class by ensuring real relief in a time frame contemporaneous to the harm that was suffered and without the delay of prolonged litigation and appeals.

50. ***Result 4: McCuneWright secured extra relief for the class it initially represented, a result for which it is singularly responsible.*** The settlement amounts include a

[46] *Id.* ("The process is as simple as registering for an email account.").

[47] *See id.* at 19 ("Dealers will be provided with a flyer regarding the settlement as an additional form of outreach to Defendants' customers."). *See also* Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Settlement and Order Directing Notice to the Class (DE 185-1) at 29 (noting that "Defendants will request that Hyundai and Kia dealers apprise customers who are members of the Class of the availability of settlement relief, including by distributing flyers to Class members receiving vehicle service") (hereafter "Preliminary Approval Brief").

[48] Preliminary Approval Reply Brief, *supra* note 45, at 16. *See also id*. at 19 ("Defendants have been in regular contact with a majority of class members because they are participants in the Reimbursement Program.").

special bonus for cars mis-represented in defendant Hyundai's so-called "4x40" marketing campaign.[49] This bonus is attributable to the fact that the claims for these class members were uncovered and developed in McCuneWright's initial case and thereby garnered special relief in the final settlement.[50] Given the origin and rationale for this bonus, the bonus (roughly $40 million worth of extra available relief) is primarily, if not fully, attributable to the McCuneWright firm.

51. ***Result 5: McCuneWright uniquely engaged in significant adversarial litigation against significant opposition.*** Before the results of the EPA audit, the defendants fought this case vigorously, contesting every aspect of it in a strong adversarial manner. Skilled attorneys represented these powerful opponents. McCuneWright fought to keep the case alive and thereby helped to ensure that this Court became the MDL forum for aggregate resolution of the nationwide controversy. As Class Counsel reported in defending its motion for preliminary settlement approval against opposition:

> The Proposed Settlement arose at a natural point in the litigation process. As this Court observed, the timing of the initial settlement announcement was "not all that surprising because the *Espinosa* case ha[d] been litigated for a year." By the time of the November 2, 2012 restatement, the *Espinosa* Plaintiffs had overcome a motion to dismiss, made and received initial disclosures, subpoenaed and reviewed dealership records, propounded and responded to extensive written discovery, subpoenaed the records of Hyundai's marketing company (Innocean Worldwide), negotiated a protective order, and reviewed tens of thousands of pages of documents produced by Hyundai. The *Espinosa* Plaintiffs had also defended three class representative depositions, hired experts, and filed a motion for class certification. After the restatement, the *Espinosa* Plaintiffs proceeded with expert depositions on class certification and further class certification briefing.[51]

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[49] *See* ¶¶ 61-62, *infra.*

[50] *Id.*

[51] Preliminary Approval Reply Brief, *supra* note 45, at 4.

52. ***Result 6: McCuneWright engaged in the adversarial litigation without significant assistance.*** Most class action cases are pursued by teams of attorneys. As noted above,[52] this means that counsel in most cases can share risks across firms. But beyond risk-sharing, a team of counsel from different firms is likely to bring to the table a range of different skill sets. In a case demanding the variety of skills this one did, such a range of skills is an important contribution of the counsel team. Remarkably, McCuneWright initially pursued this case on its own. The overwhelming bulk of plaintiffs' counsel here all joined the case only after the EPA audit was made public.

53. ***Result 7: McCuneWright's efforts were particularly important factor in garnering this settlement and ensuring its legitimacy.*** McCuneWright filed the initial fuel economy case against these defendants and independently litigated that case for nearly a year before the EPA audit was announced and the flood of lawsuits followed. When these cases were summarily settled, a critical factor in the approval process is whether counsel were aware of the value of their case, including its strengths and weaknesses, prior to settling. Courts generally gauge this fact by considering "the amount of investigation and discovery that preceded the settlement."[53] As McCuneWright's pre-EPA audit litigation for the class constituted the bulk of the adversarial activity here, the settlement is strongly dependent upon those efforts. Thus, in

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[52] *See* ¶ 43, *supra.*

[53] *See, e.g., Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804, at *4 (C.D. Cal. Nov. 18, 2014) ("To determine if a settlement is fair, some or all of the following factors should be considered: (1) the strength of Plaintiffs' case; (2) the risk, expense, complexity, and duration of further litigation; (3) the risk of maintaining class certification; (4) the amount of settlement; (5) *the amount of investigation and discovery that preceded the settlement*; (6) the experience and views of counsel; and (7) the reaction of class members to the proposed settlement.") (emphasis added) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *Staton v. Boeing*, 327 F.3d 938, 959 (9th Cir. 2003)).

moving for preliminary approval of the settlement, Class Counsel reported to the Court that, "The parties demonstrated that they were fully prepared to litigate this case through final judgment; ***in fact, the* Espinosa *Plaintiffs have engaged a full round of briefing on the merits of motions to dismiss and have briefed their motion for class certification***."[54]

54. These seven factors demonstrate the strength of the settlement, generally, and the particularly important contributions of McCuneWright, specifically, to the result achieved for the class in this matter.

(C)

The Requested Fee is Likely Far Less Than The Ninth Circuit's 25% Benchmark

55. In undertaking a percentage cross-check, courts generally look to see if the lodestar method has yielded a percentage award similar to the percentages that are acceptable when courts employ a percentage of the fund fee method in common fund cases. In such cases in the Ninth Circuit, 25% is a benchmark, or normal fee.[55] Empirical research shows that in common fund cases between 1993-2008, the mean percentage award was 25% in the Central District of California specifically,[56] and in the Ninth Circuit generally.[57] Thus, a 25% fee would surely be reasonable.

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[54] Dec. of Robert B. Carey in Support of Plaintiffs' Motion for Preliminary Approval of Class Settlement 6 ¶ 10 (DE 185-3) (emphasis added). *See also* Preliminary Approval Brief, *supra* note 47, at 29-30 (arguing that the "extent of discovery completed and the stage of the proceedings" factor for settlement approval was met because "[B]y the time settlement negotiations began, the *Espinosa* action had been actively litigated for more than a year. The *Espinosa* Plaintiffs had filed two amended complaints, this Court had made a substantive ruling in response to HMA's motion to dismiss; the parties had conducted extensive pre-trial discovery including the review of approximately 30,000 documents; Plaintiff and expert depositions had occurred; and the parties had fully briefed and argued a motion for class certification.").

[55] *Vizcaino*, 290 F.3d at 1047-48.

[56] *See Eisenberg & Miller II, supra* note 32, at 259 (Table 3).

56. Assessing the relationship of McCuneWright's $6 million fee request to the 25% benchmark is complicated by two factors: *first*, McCuneWright is not the only Class Counsel and *second*, there is not a fixed common fund here. Nonetheless, [1] some estimates can be made to help make that assessment with regard to the aggregate settlement; and [2] a portion of the settlement attributable primarily to McCuneWright's *Espinosa* case, standing along, shows that the requested fee is less than 25% of the value that McCuneWright created for the class.

McCuneWright's Fee as a Percentage of the Aggregate Settlement

57. I assume for purposes of this evaluation that McCuneWright will garner roughly 33% of the total fees the defendants pay in this case. My basis for this assumption is that McCuneWright are co-class counsel, which would imply that its request is 50% of the fees defendants are likely to pay. However, there is a group of other plaintiffs' lawyers in the case who might seek and receive fees. To be on the conservative side, therefore, I assume that McCuneWright's fee will constitute but a third of the defendants' total payment, not half. If McCuneWright's $6 million fee is a third of the defendants' full fee payment, that would set the defendants' full fee payment at $18 million.

58. Next, I note that $18 million is 25% of $72 million. Therefore, if the total value of the settlement is in the ballpark of $72 million, and the defendants pay out $18 million in total fees, with McCuneWright receiving $6 million, then McCuneWright's fee would be commensurate with a total fee of 25% of the value of the settlement – a reasonable fee in the Ninth Circuit.

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[57] *See Eisenberg & Miller II, supra* note 32, at 260 (Table 4).

59. This analysis then begs the question of whether this settlement is worth $72 million. Three factors suggest that the settlement is worth more, possibly far more, than $72 million.

- *First*, the defendants themselves advertise the settlement as worth hundreds of millions of dollars: Hyundai's press release, made an exhibit to the settlement agreement, valued its portion of the settlement at approximately $210 million (Exhibit I) and Kia's press release valued its portion of the settlement at approximately $185 million (Exhibit J). Of course, because this is a "claims-made" settlement, the defendants will only pay out the portion of that $395 million claimed by the class. Nonetheless, given defendants' own assertions about the settlement, it would surely not be inequitable to hold them to that valuation when assessing what fee would be reasonable for them to pay.[58] Indeed, 25% of the $385 million is nearly $100 million – a fee level far from that at issue here.

- *Second*, given that the settlement made $395 million available to the class, only 18% of that value need be claimed by the class for the payout to the class to reach the $72 million level, 25% of which is the $18 million fee estimate from which I am working. While there are no comprehensive data on claiming rates in class action lawsuits,[59] several factors support the presumption that 18% of the class may claim here. In a database that I maintain based on information collected in the publication *Class Action Attorney Fee Digest*, the average claims rate across 327 cases was 24.67%. Unlike a normal claiming system, there is a middle-party here (the local car dealers) who are charged with assisting the class members with receiving lump sum awards and apparently have been successful in recruiting them into that program since its inception. Moreover, the value of the lump sum awards are far from negligible, a

[58] *See Wing*, 114 F.3d at 990 ("When faced with, in the district court's words, 'a complicated formula from which valuable considerations of several kinds are provided to the class members,' it is impossible to determine the 'actual' value of the recovery for percentage purposes. In such a situation, the court must estimate the total value of the settlement. *Particularly in light of the parties' agreement as to value, we cannot say that the district court abused its discretion by using an estimated value equal to the settlement value that was communicated to the class*, and equal to the settlement value approved by another judge.") (emphasis added).

[59] *See* William B. Rubenstein and Nicholas M. Pace, *Shedding Light on Outcomes in Class Actions*, *in* CONFIDENTIALITY, TRANSPARENCY, AND THE U.S. CIVIL JUSTICE SYSTEM 20-59 (Joseph W. Doherty, Robert T. Reville, and Laura Zakaras eds. 2008) (reporting on empirical project seeking data on claiming rates in class actions and finding data available in fewer than 20% of cases).

factor that should enhance claiming rates.[60] Finally, the claiming process in not unduly burdensome on those seeking an award.

- *Third*, even if less than $72 million is distributed to the class, in appropriate circumstances courts may award counsel a percentage of the amount they made available to the class, regardless of whether the class claimed this full amount. Indeed, in the Ninth Circuit case most directly on point, the Circuit held that the district court abused in discretion by "basing the fee on the class members' claims against the fund rather than on a percentage of the entire fund or on the lodestar."[61] The Circuit so held, in part, because the defendant had agreed to pay class counsel's fee and thus could have limited its exposure by writing a ceiling into the settlement agreement itself.[62] While that rationale fits this case, there are additional reasons that paying counsel a percentage of the total fund is not inappropriate. As noted above,[63] class actions typically involve "negative value claims," claims worth less than the cost of litigating them. Given the small amounts of money at issue, it would be surprising if a large number of class members went to the effort to make a claim. Thus, so long as the claiming program is not overly onerous and there are not other signs of collusion, awarding counsel a percentage of the amount made available to the class takes account of the fact that claiming is likely to be small. Counsel's award itself becomes part of the deterrent effect of the lawsuit and it incentivizes private counsel to continue to enforce the law in small claims situations, thus serving the purposes underlying the class suit.[64]

60. This analysis suggests that if one assumes a settlement value of $72 million or higher, the benchmark 25% fee would be $18 million; and if one assumes that McCuneWright will be responsible for a third of the defendants' full payment of fees, then the firm's $6 million fee request approximates the 25% Ninth Circuit benchmark range. Note that if either [1] the

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[60] *Id.* at 39 (noting that data confirmed "familiar presumption" that claims rate will be smaller where benefit size modest). *But see id.* at 46 (reporting less correlation between claim size and claim rate in second part of study).

[61] *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997).

[62] *Id.*

[63] *See* ¶ 35, *supra.*

[64] For a discussion, see William B. Rubenstein, *Percentage of What?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 63 (March 2007) (available at: http://www.billrubenstein.com/Downloads/rubenstein_mar07_column.pdf).

settlement is worth more than $72 million or [2] the defendants pay plaintiffs' counsel total fees of less than $18 million, then McCuneWright's percentage decreases below the Ninth Circuit 25% benchmark.

McCuneWright's Fee as a Percentage of the Extra Value Added by the *Espinosa* Case Specifically

61. There is a second way to assess McCuneWright's requested $6 million fee as a percentage of the settlement. A portion of the settlement is directly attributable to the *Espinosa* case in particular and is aimed at the *Espinosa* class members. As the Court is aware, the *Espinosa* action, uniquely among the consolidated cases, pursued false advertising claims. These claims challenged the accuracy of Hyundai's 40 mpg advertisements, such as those contained in the company's so-called 4x40 program, whereby Hyundai advertised that consumers could choose among 4 Hyundai models (Elantra, Accent, Veloster, or Sonata Hybrid) that would get 40 mpg in highway driving. One section of the settlement agreement provides "additional compensation" – on top of the aggregate settlement available to the full class – for these vehicles. Owners of these cars are entitled to receive extra awards ranging from $50-$100.[65] McCuneWright has informed me that when these extra awards are multiplied by the number of vehicles sold, this extra compensation attributable solely to claims in the *Espinosa* case amounts to roughly $40 million.

62. Given that only the *Espinosa* case pursued false advertising claims for the 4x40 car owners, McCuneWright's efforts are primarily, if not exclusively, responsible for creation of

[65] *See* Settlement Agreement ¶ 3.1.8. *See also* Preliminary Approval Reply Brief, *supra* note 44, at 2 ("Certain purchasers of new vehicles featured in the 4x40 advertising campaign (Hyundai Elantra, Sonata Hybrid, Accent and Veloster) receive $100 in additional compensation, either as part of the lump-sum payment or in addition to Reimbursement Program benefits").

this $40 million in extra value within the settlement. The Ninth Circuit's 25% benchmark supports a fee of $10 million for that effort. Yet McCuneWright seeks only about $6 million *for all of its work in the aggregate*, which is only 15% of the value of the 4x40 bonus alone.

63. In sum, when the fee award McCuneWright seeks is cross-checked against the value the firm produced for the class, two different methods demonstrate that the requested fee is far below a 25% fee. This cross-check provides further support for the reasonableness of McCuneWright's application.

* * *

64. I have testified that fee McCuneWright seeks here is reasonable for three independent reasons:

- The fee is based on a reasonable lodestar – the hourly rates are standard and the hours billed to the case easily justified.
- The fee encompasses a multiplier of less than 3, recognizing the significant risks that McCuneWright, uniquely, took here and the superb results that it helped achieve for the class.
- When cross-checked, the fee represents no more (and likely far less) than a 25% share of the monies made available to the class.

In sum, it is my expert opinion that the Court should approve McCuneWright's request that the defendants be ordered to pay it $6 million in attorney's fees.

Executed this 11th day of December, 2014, in Los Angeles, California.

William B. Rubenstein

EXHIBIT A

PROFESSOR WILLIAM B. RUBENSTEIN

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ACADEMIC EMPLOYMENT

HARVARD LAW SCHOOL, CAMBRIDGE MA

Sidley Austin Professor of Law	2011-
Professor of Law	2007-2011
Bruce Bromley Visiting Professor of Law	2006-2007
Visiting Professor of Law	2003-2004, 2005-2006
Lecturer in Law	1990-1996

Courses: Civil Procedure; Class Action Law; Remedies
Awards: 2012 Albert M. Sacks-Paul A. Freund Award for Teaching Excellence

UCLA SCHOOL OF LAW, LOS ANGELES CA

Professor of Law	2002-2007
Acting Professor of Law	1997-2002

Courses: Civil Procedure; Complex Litigation; Remedies
Awards: 2002 Rutter Award for Excellence in Teaching
Top 20 California Lawyers Under 40, *Calif. Law Business* (2000)

STANFORD LAW SCHOOL, STANFORD CA

Acting Associate Professor of Law	1995-1997

Courses: Civil Procedure; Federal Litigation
Awards: 1997 John Bingham Hurlbut Award for Excellence in Teaching

YALE LAW SCHOOL, NEW HAVEN CT

Lecturer in Law	1994, 1995

BENJAMIN N. CARDOZO SCHOOL OF LAW, NEW YORK NY

Visiting Professor	Summer 2005

LITIGATION-RELATED EMPLOYMENT

AMERICAN CIVIL LIBERTIES UNION, NATIONAL OFFICE, NEW YORK NY

Project Director and Staff Counsel	1987-1995

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

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

Law Clerk	1986-87

PUBLIC CITIZEN LITIGATION GROUP, WASHINGTON DC

Intern	Summer 1985

EDUCATION

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

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

SELECTED COMPLEX LITIGATION EXPERIENCE

Professional Service and Highlighted Activities

♢ *Sole Author,* NEWBERG ON CLASS ACTIONS (4th ed. updates since 2008 and 5th ed. (2011-2015))

♢ *Invited Speaker,* Judicial Panel on Multidistrict Litigation, Multidistrict Litigation (MDL) Transferee Judges Conference, Palm Beach, Florida (invited to present to MDL judges on recent developments in class action law (2010-2014))

♢ *Adviser,* American Law Institute, *Project on the Principles of the Law of Aggregate Litigation*, Philadelphia, Pennsylvania

♢ *Author, Amicus* brief filed in the United States Supreme Court on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion,* No. 09-893, 131 S. Ct. 1740 (2011))

♢ *"Expert's Corner" (Monthly Column), Class Action Attorney Fee Digest,* 2007-2011

♢ *Advisory Board, Class Action Law Monitor* (Strafford Publications), 2008-

♢ *Co-Chair,* ABA Litigation Section, Mass Torts Committee, Class Action Sub-Committee, 2007

♢ *Planning Committee,* American Bar Association, Annual National Institute on Class Actions Conference, 2006, 2007

Expert Witness

♢ Submitted an expert witness declaration concerning attorney fee petition (*Ammari Electronics v. Pacific Bell Directory*, Case No. RG0522096, California Superior Court, Alameda County (2014))

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

♢ Submitted an expert witness declaration concerning plaintiff class action practices under the Private

Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Credit Suisse Securities (USA) LLC,* Case No. CGC-10-497840, California Superior Court, San Francisco County (2014))

♢ Retained as expert witness on proper level of common benefit fee in MDL (*In re Neurontin Marketing and Sales Practice Litigation,* Civil Action No. 04-10981, MDL 1629, U.S. Dist. Ct., D. Mass. (2014))

♢ Submitted an expert witness declaration concerning proper approach to attorney's fees under California law in a statutory fee-shifting case (*Perrin v. Nabors Well Services Co.,* Case No. 1220037974, Judicial Arbitration and Mediation Services (JAMS) (2013))

♢ Submitted an expert witness declaration concerning fairness and adequacy of proposed nationwide class action settlement (*Verdejo v. Vanguard Piping Systems,* Case No. BC448383, California Superior Court, Los Angeles County (2013))

♢ Retained as an expert witness regarding fairness, adequacy, and reasonableness of proposed nationwide consumer class action settlement (*Herke v. Merck,* No. 2:09-cv-07218, MDL Docket No. 1657 (*In re Vioxx Products Liability Litigation*), U.S. Dist. Ct., E. D. La. (2013))

♢ Retained as an expert witness concerning ascertainability requirement for class certification and related issues (*Henderson v. Acxiom Risk Mitigation, Inc.,* Case No. 3:12-cv-00589-REP, U.S. Dist. Ct., E.D. Va. (2013))

♢ Submitted an expert witness declaration concerning Rule 23(g) selection of competing counsel (*White v. Experian Information Solutions, Inc.,* Case No. 05-CV-1070, U.S. Dist. Ct., C.D. Cal. (2013))

♢ Submitted an expert witness declaration concerning reasonableness of class action settlement and performing analysis of "net expected value" of settlement benefits (*In re Navistar Diesel Engine Products Liability Litigation,* Case No. 11 C 2496, U.S. Dist. Ct., N.D. Ill. (2013))

♢ Submitted an expert witness declaration concerning reasonableness of class action settlement and attorney's fee request (*Commonwealth Care Alliance and Crenshaw v. Astrazeneca Pharm. LLP, et al.,* Civil Action No. 05-0269 BLS2, Massachusetts Superior Court, Suffolk County (2013))

♢ Submitted an expert witness declaration concerning propriety of preliminary settlement approval in nationwide consumer class action settlement (*Anaya v. Quicktrim, LLC,* Case No. CIVVS 120177, California Superior Court, San Bernardino County (2012))

♢ Submitted expert witness affidavit concerning fee issues in common fund class action (*Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Assoc.,* Case No. 217-2010-CV-00294, New Hampshire Superior Court, Merrimack County (2012))

♢ Submitted expert witness declaration and deposed concerning class certification issues in nationwide fraud class action (*Lauriello v. Caremark,* Case No. 03-CV-03-6630, Circuit Court for Jefferson County, Alabama (2012))

◊ Submitted expert witness declaration in securities class action concerning value of proxy disclosures achieved through settlement and appropriate level for fee award (*Rational Strategies Fund v. Jhung,* Case No. BC 460783, California Superior Court, Los Angeles County (2012))

◊ Submitted an expert witness report and deposed concerning legal malpractice in the defense of a class action lawsuit (*KB Home v. K&L Gates, LLP,* Case No. BC484090, California Superior Court, Los Angeles County (2011))

◊ Retained as expert witness on choice of law issues implicated by proposed nationwide class certification (*Simon v. Metropolitan Property and Cas. Co.,* Case No. CIV-2008-1008-W, U.S. Dist. Ct., W.D. Ok. (2011))

◊ Retained, deposed, and testified in court as expert witness in fee-related dispute (*Blue, et al. v. Hill*,Case No. 3:10-CV-02269-O-BK, U.S. Dist. Ct., N.D. Tex. (2011))

◊ Retained as an expert witness in fee-related dispute (*Furth v. Furth*, Case No. C11-00071-DMR, U.S. Dist. Ct., N.D. Cal. (2011))

◊ Submitted expert witness declaration concerning interim fee application in complex environmental class action (*DeLeo v. Bouchard Transportation,* Civil Action No. PLCV2004-01166-B, Massachusetts Superior Court (2010))

◊ Retained as an expert witness on common benefit fee issues in MDL proceeding in federal court (*In re Vioxx Products Liability Litigation*, MDL Docket No. 1657, U.S. Dist. Ct., E.D. La. (2010))

◊ Submitted expert witness declaration concerning fee application in securities case (*In re Amicas Inc. Shareholder Litigation,* Civil Action No. 10-412BLS2, Massachusetts Superior Court (2010))

◊ Submitted an expert witness declaration concerning fee entitlement and enhancement in non-common fund class action settlement (*Parkinson v. Hyundai Motor America, Inc.,* Case No. 06-cv-00345, U.S. Dist. Ct., C.D. Cal. (2010), *relied upon in Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160 (C.D. Cal. 2010))

◊ Submitted an expert witness declaration concerning class action fee allocation among attorneys (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))

◊ Submitted an expert witness declaration concerning settlement approval and fee application in wage and hour class action settlement (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))

◊ Submitted an expert witness declaration concerning objectors' entitlement to attorney's fees (*Rodriguez v. West Publishing Corp.,* Case No. CV-05-3222, U.S. Dist. Ct., C.D. Cal. (2010))

◊ Submitted an expert witness declaration concerning fairness of settlement provisions and processes (*White v. Experian Information Solutions, Inc.,* Case No. 05-CV-1070, U.S. Dist. Ct., C.D. Cal. (2010), *relied upon in Radcliffe v. Experian Information Solutions Inc.*, 715 F.3d 1157, 1166 (9th Cir. 2013))

♢ Submitted an expert witness declaration concerning attorney's fees in class action fee dispute (*Elihu v. Toshiba America Information Systems, Inc.*, Case No. BC328566, California Superior Court, Los Angeles County (2009), *discused in Ellis v. Toshiba America Information Systems, Inc.*, 218 Cal. App. 4th 853, 160 Cal. Rptr. 3d 557 (2d Dist. 2013))

♢ Submitted an expert witness declaration concerning common benefit fee in MDL proceeding in federal court (*In re Genetically Modified Rice Litigation*, MDL Docket No. 1811, U.S. Dist. Ct., E.D. Mo. (2009))

♢ Submitted an expert witness declaration concerning settlement approval and fee application in national MDL class action proceeding (*In re Wal-Mart Wage and Hour Employment Practices Litigation*, MDL Docket No. 1735, U.S. Dist. Ct., D. Nev. (2009))

♢ Submitted an expert witness declaration concerning fee application in national MDL class action proceeding (*In re Dept. of Veterans Affairs (VA) Data Theft Litigation*, MDL Docket No. 1796, U.S. Dist. Ct., D. D.C. (2009))

♢ Submitted an expert witness declaration concerning common benefit fee in mass tort MDL proceeding in federal court (*In re Kugel Mesh Products Liability Litigation*, MDL Docket No. 1842, U.S. Dist. Ct., D. R.I. (2009))

♢ Submitted an expert witness declaration and supplemental declaration concerning common benefit fee in consolidated mass tort proceedings in state court (*In re All Kugel Mesh Individual Cases*, Master Docket No. PC-2008-9999, Superior Court, State of Rhode Island (2009))

♢ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Warner v. Experian Information Solutions, Inc.*, Case No. BC362599, California Superior Court, Los Angeles County (2009))

♢ Submitted an expert witness declaration concerning process for selecting lead counsel in complex MDL antitrust class action (*In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL Docket No. 1869, U.S. Dist. Ct., D. D.C. (2008))

♢ Retained, deposed, and testified in court as expert witness on procedural issues in complex class action (*Hoffman v. American Express*, Case No. 2001-022881, California Superior Court, Alameda County (2008))

♢ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Salsgiver v. Yahoo! Inc.*, Case No. BC367430, California Superior Court, Los Angeles County (2008))

♢ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Voight v. Cisco Systems, Inc.*, Case No. 106CV075705, California Superior Court, Santa Clara County (2008))

♢ Retained and deposed as expert witness on fee issues in attorney fee dispute (*Stock v. Hafif,* Case No. KC034700, California Superior Court, Los Angeles County (2008))

- ♢ Submitted an expert witness declaration concerning fee application in consumer class action (*Nicholas v. Progressive Direct*, Civil Action No. 06-141-DLB, U.S. Dist. Ct., E.D. Ky. (2008))

- ♢ Submitted expert witness declaration concerning procedural aspects of national class action arbitration (*Johnson v. Gruma Corp.*, JAMS Arbitration No. 1220026252 (2007))

- ♢ Submitted expert witness declaration concerning fee application in securities case (*Drulias v. ADE Corp.*, Civil Action No. 06-11033 PBS, U.S. Dist. Court, D. Mass. (2007))

- ♢ Submitted expert witness declaration concerning use of expert witness on complex litigation matters in criminal trial (*U.S. v. Gallion, et al.*, No. 07-39 (WOB) U.S. Dist. Court, E. D. Ky. (2007))

- ♢ Retained as expert witness on fees matters (*Heger v. Attorneys' Title Guaranty Fund, Inc.*, No. 03-L-398, Illinois Circuit Court, Lake County, IL (2007))

- ♢ Retained as expert witness on certification in statewide insurance class action (*Wagner v. Travelers Property Casualty of America*, No. 06CV338, Colorado District Court, Boulder County, CO (2007))

- ♢ Testified as expert witness concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corporate Derivative Litigation*, Case No. 01098905, California Superior Court, Santa Barbara Cty, CA (2006))

- ♢ Submitted expert witness declaration concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corp. Corporate Derivative Litigation*, Case No. CV-03-11 RSWL, U.S. Dist. Court, C.D. Cal. (2006))

- ♢ Retained as expert witness as to certification of class action (*Canova v. Imperial Irrigation District*, Case No. L-01273, California Superior Court, Imperial Cty, CA (2005))

- ♢ Retained as expert witness as to certification of nationwide class action (*Enriquez v. Edward D. Jones & Co.*, Missouri Circuit Court, St. Louis, MO (2005))

- ♢ Submitted expert witness declaration on procedural aspects of international contract litigation filed in court in Korea (*Estate of Wakefield v. Bishop Han & Jooan Methodist Church* (2002))

- ♢ Submitted expert witness declaration as to contested factual matters in case involving access to a public forum (*Cimarron Alliance Foundation v. The City of Oklahoma City*, Case No. Civ. 2001-1827-C, U.S. Dist. Ct., W.D. Ok. (2002))

- ♢ Submitted expert witness declaration concerning reasonableness of class certification, settlement, and fees (*Baird v. Thomson Elec. Co.*, Case No. 00-L-000761, Cir. Ct., Mad. Cty, IL (2001))

Expert Consultant

♢ Retained as an expert consultant on class action and procedure related issues (*Lange et al v. WPX Energy Rocky Mountain LLC*, Case No. #: 2:13-cv-00074-ABJ, U.S. Dist. Ct., D. Wy. (2013))

♢ Retained as an expert consultant on class action and procedure related issues (*Flo & Eddie, Inc., v. Sirius XM Radio, Inc.*, Case No. CV 13-5693, U.S. Dist. Court, C.D. Cal. (2013))

♢ Served as an expert consultant on substantive and procedural issues in challenge to legality of credit card late and over-time fees (*In Re Late Fee and Over-Limit Fee Litigation*, 528 F.Supp.2d 953 (N.D. Cal. 2007), *aff'd*, 741 F.3d 1022 (9th Cir. 2014))

♢ Retained as an expert on Class Action Fairness Act (CAFA) removal issues and successfully briefed and argued remand motion based on local controversy exception (*Trevino, et al. v. Cummins, et al.*,No. 2:13-cv-00192-JAK-MRW, U.S. Dist. Ct., C. D. Cal. (2013))

♢ Retained as an expert consultant on class action related issues by consortium of business groups (*In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010*, MDL No. 2179, U.S. Dist. Court, E.D. La. (2012))

♢ Provided presentation on class certification issues in nationwide medical monitoring classes (*In re: National Football League Players' Concussion Injury Litigation,* MDL No. 2323, Case No. 2:12-md-02323-AB, U.S. Dist. Ct., E.D. Pa. (2012))

♢ Retained as an expert consultant on class action related issues in mutli-state MDL consumer class action (*In re Sony Corp. SXRD Rear Projection Television Marketing, Sales Practices & Prod. Liability Litig.*, MDL No. 2102, U.S. Dist. Court, S.D. N.Y. (2009))

♢ Retained as an expert consultant on class action certification, manageability, and related issues in mutli-state MDL consumer class action (*In re Teflon Prod. Liability Litig.*, MDL No. 1733, U.S. Dist. Court, S.D. Iowa (2008))

♢ Retained as an expert consultant/co-counsel on certification, manageability, and related issues in nationwide anti-trust class action (*Brantley v. NBC Universal*, No.- CV07-06101 CAS (VBKx), U.S. Dist. Court, C.D. Cal. (2008))

♢ Retained as an expert consultant on class action issues in complex multi-jurisdictional construction dispute (*Antenucci, et al., v. Washington Assoc. Residential Partner, LLP, et al.,* Civil No. 08-04194, U.S. Dist. Court, E.D. Pa. (2008))

♢ Retained as an expert consultant on complex litigation issues in multi-jurisdictional class action litigation (*McGreevey v. Montana Power Company*, No. 08-35137, U.S. Court of Appeals for the Ninth Circuit)

♢ Retained as an expert consultant on class action and attorney fee issues in nationwide consumer class action (*Figueroa v. Sharper Image*, 517 F.Supp.2d 1292 (S.D. Fla. 2007))

♢ Retained as an expert consultant on attorney's fees issue in complex class action case (*Natural Gas*

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

♢ Retained as an expert consultant on remedies and procedural matters in complex class action (*Sunscreen Cases*, JCCP No. 4352, California Superior Court, Los Angeles County (2006))

♢ Retained as an expert consultant on complex preclusion questions in petition for review to California Supreme Court (*Mooney v. Caspari,* Supreme Court of California (2006))

♢ Retained as an expert consultant on attorney fee issues in complex common fund case (*In Re Diet Drugs (Phen/Fen) Products Liability Litigation*, U.S. Dist. Court, E. D. Pa. (2006))

♢ Retained as an expert consultant on procedural matters in series of complex construction lien cases (*In re Venetian Lien Litigation*, Supreme Court of the State of Nevada (2005-2006))

♢ Served as an expert consultant on class certification issues in countywide class action (*Beauchamp v. Los Angeles Cty. Metropolitan Transp. Authority*, Case No. CV-98-00402-CBM, U.S. Dist. Ct., C.D. Cal.)

♢ Served as an expert consultant on class certification issues in state-wide class action (*Williams v. State of California*, Case No. 312-236, Cal. Superior Court, San Francisco)

♢ Served as an exert consultant on procedural aspects of complex welfare litigation (*Allen v. Anderson*, U.S. Dist. Ct., C.D. Cal., *appeal dism. as moot*, 199 F.3d 1331 (9th Cir. 1999))

Ethics Opinions

♢ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (20013))

♢ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (20011))

♢ Provided expert opinion on issues of professional ethics in implicated by nationwide class action practice (*In re Professional Responsibility Inquiries* (2010))

♢ Provided expert opinion on issues of professional ethics implicated by complex litigation matter (*In re Professional Responsibility Inquiries* (2010))

♢ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2007))

Publications on Class Actions & Procedure

♢ NEWBERG ON CLASS ACTIONS (sole author of supplements to 4th edition since 2008 and of 5th ed (2011-2015))

♢ *Profit for Costs*, 63 DEPAUL L. REV. 587 (2014) (with Morris A. Ratner)

♢ *Procedure and Society: An Essay for Steve Yeazell,* 61 U.C.L.A. REV. DISC. 136 (2013)

♢ *Supreme Court Round-Up – Part II*, 5 CLASS ACTION ATTORNEY FEE DIGEST 331 (September 2011)

♢ *Supreme Court Round-Up – Part I*, 5 CLASS ACTION ATTORNEY FEE DIGEST 263 (July-August 2011)

♢ *Class Action Fee Award* Procedures, 5 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2011)

♢ *The Benefits of Class Action Lawsuits*, 4 CLASS ACTION ATTORNEY FEE DIGEST 423 (November 2010)

♢ *Contingent Fees for Representing the Government: Developments in California Law*, 4 CLASS ACTION ATTORNEY FEE DIGEST 335 (September 2010)

♢ *Supreme Court Roundup*, 4 CLASS ACTION ATTORNEY FEE DIGEST 251 (July 2010)

♢ *SCOTUS Okays Performance Enhancements in Federal Fee Shifting Cases – At Least In Principle,* 4 CLASS ACTION ATTORNEY FEE DIGEST 135 (April 2010)

♢ *The Puzzling Persistence of the "Mega-Fund" Concept*, 4 CLASS ACTION ATTORNEY FEE DIGEST 39 (February 2010)

♢ *2009: Class Action Fee Awards Go Out With A Bang, Not A Whimper*, 3 CLASS ACTION ATTORNEY FEE DIGEST 483 (December 2009)

♢ *Privatizing Government Litigation: Do Campaign Contributors Have An Inside Track?*, 3 CLASS ACTION ATTORNEY FEE DIGEST 407 (October 2009)

♢ *Supreme Court Preview*, 3 CLASS ACTION ATTORNEY FEE DIGEST 307 (August 2009)

♢ *Supreme Court Roundup*, 3 CLASS ACTION ATTORNEY FEE DIGEST 259 (July 2009)

♢ *What We Now Know About How Lead Plaintiffs Select Lead Counsel (And Hence Who Gets Attorneys Fees!) in Securities Cases*, 3 CLASS ACTION ATTORNEY FEE DIGEST 219 (June 2009)

♢ *Beware Of Ex Ante Incentive Award Agreements*, 3 CLASS ACTION ATTORNEY FEE DIGEST 175 (May 2009)

♢ *On What a "Common Benefit Fee" Is, Is Not, and Should Be*, 3 CLASS ACTION ATTORNEY FEE DIGEST 87 (March 2009)

♢ *2009: Emerging Issues in Class Action Fee Awards*, 3 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2009)

♢ *2008: The Year in Class Action Fee Awards*, 2 CLASS ACTION ATTORNEY FEE DIGEST 465 (December 2008)

♢ *The Largest Fee Award – Ever!*, 2 CLASS ACTION ATTORNEY FEE DIGEST 337 (September 2008)

♢ *Why Are Fee Reductions Always 50%?: On The Imprecision of Sanctions for Imprecise Fee Submissions*, 2 CLASS ACTION ATTORNEY FEE DIGEST 295 (August 2008)

♢ *Supreme Court Round-Up*, 2 CLASS ACTION ATTORNEY FEE DIGEST 257 (July 2008)

♢ *Fee-Shifting For Wrongful Removals: A Developing Trend?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 177 (May 2008)

♢ *You Cut, I Choose: (Two Recent Decisions About) Allocating Fees Among Class Counsel*, 2 CLASS ACTION ATTORNEY FEE DIGEST 137 (April 2008)

♢ *Why The Percentage Method?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 93 (March 2008)

♢ *Reasonable Rates: Time To Reload The (*Laffey*) Matrix*, 2 CLASS ACTION ATTORNEY FEE DIGEST 47 (February 2008)

♢ *The "Lodestar Percentage:" A New Concept For Fee Decisions?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2008)

♢ *Class Action Practice Today: An Overview*, *in* ABA SECTION OF LITIGATION, CLASS ACTIONS TODAY 4 (2008)

♢ *Shedding Light on Outcomes in Class Actions*, *in* CONFIDENTIALITY, TRANSPARENCY, AND THE U.S. CIVIL JUSTICE SYSTEM 20-59 (Joseph W. Doherty, Robert T. Reville, and Laura Zakaras eds. 2008) (with Nicholas M. Pace)

♢ *Finality in Class Action Litigation: Lessons From Habeas*, 82 N.Y.U. L. REV. 791 (2007)

♢ *The American Law Institute's New Approach to Class Action Objectors' Attorneys Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 347 (November 2007)

♢ *The American Law Institute's New Approach to Class Action Attorneys Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 307 (October 2007)

♢ *"The Lawyers Got More Than The Class Did!": Is It Necessarily Problematic When Attorneys Fees Exceed Class Compensation?*, 1 CLASS ACTION ATTORNEY FEE DIGEST 233 (August 2007)

♢ *Supreme Court Round-Up*, 1 CLASS ACTION ATTORNEY FEE DIGEST 201 (July 2007)

♢ *On The Difference Between Winning and Getting Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 163

(June 2007)

♢ *Divvying Up The Pot: Who Divides Aggregate Fee Awards, How, and How Publicly?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 127 (May 2007)

♢ *On Plaintiff Incentive Payments,* 1 CLASS ACTION ATTORNEY FEE DIGEST 95 (April 2007)

♢ *Percentage of What?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 63 (March 2007)

♢ *Lodestar v. Percentage: The Partial Success Wrinkle,* 1 CLASS ACTION ATTORNEY FEE DIGEST 31 (February 2007)(with Hirsh)

♢ *The Fairness Hearing: Adversarial and Regulatory Approaches*, 53 U.C.L.A. L. REV. 1435 (2006) (excerpted in THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION 447-449 (Richard A. Nagareda ed., 2009))

♢ *Why Enable Litigation? A Positive Externalities Theory of the Small Claims Class Action*, 74 U.M.K.C. L. REV. 709 (2006)

♢ *On What a "Private Attorney General" Is – And Why It Matters*, 57 VAND. L. REV. 2129(2004) (excerpted in COMPLEX LITIGATION 63-72 (Kevin R. Johnson, Catherine A. Rogers & John Valery White eds., 2009)).

♢ *The Concept of Equality in Civil Procedure*, 23 CARDOZO L. REV. 1865 (2002) (selected for the Stanford/Yale Junior Faculty Forum, June 2001)

♢ *A Transactional Model of Adjudication*, 89 GEORGETOWN L.J. 371 (2000)

♢ *The Myth of Superiority*, 16 CONSTITUTIONAL COMMENTARY 599 (1999)

♢ *Divided We Litigate: Addressing Disputes Among Clients and Lawyers in Civil Rights Campaigns*, 106 YALE L. J. 1623 (1997) *(*excerpted in COMPLEX LITIGATION 120-123 (1998))

Selected Presentations

♢ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2014

♢ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2013

♢ *Class Action Remedies,* ABA 2013 National Institute on Class Actions, Boston, Massachusetts, October 23, 2013

♢ *The Public Life of the Private Law: The Logic and Experience of Mass Litigation – Conference in Honor of Richard Nagareda,* Vanderbilt Law School, Nashville, Tennessee, September 27-28, 2013

◊ *Brave New World: The Changing Face of Litigation and Law Firm Finance*, Clifford Symposium 2013, DePaul University College of Law, Chicago, Illinois, April 18-19, 2013

◊ *Twenty-First Century Litigation: Pathologies and Possibilities: A Symposium in Honor of Stephen Yeazell,* UCLA Law Review, UCLA School of Law, Los Angeles, California, January 24-25, 2013

◊ *Litigation's Mirror: The Procedural Consequences of Social Relationships,* Sidley Austin Professor of Law Chair Talk, Harvard Law School, Cambridge, Massachusetts, October 17, 2012

◊ *Alternative Litigation Funding (ALF) in the Class Action Context – Some Initial Thoughts*, Alternative Litigation Funding: A Roundtable Discussion Among Experts, George Washington University Law School, Washington, D.C., May 2, 2012

◊ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Brooklyn Law School Faculty Workshop, Brooklyn, New York, April 2, 2012

◊ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Loyola Law School Faculty Workshop, Los Angeles, California, February 2, 2012

◊ *Recent Developments in Class Action Law and Impact on MDL Cases,* MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2011

◊ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 26, 2010

◊ *A General Theory of the Class Suit*, University of Houston Law Center Colloquium, Houston, Texas, February 3, 2010

◊ *Unpacking The "Rigorous Analysis" Standard,* ALI-ABA 12th Annual National Institute on Class Actions, New York, New York, November 7, 2008

◊ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of California (Boalt Hall) School of Law Civil Justice Workshop, Berkeley, California, February 28, 2008

◊ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of Pennsylvania Law Review Symposium, Philadelphia, Pennsylvania, Dec. 1, 2007

◊ *Current CAFA Consequences: Has Class Action Practice Changed?,* ALI-ABA 11th Annual National Institute on Class Actions, Chicago, Illinois, October 17, 2007

◊ *Using Law Professors as Expert Witnesses in Class Action Lawsuits,* ALI-ABA 10th Annual National Institute on Class Actions, San Diego, California, October 6, 2006

◊ *Three Models for Transnational Class Actions*, Globalization of Class Action Panel, International Law Association 2006 Conference, Toronto, Canada, June 6, 2006

◊ *Why Create Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, UMKC Law Review Symposium, Kansas City, Missouri, April 7, 2006

♢ *Marks, Bonds, and Labels: Three New Proposals for Private Oversight of Class Action Settlements*, UCLA Law Review Symposium, Los Angeles, California, January 26, 2006

♢ Class Action Fairness Act, Arnold & Porter, Los Angeles, California, December 6, 2005

♢ ALI-ABA 9th Annual National Institute on Class Actions, Chicago, Illinois, September 23, 2005

♢ Class Action Fairness Act, UCLA Alumni Assoc., Los Angeles, California, September 9, 2005

♢ Class Action Fairness Act, Thelen Reid & Priest, Los Angeles, California, May 12, 2005

♢ Class Action Fairness Act, Sidley Austin, Los Angeles, California, May 10, 2005

♢ Class Action Fairness Act, Munger, Tolles & Olson, Los Angeles, California, April 28, 2005

♢ Class Action Fairness Act, Akin Gump Strauss Hauer Feld, Century City, CA, April 20, 2005

SELECTED OTHER LITIGATION EXPERIENCE

United States Supreme Court

♢ Authored *amicus* brief filed on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion,* No. 09-893, 131 S. Ct. 1740 (2011))

♢ Co-counsel in constitutional challenge to display of Christian cross on federal land in California's Mojave preserve (*Salazar v. Buono*, 130 S. Ct. 1803 (2010))

♢ Co-authored *amicus* brief filed on behalf of constitutional law professors arguing against constitutionality of Texas criminal law (*Lawrence v. Texas*, 539 U.S. 558 (2003))

♢ Co-authored *amicus* brief on scope of *Miranda* (*Illinois v. Perkins*, 496 U.S. 292 (1990))

Consumer Class Action

♢ Co-counsel in challenge to antenna-related design defect in Apple's iPhone4 (*Dydyk v. Apple Inc.,* 5:10-cv-02897-HRL, U.S. Dist. Court, N.D. Cal.) (complaint filed June 30, 2010)

♢ Co-class counsel in $8.5 million nationwide class action settlement challenging privacy concerns raised by Google's Buzz social networking program (*In re Google Buzz Privacy Litigation,* 5:10-cv-00672-JW, U.S. Dist. Court, N.D. Cal.) (amended final judgment June 2, 2011)

Disability

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

Employment

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

Equal Protection

♢ Co-counsel in (state court phases of) successful challenge to constitutionality of a Colorado ballot initiative, Amendment 2 (*Evans v. Romer*, 882 P.2d 1335 (Colo. 1994))

♢ Co-counsel (and *amici*) in challenges to rules barring military service by gay people (*Able v. United States*, 44 F.3d 128 (2d Cir. 1995); *Steffan v. Perry*, 41 F.3d 677 (D.C. Cir. 1994) (en banc))

♢ Co-counsel in challenge to the constitutionality of the Attorney General of Georgia's firing of staff attorney (*Shahar v. Bowers*, 120 F.3d 211 (11th Cir. 1997))

Fair Housing

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

Family Law

♢ Co-counsel in challenge to constitutionality of Florida law limiting adoption (*Cox v. Florida Dept. of Health and Rehab. Srvcs.*, 656 So.2d 902 (Fla. 1995))

♢ Co-authored *amicus* brief in successful challenge to Hawaii ban on same-sex marriages (*Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993))

First Amendment

♢ Co-counsel in successful challenge to constitutionality of Alabama law barring state funding for university student groups (*GLBA v. Sessions*, 930 F.Supp. 1492 (M.D. Ala. 1996))

♢ Co-counsel in successful challenge to content restrictions on grants for AIDS education materials (*Gay Men's Health Crisis v. Sullivan*, 792 F.Supp. 278 (S.D.N.Y. 1992))

Landlord / Tenant

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

Police

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

Racial Equality

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

SELECTED OTHER PUBLICATIONS

Editorials

♢ *Follow the Leaders*, NEW YORK TIMES, March 15, 2005

♢ *Play It Straight*, NEW YORK TIMES, October 16, 2004

♢ *Hiding Behind The Constitution*, NEW YORK TIMES, March 20, 2004

♢ *Toward More Perfect Unions,* NEW YORK TIMES, November 20, 2003 (with Brad Sears)

♢ *Don't Ask, Don't Tell. Don't Believe It*, NEW YORK TIMES, July 20, 1993

♢ *AIDS: Illness and Injustice*, WASH. POST, July 26, 1992 (with Nan D. Hunter)

BAR ADMISSIONS

♢ Massachusetts (2008)
♢ California (2004)
♢ District of Columbia (1987) (inactive)
♢ Pennsylvania (1986) (inactive)

♢ U.S. Supreme Court (1993)

♢ U.S. Court of Appeals for the First Circuit (2010)
♢ U.S. Court of Appeals for the Fifth Circuit (1989)
♢ U.S. Court of Appeals for the Ninth Circuit (2004)
♢ U.S. Court of Appeals for the Eleventh Circuit (1993)
♢ U.S. Court of Appeals for the D.C. Circuit (1993)

♢ U.S. District Courts for the Central District of California (2004)
♢ U.S. District Court for the District of the District of Columbia (1989)
♢ U.S. District Court for the District of Massachusetts (2010)
♢ U.S. District Court for the Northern District of California (2010)

EXHIBIT B

In re: Hyundai and Kia Fuel Economy Litigation
No. MDL 13-02424-GW (FFMx)
Expert Declaration of William B. Rubenstein

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

1. Consumer Legal Remedies Act Notice
2. State Court *Espinosa* Complaint
3. Notice of Removal to Federal Court
4. Plaintiff's Notice of Related Case and Request to Transfer
5. Hyundai's Opposition to Notice of Related Case
6. Plaintiff's Response to Opposition to Notice of Related Case
7. Order Denying Transfer of Case
8. Documents re: Hyundai's Motion to Dismiss Complaint
    a. Motion with Exhibits
    b. Proposed Order to MTD Complaint
    c. Request for Judicial Notice ISO MTD Complaint
9. Stipulation to Continue Hearing on MTD to File FAC
10. First Amended Complaint
11. Joint Rule 26(f) Report
12. Documents re: Hyundai's Motion to Dismiss FAC
    a. Motion with Exhibits
    b. Request for Judicial Notice ISO MTD FAC
13. Documents re: Plaintiffs' Opposition to MTD FAC
    a. Opposition to MTD FAC
    b. Opposition to Hyundai's RJN ISO MTD FAC
    c. Plaintiff's RJN ISO Opposition to MTD FAC
    d. Notice of Lodging DVD(Ex. C.2)
14. Documents re: Hyundai's Reply to Opposition to MTD FAC
    a. Reply to Opposition MTD FAC
    b. Response to Plaintiff's Opposition to RJN ISO MTD FAC
    c. Objection to Plaintiff's RJN ISO Opposition to MTD FAC
15. Court Order Denying MTD (04-24-2012)
    a. Supplemental Reasons Provided by the Court ISO of Denying MTD (4-23-2012)
16. Hyundai Initial Disclosures
17. Negotiated Protective Order
18. Stipulation for Continuance of Hearing and Deadline to File Class Certification Motion
19. Order re Stip for Continuance of Hearing and Deadline to File Class Certification Motion
20. Answer to First Amended Complaint
21. Stipulation to Continue Class Cert Filing Deadline to Add Parties
22. Order re Stip Continue Class Cert Filing Deadline to Add Parties
23. Second Amended Complaint
24. Answer to Second Amended Complaint
25. Plaintiffs' Supplemental Disclosure

26. Order Granting Voluntary Dismissal of Plaintiff Espinosa
27. Order Denying Further Continuation of Class Cert Filing Date
28. Deposition Notice of Lillian Levoff
29. Deposition Notice of Thomas Ganim
30. Documents re: Plaintiffs' Class Certification Motion
    a. Notice of Class Cert Motion
    b. Class Cert Motion
    c. Declarations of:
        i. Expert Espey
        ii. Expert Krosnick
        iii. Richard McCune
        iv. Plaintiff Ganim
        v. Plaintiff Levoff
        vi. Plaintiff Baldeschi
    d. Exhibits Class Cert Motion
31. Documents re: Hyundai's Opposition to Class Certification Motion
    a. Opposition to Class Cert Motion
    b. Declarations of:
        i. Budd
        ii. Johnson
        iii. Morgan
        iv. Nguyen
        v. Reedy
    c. Request for Judicial Notice with Exhibits
    d. Expert Reports of:
        i. Simonson
        ii. Ugone
    e. Appendix of variations in state laws
32. Hyundai Announcement of Voluntary Recall for Inflated MPG
33. Documents re: Plaintiffs' Reply ISO of Class Certification Motion
    a. Reply brief
    b. Declarations of:
        i. Expert Espey
        ii. Expert Krosnick
        iii. Richard McCune
    c. Exhibits
34. Motion to JPML to Transfer Cases
35. Denial of Hyundai's Ex Parte Motion for Stay Pending Resolution of JPML
36. Documents re: Hyundai Supplemental Brief ISO Opposition to Class Certification Motion
    a. Supplemental Brief
    b. Morgan Declaration and Exhibits
37. Plaintiffs' Supplemental Responsive Brief ISO Class Cert Motion
38. Court's Tentative Ruling and Request for Additional Briefing
39. Plaintiffs Filing of Supplemental Authority
40. Court's Further Tentative Ruling on Class Cert and Request for Additional Briefing
41. MDL Transfer Order to Judge Wu

42. Order re Stipulation to Continue Supplemental Class Certification Filing Deadlines
43. Minute Order Advising of Settlement with Hyundai
44. Interim Agreement for McCuneWright as one of the lead firms (highlighted)
45. Basic Settlement Terms
46. Email of KMA Confirmatory Witness Interviews (I took Michael Sprague)
47. Morgan Letter Outlining Confirmatory Witness Interviews (Highlights are those I took)
48. Settlement Agreement
49. Addendum to Settlement Agreement
50. Motion for Preliminary Approval of Settlement
51. Tentative Preliminary Approval of Settlement
52. Order Granting Preliminary Approval
53. Schedule of Class Settlement Dates
54. Amended Settlement Agreement with Exhibits
55. Espinosa Lodestar
56. Krauth Plaintiffs' Notice of Appearance (Consumer Watchdog firm)
57. Krauth Plaintiffs' Motion to Intervene (Consumer Watchdog firm)
58. Joint Stipulation re Briefing Schedule re Motion to Intervene
59. Order Granting Briefing Schedule re Motion to Intervene
60. Documents re: Espinosa Plaintiffs' Opposition to Motion to Intervene
    a. Opposition to Motion to Intervene
    b. McCune Declaration ISO Opp to Mx to Intervene
    c. Exhibit 1 to McCune Decl ISO Opp to Mx to Intervene
    d. Exhibit 2 to McCune Decl ISO Opp to Mx to Intervene
61. Hyundai's Opposition to Motion to Intervene
    a. Joseph Ashby Declaration ISO of Opp to Mx to Intervene
    b. Exhibit 1 to Ashby Decl ISO of Opp to Mx to Intervene
62. Hunter Plaintiffs' Notice of Special Appearance (HagensBerman firm)
63. Hunter Plaintiffs' Opposition to Motion to Intervene
64. Quinn Rates-Declaration of Diane C. Hytnyan (Apple, Inc.)
65. Quinn Rates-Declaration of Eric Cramer (Marchbanks Truck Serv)
66. Quinn Rates-Declaration of Susheel Kirpalani (Lehman Bros)
67. Quinn Rates-Declaration of Richard Pearl (Clements)
68. Quinn Rates-Declaration of Stephen Neuwirth (Four in One)
69. Court Hearing Transcript (11-29-2012) re Motion to Intervene
70. Appointment of Lead Counsel (DE 32) (3/28/2013)
71. Memo in Support of Motion for Certification of Settlement Class (DE 184) (1/23/2014)
72. Memo in Opposition to Certification of Proposed Settlement Class (DE 229) (05/29/2014)
73. *Krauth/Hasper* Plaintiffs' Opposition to *Brady/Hunter/Espinosa* Plaintiffs' Motion for Preliminary Approval (DE 236) (05/30/2014)
74. Combined Reply in Support of Plaintiffs' Motion for Certification of Settlement Class and Motion for Preliminary Settlement Approval as to *Gentry* Plaintiffs (DE 252) (06/14/2014)
75. Reply in Support of Plaintiffs' Motion for Preliminary Approval of Class Settlement as to *Krauth/Hasper* Plaintiffs (DE 253) (06/14/2014)
76. Declaration of Richard D. McCune in Support of Reply Re: Plaintiffs' Motion for Preliminary Approval of Class Settlement as to *Krauth/Hasper* Plaintiffs (DE 253-1) (06/14/2014)
77. Objection to Settling Plaintiffs Attempt to Adjudicate and Release All Virginia Claims for Lack

of Article III Standing (DE 260) (06/20/2014)

78. Supplemental Authorities in Support of Objection to Standing of Settling Plaintiffs (DE 262) (6/23/2014)
79. Tentative Ruling on Preliminary Approval (DE 267) (06/26/2014)
80. *Krauth/Hasper* Plaintiffs' Response to Settling Parties' Supplemental Brief in Support of Preliminary Approval (DE 277) (07/18/2014)
81. Second Tentative Ruling on Preliminary Approval (DE 317) (08/21/2014)
82. Order Granting Preliminary Approval of Class Settlement and Certifying Settlement Class (DE 319) (08/29/2014)

EXHIBIT C

In re: Hyundai and Kia Fuel Economy Litigation
No. MDL 13-02424-GW (FFMx)
Expert Declaration of William B. Rubenstein

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

1. *Anderson v. Nextel Retail Stores, LLC*, 2010 WL 8591002 (C.D. Cal. April 12, 2010)

2. *Boyd v. Bank of America Corp*., 2014 WL 6473804 (C.D. Cal. November 18, 2014)

3. *Carter v. Anderson Merchandisers, LP*, 2010 WL 1946757 (C.D. Cal. May 11, 2010)

4 *Elliott v. Rolling Frito-Lay Sales, LP*, 2014 WL 2761316 (C.D. Cal. June 12, 2014)

5. *Espinoza v. Domino's Pizza, LLC*, 2012 WL 5462550 (C.D. Cal. November 07, 2012)

6. *In re Toys R Us-Delaware, Inc.--Fair and Accurate Credit Transactions Act (FACTA) Litigation*, 295 F.R.D. 438 (C.D. Cal. 2014)

7. *Johnson v. General Mills, Inc*., 2013 WL 3213832 (C.D. Cal. June 17, 2013)

8. *Kearney v. Hyundai Motor America*, 2013 WL 3287996 (C.D. Cal. June 28, 2013)

9. *Maine State Ret. Sys. v. Countrywide Fin. Corp.,* 2013 WL 6577020 (C.D. Cal. Dec. 5, 2013)

10. *Mancini v. Ticketmaster*, 2013 WL 3995269 (C.D. Cal. Aug. 2, 2013)

11. *McKenzie v. Fed. Exp. Corp*., 2012 WL 2930201 (C.D. Cal. July 2, 2012)

12. *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160 (C.D. Cal. 2010)

13. *Pereira v. Ralph's Grocery Co*., 2010 WL 6510346 (C.D. Cal. July 1, 2010)

14. *Roberts v. Electrolux Home Products, Inc*., 2014 WL 4568632 (C.D. Cal. Sept. 11, 2014)

15. *Vandervort v. Balboa Capital Corp*., 8 F.Supp.3d 1200 (C.D. Cal. 2014)

16. *Vinh Nguyen v. Radient Pharmaceuticals Corp*., 2014 WL 1802293 (C.D. Cal. May 06, 2014)

EXHIBIT D

In re: Hyundai and Kia Fuel Economy Litigation
No. MDL 13-02424-GW (FFMx)
Expert Declaration of William B. Rubenstein

EXHIBIT D
List of Exemplary Cases With Multipliers Over 3.5

1. In re Merry-Go-Round Enterprises, Inc., 244 B.R. 327 (Bankr. D. Md. 2000) (19.6 multiplier)

2. Stop & Shop Supermarket Co. v. SmithKline Beecham Corp., NO. CIV.A. 03-457, 2005 WL 1213926, at *17-18 (E.D. Pa. May 19, 2005) (15.6 multiplier)

3. Kuhnlein v. Department of Revenue, 662 So.2d 309, 315 (Fla. 1995) (15 multiplier reduced to 5)

4. In re Doral Fin. Corp. Sec. Litig., No. 05-md-1706 (S. D. N.Y. July 17, 2007) (10.26 multiplier)

5. Weiss v. Mercedes-Benz, 899 F. Supp. 1297 (D. N.J. 1995), aff'd, 66 F.3d 314 (3d Cir. 1995) (9.3 multiplier)

6. Doty v. Costco Wholesale Corp., No. 05-3241 (C. D. Cal. May 14, 2007) (9 multiplier)

7. Conley v. Sears, Roebuck & Co., 222 B.R. 181 (D. Mass. 1998) (8.9 multiplier)

8. Cosgrove v. Sullivan, 759 F. Supp. 1667, 167 n.1 (S. D. N.Y. 1991) (8.74 multiplier)

9. New England Carpenters Health Benefits Fund v. First Databank, Inc., Civil Action No. 05-11148-PBS, 2009 WL 2408560 (D. Mass. Aug. 3, 2009) (8.3 multiplier)

10. Newman v. Caribiner Int'l, Inc., No. 99 Civ. 2271 (S.D. N.Y. Oct. 19, 2001) (7.7 multiplier)

11. Hainey v. Parrott, No. 02-733 (S. D. Ohio Nov. 6, 2007) (7.47 effective multiplier)

12. In re Rite Aid Corp. Sec. Litigation, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (6.96 multiplier)

13. Steiner v. Amer. Broadcasting Co., Inc., 248 Fed. Appx. 780, 783 (9th Cir. 2007) (6.85 multiplier)

14. In re UnitedHealth Group, Inc. PSLRA Litig., No. 06-1691 (D. Minn. Aug. 10, 2009) (6.49 multiplier)

15. The Music Force, LLC v. Viacom, Inc., No. 04-8239 (C.D. Cal. Aug. 8, 2007) (6.43 multiplier)

16. In re Boston and Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A., 778 F.2d 890 (1st Cir. 1985) (6 multiplier)

17. In re Cardinal Health Inc. Securities Litigations, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (6 multiplier)

18. In re Krispy Kreme Doughnuts, Inc. Sec. Litig., No. 04-416 (M.D. N.C. Feb. 15, 2007) (6 multiplier)

19. In re RJR Nabisco, Inc. Securities Litigation, No. 88 Civ. 7905(MBM), 1992 WL 210138, at *5-6 (S.D. N.Y. Aug. 14, 1992) (6 multiplier)

20. Spartanburg Reg'l Health Servs. Dist., Inc. v. Hillenbrand Indus., Inc., No. 03-2141 (D. S.C. Aug. 15, 2006) (6 multiplier)

21. In re Cardinal Health, Inc. Sec. Litig., No. 04-575, 2007 U.S. Dist. LEXIS 95127 (S. D. Ohio Dec. 31, 2007) (5.85 multiplier)

22. Dutton v. D&K Healthcare Res., Inc., No. 04-147 (E. D. Mo. June 5, 2007) (5.6 multiplier)

23. In re Charter Communications, Inc., Securities Litigation, No. MDL 1506, 2005 WL 4045741, at * 22 (E.D. Mo. June 30, 2005) (5.6 multiplier)

24. Roberts v. Texaco, Inc., 979 F. Supp. 185, 198 (S.D. N.Y. 1997) (5.5 multiplier)

25. Warner v. Experian Info. Solutions, Inc., No. BC362599 (Cal. Super. Ct. Los Angeles Co. Feb. 26, 2009) (5.48 multiplier)

26. Davis v. J.P. Morgan Chase & Co., 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) (5.3 multiplier)

27. Di Giacomo v. Plains All American Pipeline, No. Civ.A.H-99-4137, 2001 WL 34633373, * at 11-12 (S.D. Tex. Dec. 19, 2001) (5.3 multiplier)

28. Craft v. County of San Bernardino, 624 F. Supp. 2d 1113, 1123-25 (C.D. Cal. 2008) (5.2 multiplier)

29. In re Enron Corp. Securities, Derivative & ERISA Litigation, 586 F. Supp. 2d 732, 803 (S.D. Tex. 2008) (5.2 multiplier)

30. In re Beverly Hills Fire Litig., 639 F. Supp. 915, 924 (E. D. Ky. 1986) (5 multiplier to attorney who performed the bulk of work on the case)

31. In re Fernald Litigation, No. C-1-85-149, 1989 WL 267038, at *4-5 (S.D. Ohio Sept. 29, 1989) (5 multiplier)

32. In re Cendant Corp. Securities Litigation, 404 F.3d 173, 183 (3d Cir. 2005) (multiplier in "mid-single digits")

33. In re United Rentals, Inc. Sec. Litig., No. 04-1615 (D. Conn. May 26, 2009) (4.79 multiplier)

34. Castillo v. General Motors Corp., No. 07-2142 (E. D. Cal. April 19, 2009) (4.77 multiplier)

35. Meijer, Inc. v. 3M, No. 04-5871, 2006 WL 2382718 (E. D. Pa. Aug. 14, 2006) (4.77 multiplier)

36. In re Xcel Energy, Inc., Securities, Derivative & "ERISA" Litigation, 364 F. Supp. 2d 980, 999 (D. Minn. 2005) (4.7 multiplier)

37. Maley v. Del Global Technologies Corp., 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (4.65 multiplier)

38. Teeter v. NCR Corp., No. 08-297 (C.D. Cal. Aug. 6, 2009) (4.61 multiplier)

39. Holleran v. Rita Medical Sys., Inc., No. RG06302394 (Cal. Super. Ct. Alameda Co. Aug. 1, 2007) (4.57 multiplier)

40. Rabin v. Concord Assets Group, Inc., No. 89 Civ. 6130, 1991 WL 275757 (S.D. N.Y. Dec. 19, 1991) (4.4 multiplier)

41. Agofonova v. Nobu Corp., No. 07-6926 (S. D. N.Y. Feb. 6, 2009) (4.34 multiplier)

42. Buccellato v. AT & T Operations, Inc., No. C10-00463-LHK, 2011 WL 3348055, at *2 (N.D. Cal. Jun. 30, 2011) (4.3 multiplier)

43. In re AremisSoft Corp. Sec. Litig., 210 F.R.D. 109, 135 (D.N.J. 2002) (4.3 multiplier)

44. Shannon v. Hidalgo County Board of Comm'r, No. 08-369 (D. N.M. June 4, 2009) (4.2 multiplier)

45. Simmons v. Andarko Petroleum Corp., No. CJ-2004-57 (Okla. Dist. Ct. Caddo Co. Dec. 23, 2008) (4.17 multiplier)

46. In re OSI Pharm., Inc. Sec. Litig., No. 04-5505 (E.D. N.Y. Aug. 22, 2008) (4.11 multiplier)

47. Blackmoss Inv., Inc. v. Gravity Co., No. 05-4804 (S. D. N.Y. Nov. 20, 2007) (4.0 multiplier)

48. In re WorldCom, Inc. Sec. Litig., 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2003) (4.0 multiplier)

49. In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 465, 489 (S.D. N.Y. 1998) (3.97 multiplier)

50. Karpus v. Borelli (In re Interpublic Secs. Litig.), No. 02 Civ. 6527, 2004 WL 2397190, at *12 (S.D. N.Y. Oct. 26, 2004 (3.96 multiplier)

51. Vizcaino v. Microsoft Corp., 290 F.3d 1045, 1050-51 (9th Cir. 2002) (3.65 multiplier)

52. Donkerbrook v. Title Guar. Escrow Servs., Inc., No. 10-00616 LEK-RLP, 2011 WL 3649539, at *10 (D. Haw. Aug. 18, 2011) (3.6 multiplier)

53. Turner v. Murphy Oil USA, Inc., 472 F. Supp. 2d 830, 869 (E.D. La. 2007) (3.5 multiplier)

54. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 123 (2d Cir. 2005) (3.5 multiplier)