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17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA

19 RAMTIN ZAKIKHANI, KIMBERLY  
20 ELZINGA, THEODORE MADDOX JR.,  
21 MICHAEL SUMMA, JACQUELINE  
22 WASHINGTON, PATTI TALLEY,  
23 ANA OLACIREGUI, ELAINE  
24 PEACOCK, MELODY IRISH, and  
25 DONNA TINSLEY, individually and on  
26 behalf of all others similarly situated,

27 Plaintiffs,

28 v.

29 HYUNDAI MOTOR COMPANY,  
30 HYUNDAI MOTOR AMERICA, KIA  
31 CORPORATION, and KIA AMERICA,  
32 INC.,

33 Defendants.

Case No. 8:20-cv-01584-SB-JDE

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

Judge: Hon. Stanley Blumenfeld, Jr.

Date: April 21, 2023

Time: 8:30 a.m.

Courtroom: 6C

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 21, 2023, at 8:30 a.m., before the  
3 Honorable Stanley Blumenfeld Jr. of the United States District Court for the Central  
4 District of California, located at First Street Courthouse, 350 W. First Street,  
5 Courtroom 6C, Los Angeles, California 90012, Plaintiffs Kimberly Elzinga,  
6 Theodore Maddox, Jr., Jacqueline Washington, Patti Talley, Ana Olaciregui, Elaine  
7 Peacock, Melody Irish, Donna Tinsley, Ramtin Zakikhani, Brenda Evans, Anthony  
8 Vacchio, Minda Briaddy, Adam Pluskowski, Ricky Barber, Lucille Jacob, Carla  
9 Ward, Pepper Miller, and Cindy Brady (“Plaintiffs”) will and hereby do move the  
10 Court under Federal Rule of Civil Procedure 23(h) and 54(d)(2) for an Order  
11 awarding:

- 12 1. Attorneys’ fees to Class and Plaintiffs’ Counsel totaling \$8,696,551.50;
- 13 2. Actual out-of-pocket litigation costs in an amount up to \$239,767.60;
- 14 and
- 15 3. Service awards to eighteen (18) Class Representatives totaling \$67,500.

16 This Motion is based on this Notice of Motion and Motion, the accompanying  
17 Memorandum of Points and Authorities, the Settlement Agreement, including all  
18 exhibits thereto, the Declarations of Steve W. Berman (containing the expert report  
19 of Prof. Robert Klonoff), Elizabeth A. Fegan (containing the expert report of Susan  
20 K. Thompson), Jonathan M. Jagher, Katrina Carroll, Rosemary M. Rivas, and  
21 J. Barton Goplerud (all containing the declarations from each of their plaintiffs), and  
22 all other pleadings, papers, records, and documentary materials on file in this action,  
23 including those matters of which the Court may take judicial notice, and such other  
24 argument as the Court may consider.

25 This Motion is made following the conference of counsel under L.R. 7-3,  
26 which took place on March 14, 2023.

1 DATED: March 20, 2023

Respectfully submitted,

2 /s/ Steve W. Berman

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## I. INTRODUCTION

1  
2 Plaintiffs and Defendants Hyundai Motor Company (HMC), Hyundai Motor  
3 America (HMA), Kia Corporation (KC), and Kia America, Inc. (KA) (“Defendants”)   
4 agreed to a proposed settlement resolving nationwide class claims regarding an  
5 alleged defect in the anti-lock brake (ABS) modules, also referred to as a hydraulic  
6 electronic control unit (HECU), contained in more than three million Class Vehicles.<sup>1</sup>  
7 The alleged defect in these ABS modules make them prone to an electrical short that  
8 can result in abnormal ABS functionality, and in some instances, spontaneous engine  
9 compartment fire when a vehicle is parked and off, or while in operation. Over the  
10 course of nearly three years, Class and Plaintiffs’ Counsel overcame two motions to  
11 dismiss, were successful in pursuing claims under California law on behalf of a  
12 nationwide class of consumers, battled through eight-plus months of fast-paced and  
13 antagonistic discovery, retained experts, and were working on their anticipated  
14 motion for class certification up until the case settled at mediation. The proposed  
15 settlement demonstrates the high value of this work by, among other things,  
16 extending the vehicles’ warranties and providing free one-time vehicle inspections to  
17 ensure the recall remedies are effective in the field and class members are not  
18 damaged should the defect manifest for them or subsequent owners, providing a  
19 mechanism for qualifying vehicle owners to receive full reimbursement for eligible  
20 out-of-pocket expenses, and compensating qualifying vehicle owners for the  
21 inconvenience and out-of-pocket losses they incurred because of vehicle fire caused

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22 <sup>1</sup> Capitalized terms have the same meaning as in the Amended Settlement  
23 Agreement (“S.A.”). Dkt. 131-1. Class Vehicles refers to Hyundai Tucson (MY2014-  
24 2021), Hyundai Santa Fe (MY2007, 2017-2018), Hyundai Santa Fe Sport (MY2013-  
25 2015, 2017-2018), Hyundai Santa Fe XL (MY2019), Hyundai Azera (MY2006-  
26 2011), Genesis G80 (MY2017-2020), Genesis G70 (MY2019-2021), Hyundai  
27 Genesis (MY2015-2016), Hyundai Elantra (MY2007-2010), Hyundai Elantra  
28 Touring (MY2009-2011), Hyundai Sonata (MY2006), Hyundai Entourage  
(MY2007-2008), Kia Sportage (MY2008-2009, 2014-2021), Kia Sorento (MY2007-  
2009, 2014-2015), Kia Optima (MY 2013-2015), Kia Stinger (MY2018-2021), Kia  
Sedona (MY2006-2010), Kia Cadenza (MY 2017-2019), and Kia K900 vehicles  
(MY2016-2018) that were the subject of NHTSA recalls. S.A. ¶¶ 1.16, 1.18, 1.21.

1 by the ABS module defect. While there is no “clear sailing” provision, Defendants  
2 have agreed to pay the attorneys’ fees and service awards ordered by the Court  
3 without diminishing the compensation provided to the Settlement Class.

4 This Settlement is the result of hard-fought litigation, including extensive  
5 motion practice and discovery, and considerable time, effort, and skill from Class  
6 and Plaintiffs’ Counsel. Although they originally brought three separate class cases  
7 that were eventually consolidated under *Zakikhani* after the Settlement was reached,  
8 Class and Plaintiffs’ Counsel recognized their common goals for Class members and  
9 quickly united to prosecute the claims zealously, thoroughly, cooperatively, and  
10 efficiently. Once working together, Class and Plaintiffs’ Counsel endeavored to  
11 allocate their time and expenses efficiently among the participating firms, and avoid  
12 double billing (i.e., billing time in separate cases for the same work performed).  
13 See Declaration of Steve W. Berman in support of Plaintiffs’ Motion for Attorneys’  
14 Fees, Costs, and Service Awards (“Berman Decl.”) ¶¶ 18-20, 25; Declaration of  
15 Elizabeth A. Fegan in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and  
16 Service Awards (“Fegan Decl.”) ¶¶ 86-87. Despite their efforts and an excellent  
17 proposed Settlement that, to date, has received no objections, Class and Plaintiffs’  
18 Counsel have not been paid for the approximate 4,550 hours of work attributable to  
19 this case over the last several years or reimbursed for the \$239,767.60 in expenses  
20 they have incurred in this case. The Settlement provides various forms of benefits to  
21 Class members to ensure that each Class member receives benefits commensurate  
22 with the harm they suffered. While this structure is ideal to ensure that each Class  
23 member is made whole for their particular harm, it makes Settlement administration  
24 more complex than many class actions. Based on their direct experience with similar  
25 settlement structures, Class Counsel anticipate that they will spend an additional  
26 2,500 hours assisting Class members after final approval of the Settlement.

27 Accordingly, Class and Plaintiffs’ Counsel respectfully ask the Court to  
28 approve their request for \$8,696,551.50 in attorneys’ fees and actual litigation

1 expenses up to \$239,767.60 incurred to achieve this Settlement. As detailed herein,  
2 this fee request equates to just three percent (3%) of the warranty extension value  
3 alone. Further, the requested amount would provide a 3.0 multiplier based on their  
4 current lodestar, but just a 1.95 multiplier after accounting for the anticipated work  
5 during and post-final approval.

6 Plaintiffs further seek Court approval of service awards ranging from \$2,500  
7 to \$5,000 to each of the eighteen Plaintiffs, for a total award of \$67,500. Given the  
8 resources each plaintiff devoted to this case, including substantial discovery efforts  
9 by nine plaintiffs, and the results achieved on behalf of the Settlement Class that  
10 could not have occurred without their assistance, the requested service awards are  
11 reasonable and should also be approved. Plaintiffs request the Court grant this Motion  
12 and approve the requested attorneys' fees, costs, and service awards as reasonable.

13 **II. PROCEDURAL HISTORY AND THE WORK**  
14 **ACCOMPLISHED FOR CLASS MEMBERS**

15 **A. The Zakikhani, Evans, and Pluskowski Litigation**

16 Class Counsel began investigating the ABS module defect in April 2020.  
17 Fegan Decl. ¶¶ 12-15. These extensive pre-suit efforts included analysis of Plaintiff  
18 Ramtin Zakikhani's vehicle fire and work with an automotive expert regarding its  
19 cause, identification of the ABS module defect in other vehicle models, review of  
20 published NHTSA documents, investigation into other vehicle owner complaints,  
21 and investigation of potential legal claims, all of which resulted in Mr. Zakikhani  
22 filing this class action on August 25, 2020. Fegan Decl. ¶¶ 14-16.

23 On November 13, 2020, Mr. Zakikhani, Kimberly Elzinga, and four additional  
24 plaintiffs filed their First Amended Class Action Complaint ("FAC"), which  
25 Defendants moved to dismiss. *Zakikhani* Dkt. 28, 34. On June 28, 2021, the Court  
26 granted in part and denied in part Defendants' motion, holding that it could exercise  
27 personal jurisdiction over HMC and KC but granting the remainder of the motion  
28 with leave to amend. *Zakikhani* Dkt. 48.

1 On July 16, 2021, Plaintiffs Zakikhani, Elzinga, Maddox, Washington, Talley,  
2 Olaciregui, Peacock, Irish, and Tinsley, along with another plaintiff, filed their  
3 Second Amended Complaint (“SAC”), which alleged putative claims on behalf of a  
4 nationwide class of consumers under California law and individual state classes on  
5 behalf of consumers in California, Florida, Ohio, Maryland, Virginia, Rhode Island,  
6 Texas, and Missouri. *Zakikhani* Dkt. 49 ¶¶ 306-307; *see also* Fegan Decl. ¶ 20.  
7 Following the initial case management conference on August 27, 2021, the Court  
8 entered a condensed litigation schedule that allowed discovery to proceed  
9 immediately, set a June 10, 2022 deadline for Plaintiffs’ class certification motion,  
10 and set an April 17, 2023 trial date. *Zakikhani* Dkt. 53, 55.

11 On September 14, 2021, Defendants moved to dismiss the SAC. *Zakikhani*  
12 Dkt. 57. On January 25, 2022, the Court largely denied Defendants’ motion and held  
13 that, among other things, Plaintiffs could pursue claims under California law on  
14 behalf of a nationwide class of consumers. *Id.*

15 On February 25, 2022, after undertaking an investigation that included a  
16 review of publicly available sources of technical information, research into the  
17 allegedly defective ABS modules, and discussions with numerous putative class  
18 members, Plaintiffs Evans, Vacchio, Briaddy, and one other plaintiff, filed *Evans v.*  
19 *Hyundai Motor Company, et al.*, No. 8:22-cv-00300-SB-JDE (C.D. Cal.) (“*Evans*”),  
20 asserting claims for violations of the Magnuson-Moss Warranty Act, state law, and  
21 common law. Berman Decl. ¶ 6. Like *Zakikhani*, *Evans* alleged Defendants’ flawed  
22 design and manufacturing processes resulted in the production and sale of Hyundai  
23 and Kia vehicles with defective ABS modules, but *Evans* included additional newly  
24 recalled vehicles. *Id.* After *Evans* was related to *Zakikhani* and transferred to this  
25 Court, counsel agreed to jointly prosecute their cases. *Id.* ¶ 7; Fegan Decl. ¶¶ 23-24.

26 On April 15, 2022, after an extensive investigation that included interviewing  
27 numerous Hyundai and Kia owners about their experiences with their vehicles with  
28 the defective ABS modules, reviewing NHTSA filings, and conducting research

1 regarding the defective ABS module and other technical information, Plaintiffs  
2 Pluskowski, Barber, Jacob, Ward, Miller, and Brady filed *Pluskowski, et al. v.*  
3 *Hyundai Motor America, et al.*, No. 8:22-cv-00824 (“*Pluskowski*”), alleging claims  
4 and a proposed nationwide class substantially similar to those in *Zakikhani* and  
5 *Evans*. Declaration of Rosemary M. Rivas in support of Plaintiffs’ Motion for Class  
6 Counsel Fee and Expense Award and Class Representative Service Awards (“*Rivas*  
7 *Decl.*”) ¶¶ 6-9. The claims in *Pluskowski* related to the February 2022 recalls and  
8 expanded the scope of the litigation to include additional vehicles suffering from the  
9 ABS module defect that were not previously covered by the plaintiffs in *Zakikhani*  
10 or *Evans*. *Rivas Decl.* ¶ 9.

11 Once the litigation schedule here was in place, it set off an active and  
12 contentious discovery phase that required numerous meet-and-confers, discovery  
13 motions, and hearings. *Fegan Decl.* ¶¶ 25-62; *Berman Decl.* ¶¶ 8, 10. Plaintiffs  
14 received and reviewed extensive document productions from Defendants, including  
15 thousands of documents in English and Korean, took 30(b)(6) depositions, conducted  
16 third-party discovery of Mando America Corporation (the supplier of the ABS  
17 modules installed in certain Class Vehicles), and located, reviewed, and produced  
18 substantial documents in response to Defendants’ discovery requests. *Fegan Decl.*  
19 ¶¶ 27-53, 55-61; *Berman Decl.* ¶ 8. Class and Plaintiffs’ Counsel worked  
20 cooperatively and efficiently to complete this discovery, retain experts, develop a  
21 class certification strategy, and, eventually, prepare and participate in mediation.  
22 *Fegan Decl.* ¶ 88; *Berman Decl.* ¶¶ 8-10.

23 **B. The proposed Settlement was negotiated at arms’ length.**

24 On April 25-26, 2022, the parties mediated in with the Hon. Edward A. Infante  
25 (Ret.) for more than fourteen hours across two separate sessions. Thanks in part to  
26 Judge Infante’s persistent attention, the sessions culminated in an agreement in  
27 principle for a nationwide settlement. *Fegan Decl.* ¶ 66; *Berman Decl.* ¶ 9. The  
28 Settlement terms are detailed more fully in the Settlement Agreement (Dkt. 131-1)



1 and Plaintiffs’ Motion for Final Approval of Class Action Settlement filed  
2 concurrently herewith, but in essence they provide a combination of benefits to Class  
3 members that includes both monetary and non-monetary value, but it does not  
4 establish a traditional common fund for the payment of these benefits.

5 The parties used these sessions to focus on the Settlement relief and did not  
6 discuss or negotiate attorneys’ fees, costs, and service awards. Fegan Decl. ¶ 66;  
7 Berman Decl. ¶ 32. Even though they were engaged in settlement negotiations, given  
8 the ongoing discovery and tight class certification deadline, Class and Plaintiffs’  
9 Counsel continued to investigate the underlying facts regarding the alleged ABS  
10 module defect and develop the evidence necessary to obtain class certification and  
11 successfully resolve the case for the proposed class of vehicle owners. *See, e.g.*,  
12 Fegan Decl. ¶¶ 59-62; Berman Decl. ¶ 10. Once the Settlement was reached in  
13 principle, Class and Plaintiffs’ Counsel continued these efforts in the form of  
14 confirmatory discovery by taking two additional corporate depositions of Defendants  
15 and conducting research into each of the several fixes provided by the various  
16 NHTSA recalls. Fegan Decl. ¶ 63; Berman Decl. ¶ 12.

17 Although the *Pluskowski* Plaintiffs were not part of the mediation negotiations,  
18 their class counsel is highly experienced in automotive defect class actions, and they  
19 engaged in meet and confer efforts with Defendants and Class Counsel that ultimately  
20 led to the consolidation and settlement of *Pluskowski* with this action. After  
21 reviewing the proposed Settlement terms and satisfying themselves that they  
22 provided excellent results for the Class, the *Pluskowski* Plaintiffs agreed to join the  
23 Settlement. Rivas Decl. ¶ 12.

24 Class and Plaintiffs’ Counsel moved for preliminary approval of the  
25 Settlement, which this Court granted on October 20, 2022. Dkt. 130. Notice to the  
26 Settlement Classes commenced on February 17, 2023. *Id.* at 13.

1 **C. The parties have no agreement on the amount of fees, expenses, or**  
2 **service awards.**

3 After negotiating the Settlement benefits and reaching agreement, the parties  
4 then shifted their focus to attorneys' fees, costs, and service awards. On July 14,  
5 2022, Class Counsel and Defendants' counsel held a mediation session on attorneys'  
6 fees and costs with the assistance of retired Judge Edward A. Infante. Berman Decl.  
7 ¶ 32. This mediation was unsuccessful. *Id.* Importantly though, while finalizing the  
8 Settlement Agreement, Defendants agreed to pay attorneys' fees, costs, and service  
9 awards separately, so they would not impact or diminish the full value of the  
10 Settlement to Class members. S.A. ¶ 14.3. There is no "clear sailing" agreement  
11 between the parties, meaning there is no agreement that Defendants will not oppose  
12 fees up to a certain amount. *Id.* Instead, Defendants reserved the right to challenge  
13 Class and Plaintiffs' Counsel's fee request, regardless of the amount sought, as well  
14 as challenge the out-of-pocket expenses and service awards requested. *Id.* As of this  
15 filing, no agreement on attorneys' fees, costs, or service award has been reached by  
16 the parties. Berman Decl. ¶ 33.

17 **D. Class and Plaintiffs' Counsel vigorously represented the Classes.**

18 Class and Plaintiffs' Counsel invested substantial time and resources  
19 investigating and litigating this action. Tasks they performed include:  
20 (1) investigating the claims and ABS module defect; (2) meeting and communicating  
21 regularly with Plaintiffs and other Class members; (3) researching and drafting the  
22 complaint and amended complaints; (4) researching and responding to two motions  
23 to dismiss; (5) reviewing Plaintiffs' documents and preparing them for production;  
24 (6) drafting responses and supplemental responses to Defendants' written discovery  
25 requests; (7) drafting a protective order; (8) drafting discovery requests, including  
26 third-party subpoenas; (9) negotiating the production of extensive electronically  
27 stored information (ESI); (10) reviewing more than 20,000 pages of documents,  
28 many of which were in Korean and required translation; (11) preparing for and

1 participating in two 30(b)(6) depositions; (12) retaining and consulting with liability  
2 and damages experts; (13) researching, drafting, and arguing an exhaustive motion  
3 to compel; (14) drafting mediation statements and participating in multiple mediation  
4 sessions; (15) drafting the Settlement Agreement, class notices, claim forms,  
5 settlement websites, and other settlement-related tasks, which required extensive  
6 negotiation with Defendants; (16) researching, briefing, and arguing preliminary  
7 approval; (17) overseeing administration of the Settlement (which just began in the  
8 last month); and (18) responding to communications from Class members with  
9 questions about the Settlement. Berman Decl. ¶¶ 6-14; Fegan Decl. ¶¶ 12-77.

10 Class and Plaintiffs' Counsel have performed this work without compensation  
11 for their time and paid substantial out-of-pocket expenses—\$172,676.60 as of this  
12 filing with another \$67,000 incurred and expected through final approval—in the  
13 prosecution of the Class members' claims. Berman Decl. ¶¶ 22, 31, 34; Fegan Decl.  
14 ¶¶ 81-83. Class and Plaintiffs' Counsel assumed the financial risks involved in the  
15 representation and agreed to advance all costs. If they did not successfully resolve  
16 this matter or prevail at trial and any related appeals, Class and Plaintiffs' Counsel  
17 would have been paid nothing. Berman Decl. ¶ 34; Fegan Decl. ¶ 79.

18 To assist in the analysis of their requests under this Motion, Plaintiffs retained  
19 seasoned attorney, professor, and class action expert Robert H. Klonoff to opine on  
20 the reasonableness of the requested attorneys' fees, the requested costs, and the  
21 proposed service awards to Plaintiffs. Berman Decl. ¶ 36, Ex. 2 (Declaration of  
22 Robert H. Klonoff ("Klonoff Decl.")) ¶ 1. Professor Klonoff reviewed and  
23 considered Class and Plaintiffs' Counsel's work and outcome achieved in this case  
24 (including Susan K. Thompson's expert valuation of certain Settlement benefits),  
25 their detailed billable time and lodestar data, expenses, rate information for  
26 timekeepers, a representative plaintiff declaration, and various materials from other  
27 class action cases on which Class and Plaintiffs' Counsel have worked. *Id.* ¶ 12.  
28 Based on this review and analysis, and his extensive background and experience in

1 this area of litigation, *see id.* ¶¶ 2-11, Professor Klonoff concluded that Class and  
 2 Plaintiffs’ Counsel’s requested attorneys’ fees, costs, and service award requests  
 3 were reasonable, and he recommends their approval. *Id.* ¶¶ 25-28, 84.

4 **E. Class Counsel anticipates substantial post-approval work in assisting  
 5 with the administration of this Settlement.**

6 Based on recent experience with similarly structured settlements—*see, e.g., In*  
 7 *re Kia Engine Litig.*, No. 8:17-cv-00838-JLS-JDE (Dkt. 202) (C.D. Cal. May 10,  
 8 2021)—Class Counsel estimates they will spend an additional 2,500 hours assisting  
 9 Class members with claims administration, as well as reviewing and auditing claims  
 10 data. Berman Decl. ¶ 38; Fegan Decl. ¶ 93. Because of the nature of the ABS module  
 11 defect—namely, that it can manifest in several ways, such as ABS failure or a vehicle  
 12 fire, both of which can have other potential causes—and the Settlement structure  
 13 providing a variety of benefits requiring differing levels of documentation and action,  
 14 increased oversight and intervention from Class Counsel will be required to ensure  
 15 the Settlement is being administered fairly. Berman Decl. ¶ 39; Fegan Decl. ¶ 93.  
 16 The settlement in *In re Kia Engine Litigation*, No. 8:17-cv-00838-JLS-JDE, was  
 17 similarly structured, offering a range of benefits with various requirements from  
 18 Class members, and the alleged engine defect there was similarly nuanced (i.e.,  
 19 tracing manifestation to the alleged defect based on historical records and dealer  
 20 inspections). Berman Decl. ¶ 40. Assisting class members there was also more time-  
 21 consuming compared to other class administrations, given the documentation  
 22 required and coordination with the settlement administrators. *Id.* ¶ 41. Class Counsel  
 23 underestimated their future work there and have applied those lessons here by  
 24 factoring in what Class Counsel believes is an accurate estimate of future time. *Id.*

25 **III. ARGUMENT**

26 **A. Class and Plaintiffs’ Counsel are entitled to a fee for their work.**

27 “Federal Rule of Civil Procedure 23(h) permits the court to award reasonable  
 28 attorney’s fees and costs in class action settlements as authorized by law or by the

1 parties' agreement." *In re HP Printer Firmware Update Litig.*, No. 16-cv-05820,  
2 2019 WL 2716287, at \*2 (N.D. Cal. June 28, 2019) (citing Fed. R. Civ. P. 23(h)).  
3 "Courts in this circuit determine attorney's fees in class actions using either the  
4 lodestar method or the percentage-of-recovery method." *In re Hyundai & Kia Fuel*  
5 *Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (citing *Hanlon v. Chrysler Corp.*, 150  
6 F.3d 1011, 1029 (9th Cir. 1998)). Although the parties have not reached agreement  
7 on the amount of attorneys' fees, as a part of the Settlement, Defendants "agree to  
8 pay the attorneys' fees, expenses, and Class Representative service awards as ordered  
9 by the Court separate and apart from, and in addition to, the relief provided to the  
10 Class." S.A. ¶ 14.3.

11 There is further justification for a fee award here under several applicable  
12 California fee-shifting statutes that are designed to reward counsel who successfully  
13 pursue consumers' interests through publicly beneficial litigation. First, among other  
14 class-wide claims, Plaintiffs sued for violations of the California Consumers Legal  
15 Remedies Act ("CLRA"), under which the prevailing party is afforded fees. Cal. Civ.  
16 Code § 1780(e); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1169 (C.D.  
17 Cal. 2010) ("Under Cal. Civ. Code § 1780(e), the Court shall award costs and  
18 attorneys' fees to a prevailing plaintiff in an action under the CLRA."); *Mangold v.*  
19 *Cal. Pub. Utils. Comm'n*, 67 F.3d 1470, 1478-79 (9th Cir. 1995) ("a state right to an  
20 attorneys' fee reflects a substantial policy of the state"); *Kim v. Euromotors West/The*  
21 *Auto Gallery*, 149 Cal. App. 4th 170, 178-79 (2007) (plaintiff entitled to fee under  
22 CLRA "either because he obtained a net monetary recovery or because he achieved  
23 most or all of what he wanted by filing the action or a combination of the two").

24 Second, California's private attorney general doctrine provides fees to a  
25 successful party who confers a significant benefit on the public or a large class of  
26 persons. Cal. Civ. Proc. Code § 1021.5. Third, under Cal. Civ. Code § 1794, the Class  
27 is entitled to costs and attorneys' fees. *See* Cal. Civ. Code § 1794 (providing, among  
28 other things, that a buyer of consumer goods who recovers under this section may

1 recover attorneys’ fees). Last, the Magnuson Moss Warranty Act provides for  
2 recovery of attorneys’ fees. *See* 15 U.S.C. § 2310(d)(2) (a consumer who prevails on  
3 a claim under that statute or on a claim for breach of warranty may recover  
4 “attorneys’ fees based on actual time expended”).

5 The outcome Plaintiffs achieved with this Settlement warrants payment for  
6 their work: Class members that obtained a recall repair will receive 5- and 12-year  
7 (transferrable) warranties against the ABS module defect (S.A. ¶¶ 2.1-2.2) and are  
8 also entitled to a one-time free inspection of the ABS Module for peace of mind (S.A.  
9 ¶ 2.3); eligible Class members that paid out-of-pocket for ABS module-related  
10 repairs, towing, and transportation are entitled to full reimbursement (S.A. ¶¶ 2.5-  
11 2.6); and Class members that experienced the worst case-scenario—vehicle fire—are  
12 eligible for compensation for their vehicle’s value plus a goodwill cash payment  
13 (S.A. ¶ 2.4).

14 Because this Settlement does not provide a traditional monetary common fund  
15 (although the Settlement provides benefits that have calculable and significant value  
16 even under conservative estimates), there is agreement for the separate payment of  
17 fees, and the claims were brought under California fee-shifting statutes (although  
18 ultimately settled by agreement), there is some ambiguity about which methodology  
19 is appropriate to apply in assessing the attorneys’ fees request. *See* Klonoff Decl.  
20 ¶¶ 29-33. Therefore, Plaintiffs address and demonstrate the reasonableness of their  
21 request under both the lodestar and percentage-of-the-recovery methods.

22 **B. The attorneys’ fee request is reasonable under the lodestar approach.**

23 The lodestar calculation requires “multiplication of the number of hours  
24 reasonably expended by a reasonable hourly rate.” *In re Hyundai*, 926 F.3d at 570  
25 (quoting *Hanlon*, 150 F.3d at 1029)). The Court has discretion to enhance this  
26 lodestar figure by applying a multiplier based on a variety of factors, including “the  
27 results obtained for the Class and the quality of representation.” Order Granting Final  
28 Approval of Class Action Settlement and Granting Motion for Attorneys’ Fees at 43,

1 45, *In re Kia Engine Litig.*, No. 8:17-cv-00838-JLS-JDE (C.D. Cal. May 10, 2021)  
 2 (Dkt. 202); *see also Morales v. City of San Rafael*, 96 F.3d 359, 364 (9th Cir. 1996)  
 3 (noting the district court was “not only free but obligated to consider the results  
 4 obtained . . . in calculating the lodestar figure”) (cleaned up).

5 **1. The number of hours billed is reasonable.**

6 The lodestar for all Class and Plaintiffs’ Counsel as of February 28, 2023,  
 7 totals \$2,898,850.50 (*see* summary chart below), and the current billing rates, hours  
 8 billed, and resulting lodestar for each timekeeper that billed to this case are set forth  
 9 at Berman Decl. ¶ 17; Fegan Decl. ¶¶ 79, 81; Rivas Decl. ¶ 14; Fee Declaration of  
 10 Jonathan M. Jagher in support of Plaintiffs’ Motion for Attorneys’ Fees and Service  
 11 Awards (“Jagher Decl.”) ¶ 11; Declaration of Katrina Carroll in support of Plaintiffs’  
 12 Motion for Attorneys’ Fees and Service Awards (“Carroll Decl.”) ¶ 14; Declaration  
 13 of J. Barton Goplerud in support of Plaintiffs’ Motion for Attorneys’ Fees and Service  
 14 Awards (“Goplerud Decl.”) ¶ 8.

Firm	Total Hours	Total Lodestar (as of 2/28/2023)
Hagens Berman Sobol Shapiro LLP	1045.8	\$713,205.00
Fegan Scott LLC	2641.7	\$1,505,480.00
Freed Kanner London & Millen LLC	333.7	\$265,443.50
Lynch Carpenter LLP	154	\$140,120.00
Gibbs Law Group	285.6	\$217,977.00
Shindler, Anderson, Goplerud & Weese, PC	90.6	\$56,625.00
<b>TOTAL:</b>	<b>4551.4</b>	<b>\$2,898,850.50</b>

21 Class and Plaintiffs’ Counsel each maintained contemporaneous and detailed  
 22 time records, which include a description of all work performed and expenses  
 23 incurred.<sup>2</sup> The time committed by each firm was necessary to the successful  
 24

25 <sup>2</sup> Because courts do not require counsel to submit detailed time records in support  
 26 of a lodestar fee application, Class and Plaintiffs’ Counsel have not done so here.  
 27 *See, e.g., Parkinson*, 796 F. Supp. 2d at 1165 (noting plaintiffs provided summaries  
 28 of work performed at each stage of litigation supported by declarations to support fee  
 request but offered to produce detailed time records for *in camera* review if the court  
 so requests); *Hunter v. Nature’s Way Prods., LCC*, No. 16-cv-00532, 2020 WL

1 resolution of this litigation and all attorneys made sure to efficiently allocate work,  
2 coordinate assignments, and prevent the unnecessary duplication of work. Berman  
3 Decl. ¶¶ 18-20; Fegan Decl. ¶¶ 82, 88-89; Rivas Decl. ¶ 13; Jagher Decl. ¶¶ 12-13;  
4 Carroll Decl. ¶ 15; Goplerud Decl. ¶¶ 7, 10.

5 As confirmed by Professor Klonoff’s review of their time entries, the firms  
6 kept detailed and descriptive records in tenth-of-an-hour increments for all  
7 timekeepers. Berman Decl. ¶ 15; Fegan Decl. ¶ 79; Klonoff Decl. ¶ 37. They also  
8 appropriately and efficiently allocated work among timekeepers of varying expertise  
9 based on the difficulty or importance of the task—e.g., “utilizing more senior  
10 attorneys for crucial tasks, such as drafting and arguing major motions, taking Rule  
11 30(b)(6) depositions, conducting meet and confer sessions, and participating in  
12 settlement negotiations, while delegating more routine tasks to junior lawyers or  
13 paralegals.” Klonoff Decl. ¶ 37; Berman Decl. ¶ 18; Fegan Decl. ¶ 82. Further, the  
14 firms divided the labor efficiently among themselves as soon as they began to work  
15 together, effectively reducing duplicative work, so as to reduce their overall  
16 lodestars. Klonoff Decl. ¶ 38. Aside from *Evans* counsel’s initial investigation,  
17 drafting, and filing efforts (which added newly recalled vehicles not already in the  
18 *Zakikhani* case), their work was largely conducted in conjunction with that of  
19 *Zakikhani*’s counsel and therefore non-duplicative. Berman Decl. ¶ 20; Fegan Decl.  
20 ¶ 88. *Pluskowski*’s counsel incurred initial time and effort like that in *Evans*, but they  
21 agreed to join the Settlement after reviewing its terms. Rivas Decl. ¶¶ 6-10, 12.  
22 Overall, the work performed and outcome achieved clearly demonstrates it was  
23 conducted by attorneys and staff with vast expertise in handling automotive and  
24

25  
26 71160, at \*8 (S.D. Cal. Jan. 6, 2020) (“Class Counsel has not provided detailed time  
27 records, but instead provides general summaries of each firm’s billing time. The  
28 summaries and declarations provide a sufficient showing of the hours counsel  
performed on this case.”). Should the Court wish to see these detailed time records,  
Class and Plaintiffs’ Counsel are prepared to provide them for review *in camera*.



1 complex class action litigation. Berman Decl. ¶ 35; Fegan Decl. ¶ 89; Klonoff Decl.  
2 ¶ 36.

3 Class Counsel also anticipate conducting significant work following this filing,  
4 a reasonably estimated 2,500 hours split between Class Counsel and billed at each  
5 firm's blended rate, for responding to possible objectors, preparing for and presenting  
6 at the fairness hearing, addressing any appeals, and, most time consuming of all,  
7 overseeing the Settlement administration, which based on their experience in similar  
8 auto settlements, will require more than the typical time to field Class member  
9 inquiries and audit the claims process. Berman Decl. ¶¶ 37-41; Fegan Decl. ¶ 93; *see*  
10 *Craft v. Cty. of San Bernardino*, 624 F. Supp. 2d 1113, 1123 (C.D. Cal. 2008)  
11 (awarding a 5.2 multiplier based on plaintiffs' lodestar that included "post-approval  
12 projected time"); *In re Philips/Magnavox Television Litig.*, No. 09-cv-03072, 2012  
13 WL 1677244, at \*17 (D.N.J. May 14, 2012) (recognizing that time submitted in  
14 connection with fee petition filed before final approval "does not include the fees and  
15 expenses . . . expended after [that date] on tasks such as preparing for and appearing  
16 at the fairness hearing"); *Estate of McConnell v. EUBA Corp.*, No. 18-cv-00355,  
17 2021 WL 1966062, at \*7 (S.D. Ohio May 17, 2021) ("The Court is aware that Class  
18 Counsel's work does not end at final approval. Class Counsel frequently spend  
19 additional time, sometimes significant time, dealing with class members' inquiries,  
20 administration issues, and other post-approval matters.").

21 The more than 4,550 hours billed by Class and Plaintiffs' Counsel were  
22 reasonable, appropriate, and necessary for the effective prosecution of this case. As  
23 set forth above, this case saw extensive early motion practice, the production of  
24 thousands of pages of documents, several depositions, discovery disputes, expert  
25 consultation and work, and class certification preparation and work before it settled.  
26 Then when it settled, Class and Plaintiffs' Counsel spent and will continue to spend  
27 significant work getting it through final approval, any appeals, and administration.  
28 Although Plaintiffs were able to resolve the action before trial, courts recognize that

1 Class and Plaintiffs’ Counsel “should not be ‘punished’ for efficiently litigating[.]”  
2 *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, MDL  
3 No. 2672, 2017 WL 1352859, at \*6 (N.D. Cal. Apr. 12, 2017); *see also Rivera v.*  
4 *Agreserves, Inc.*, No. 15-cv-00613, 2017 WL 445710, at \*13 (E.D. Cal. Feb. 1, 2017)  
5 (“[a]warding Plaintiff a lesser amount of fees based on a lower multiplier would  
6 penalize Plaintiff’s counsel for achieving a stellar result with maximum efficiency”).

7 **2. The hourly rates are reasonable.**

8 Generally, “prevailing market rates in the relevant community set the  
9 reasonable hourly rate for purposes of computing the lodestar amount.” *Gonzales v.*  
10 *City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013). In general, “the relevant  
11 community is the forum in which the district court sits,” *id.*, and because counsel  
12 should be compensated for the delay in payment, it is appropriate to apply each  
13 biller’s current rates for all hours. *In re WPPSS Sec. Litig.*, 19 F.3d 1291, 1305 (9th  
14 Cir. 1994). But where “local community rates would not be sufficient to attract  
15 experienced counsel in a specialized legal field, the appropriate rate may be  
16 determined by reference to a national market or a market for a particular legal  
17 specialization.” *Dinosaur Merch. Bank v. Bancservices Int’l LLC*, No. 19-cv-00084,  
18 at \*8 (E.D. Mo. June 26, 2020) (cleaned up). That way courts can ensure they award  
19 “sufficient fees to attract qualified counsel.” *Moreno v. City of Sacramento*, 534 F.3d  
20 1106, 1111 (9th Cir. 2008); *see also Perfect 10, Inc. v. Giganews, Inc.*, No. 11-cv-  
21 07098, 2015 WL 1746484, at \*5 (C.D. Cal. Mar. 24, 2015), *aff’d*, 847 F.3d 657 (9th  
22 Cir. 2017) (noting “proper scope of comparison . . . extends to all attorneys in the  
23 relevant community engaged in equally complex Federal litigation, no matter the  
24 subject matter”) (quoting *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455  
25 (9th Cir. 2010)). Accordingly, Class and Plaintiffs’ Counsel’s rates are reasonable if  
26 they are within the range charged by and awarded to attorneys of comparable  
27 experience, reputation, and ability for similar work—i.e., complex class action  
28 litigation, particularly where the litigation was handled by lawyers from multiple

1 states, was nationwide in scope, and involved millions of Hyundai and Kia owners  
2 from across the United States. *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984); *see*  
3 *also* Klonoff Decl. ¶ 39.

4 Class and Plaintiffs' Counsel's rates reflect their skill, experience, reputation,  
5 and ability for similar work. *See Zakikhani* Dkt. 130 at 4 (the Court finding "Class  
6 Counsel have substantial experience in bringing successful class action lawsuits").  
7 The hourly rates sought here range from \$225-\$400 for paralegals, \$350-\$550 for  
8 associates and staff attorneys, \$550-\$850 for of counsel; and \$625-\$1,285 for  
9 partners. Berman Decl. ¶ 17; Fegan Decl. ¶ 81; Rivas Decl. ¶ 14; Jagher Decl. ¶ 11;  
10 Carroll Decl. ¶ 14; Goplerud Decl. ¶ 8. These rates are consistent with the prevailing  
11 market rates in this forum for attorneys of comparable experience, reputation, and  
12 ability. *See* Klonoff Decl. ¶¶ 41-44. Moreover, the rates Class and Plaintiffs' Counsel  
13 seek are consistent with or only slightly higher than those that have been approved  
14 by the Ninth Circuit and judges in the Central District over the last ten years,  
15 including some in which Class and Plaintiffs' Counsel's rates were specifically  
16 approved. *See* Klonoff Decl. ¶ 40; *see also, e.g., Marshall v. Northrup Grumman*  
17 *Corp.*, No. 16-cv-06794, 2020 WL 5668935, at \*7 (C.D. Cal. Sept. 18, 2020)  
18 (approving attorney rates between \$490 and \$1,060 per hour); *Alikhan v. Goodrich*  
19 *Corp.*, No. 17-cv-06756, 2020 WL 4919382, at \*8 (C.D. Cal. June 25, 2020)  
20 (approving rates of up to \$950 per hour); *Edwards v. First Am. Corp.*, No. 07-cv-  
21 03796, 2016 WL 8999934, at \*5 (C.D. Cal. Oct. 4, 2016) (rates of up to \$990 found  
22 reasonable); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, No. 15-cv-01614, 2018  
23 WL 8334858, at \*6 (C.D. Cal. July 30, 2018) (approving billing rates between \$600  
24 and \$825 per hour for attorneys with more than ten years of experience, \$325 to \$575  
25 per hour for attorneys with ten or fewer years of experience, and \$250 per hour for  
26 paralegals and clerks); *Gutierrez v. Wells Fargo Bank, N.A.*, No. 07-cv-05923, 2015  
27 WL 2438274, at \*5 (N.D. Cal. May 21, 2015) (rates ranging \$475-\$975 for partners,  
28 \$300-\$490 for associates, \$150-\$430 for paralegals and \$250-\$340 for litigation

1 support staff); *In re Toyota Motor Corp. Unint. Accel. Mktg., Sales Pracs., & Prods.*  
2 *Liab. Litig.*, No. 10-ml-02151, 2013 WL 12327929, at \*33 n.13 (C.D. Cal. July 24,  
3 2013) (rates ranging from \$150-\$950). And when compared to the rates actually paid  
4 to defense counsel on these kinds of cases, including that of defense counsel here,  
5 Class and Plaintiffs' Counsel's rates are patently reasonable. *See* Klonoff Decl.  
6 ¶¶ 45-47.

7 **3. A multiplier is warranted here.**

8 Class and Plaintiffs' Counsel's request for \$8,696,551.50 in fees reflects a 3.0  
9 multiplier of their billed time through February 2023. This multiplier will only be  
10 diluted down though by their significant work performed since February and  
11 expected to be performed through final approval, any appeals, and Settlement  
12 administration. *See* Klonoff Decl. ¶ 51. When factoring in Class Counsel's  
13 reasonable estimate of 2,500 additional hours, the multiplier drops to 1.95. *Id.* These  
14 are both reasonable multipliers and within the range of multipliers awarded by courts  
15 in this District. *Id.* ¶ 52; *see also Moreno v. Pretium Packaging, L.L.C.*, No. 19-cv-  
16 02500, 2021 WL 3673845, at \*3 (C.D. Cal. Aug. 6, 2021) (awarding 2.57 multiplier  
17 for \$1.6 million employment settlement); *In re Glumetza Antitrust Litig.*, No. 19-cv-  
18 05822, 2022 WL 327707, at \*12 (N.D. Cal. Feb. 3, 2022) (awarding 2.2 multiplier  
19 in \$450 million antitrust settlement).

20 Courts in the Ninth Circuit consider a number of factors in setting an  
21 appropriate fee, including: (1) the results achieved; (2) the risks of litigation;  
22 (3) whether there are benefits to the class beyond the immediate generation of a cash  
23 fund; (4) whether the percentage rate is above or below the market rate; (5) the  
24 contingent nature of the representation and the opportunity cost of bringing the suit;  
25 (6) reactions from the class; and (7) a lodestar cross-check. *Vizcaino v. Microsoft*  
26 *Corp.*, 290 F.3d 1043, 1048-52 (9th Cir. 2002); *see also Kissel v. Code 42 Software*  
27 *Inc.*, No. 15-cv-01936, 2018 WL 6113078, at \*4 (C.D. Cal. Feb. 20, 2018). These  
28 factors support Class and Plaintiffs' Counsel's enhanced fee request.

1                   **a. Class and Plaintiffs’ Counsel achieved a favorable result for**  
 2                   **the Settlement Classes.**

3                   As described more fully in Plaintiffs’ Motion for Final Approval of Class  
 4 Action Settlement, the Settlement here is excellent. Class members receive real  
 5 substantial relief. Just the extended warranty alone has been conservatively valued at  
 6 \$288,697,701,<sup>3</sup> and so long as the Class member has their vehicle repaired free-of-  
 7 charge under the applicable NHTSA recall (many of whom already did) they will  
 8 automatically receive this coverage. *See* Fegan Decl. at Ex. 1 (S. Thompson Mar. 17,  
 9 2023 expert report). This benefit does not require submission of a claim form and  
 10 even transfers to subsequent vehicle owners. Qualifying Class members are also  
 11 eligible for free one-time inspections, cash reimbursements (without caps) for repairs  
 12 and repair-related out-of-pocket costs, and cash payments where they experienced a  
 13 vehicle fire. The Settlement funds or benefits do not revert to Defendants if  
 14 unclaimed, and they are not worthless coupons. The outcome for the Settlement  
 15 Classes “is almost certainly better than what the class could have achieved in a  
 16 contested trial.” Klonoff Decl. ¶ 56. When comparing the requested fee (\$8.69  
 17 million) to the value of the extended warranty alone, the fees sought make up just  
 18 three percent of this value. These factors are enough to warrant a lodestar  
 19 enhancement here. *See id.* ¶ 55 (noting usefulness of comparing lodestar to  
 20 Settlement when considering multiplier).

21 \_\_\_\_\_  
 22 <sup>3</sup> *See, e.g., Granillo v. FCA US LLC*, No. 16-cv-00153, at \*19 (D.N.J. Aug. 27,  
 23 2019) (explaining that courts “determine[] the potential value of a settlement  
 24 involving non-monetary benefits such as automotive warranties by multiplying the  
 25 total number of vehicles at issue”); *O’Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D.  
 26 266, 305 (E.D. Pa. 2003) (noting that the value of the benefit to the class was “most  
 27 accurately measured by making an estimation of the Extended Coverage Program’s  
 28 market price”); *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d  
 155, 169 (D. Mass. 2015) (finding the retail value of the extended warranty to be “a  
 sensible measure of what the class members gained from free extended coverage”);  
*see also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at 571 n.13 (noting  
 appropriateness of relying on expert’s assessment of the benefits under a class  
 settlement).

1                   **b. Class and Plaintiffs’ Counsel performed superior quality**  
2                   **work to achieve the Settlement.**

3                   “Courts have recognized that the ‘prosecution and management of a complex  
4 national class action requires unique legal skills and abilities.’” *In re Toyota*, 2013  
5 WL 12327929, at \*31 (citation omitted). When evaluating this factor, the “single  
6 clearest factor reflecting the quality of class counsels’ services to the class are the  
7 results obtained.” *In re Heritage Bond Litig.*, No. 02-ml-01475, 2005 WL 1594389,  
8 at \*12 (C.D. Cal. June 10, 2005) (citations omitted). As discussed above, the results  
9 achieved here confer significant benefits to the Settlement Classes, and they were  
10 achieved after Class and Plaintiffs’ Counsel successfully resisted motions to dismiss  
11 and was nearly through discovery.

12                   Class and Plaintiffs’ Counsel also have significant experience in consumer  
13 class actions, products liability, and auto defect cases (*see* Berman Decl. ¶¶ 4-5;  
14 Fegan Decl. ¶¶ 5-10), which permitted them to efficiently litigate—more so than the  
15 average firm—and the skill exhibited supports approval of the fee request. *See*  
16 Klonoff Decl. ¶¶ 57-58; *see also, e.g., Norris v. Mazzola*, No. 15-cv-04962, 2017 WL  
17 6493091, at \*13 (N.D. Cal. Dec. 19, 2017) (fee award supported by the skill required  
18 in extensive motion practice and discovery as well as the quality of work performed  
19 by highly experienced counsel); *Zepeda v. PayPal, Inc.*, No. 10-cv-02500, 2017 WL  
20 1113293, at \*20 (N.D. Cal. Mar. 24, 2017) (class counsel’s consumer class action  
21 expertise allowed for a result that “would have been unlikely if entrusted to counsel  
22 of lesser experience or capability” given the “substantive and procedural  
23 complexities” and the “contentious nature” of the settlement); *Allagas v. BP Solar*  
24 *Int’l, Inc.*, No. 14-cv-00560, 2016 WL 9114162, at \*2 (N.D. Cal. Dec. 22, 2016)  
25 (class counsel “highly experienced in prosecuting and settling complex class actions”  
26 factors in favor of requested fee). Where class counsel is particularly experienced,  
27 their lodestar alone can fail to reflect such benefits of their expertise, and they should  
28 not be punished for their efficiency. *See* Klonoff Decl. ¶ 59; *Bayat v. Bank of the*

1 *West*, No. 13-cv-02376, 2015 WL 1744342, at \*9 (N.D. Cal. Apr. 15, 2015); *Hartman*  
 2 *v. Duffey*, 973 F. Supp. 199, 202 (D.D.C. 1997). Under this prong, Class and  
 3 Plaintiffs’ Counsel’s enhanced lodestar request is also warranted.

4 **c. The litigation was risky and expensive.**

5 Another factor to consider in determining attorneys’ fees is the risk counsel  
 6 took of “not recovering at all, particularly in a case involving complicated legal  
 7 issues.”<sup>4</sup> *In re Toyota*, 2013 WL 12327929, at \*31 (internal alterations and citations  
 8 omitted); *see also In re Heritage Bond Litig.*, 2005 WL 1594389, at \*14 (“The risks  
 9 assumed by Class Counsel, particularly the risk of non-payment or reimbursement of  
 10 costs, is a factor in determining counsel’s proper fee award.”); *Vizcaino*, 290 F.3d at  
 11 1048 (“Risk is a relevant circumstance.”). Consumer fraud class actions carry an  
 12 inherent risk of being more uncertain than other types of class actions. *Kakani v.*  
 13 *Oracle Corp.*, No. 06-cv-06493, 2007 WL 4570190, at \*4 (N.D. Cal. Dec. 21, 2007).

14 Here, while Class and Plaintiffs’ Counsel were confident in Plaintiffs’ claims,  
 15 risk is recognized in any litigation, particularly complex and expensive class  
 16 litigation. Class Counsel advanced more than \$200,000 in litigation costs and nearly  
 17 three million dollars in professional time, evidencing the monetary risk they faced.  
 18 *See In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1046-47 (C.D. Cal. 2008) (“The  
 19 risk that further litigation might result in plaintiffs not recovering at all, particularly  
 20 a case involving complicated legal issues, is a significant factor in the award of  
 21 fees.”).

22  
 23  
 24 <sup>4</sup> Where a common fund settlement undergoes a lodestar cross-check, risk is an  
 25 appropriate element of consideration for applying a multiplier. *See, e.g., In re*  
 26 *Bluetooth Headset Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011) (noting risk is one  
 27 factor courts consider when evaluating if a multiplier is appropriate); *In re WPPSS*,  
 28 19 F.3d 1291, 1301 (9th Cir. 1994) (remanding for reconsideration because the  
 district court “abused its discretion in refusing to award a risk multiplier in this  
 case”). *But see* Klonoff Decl. ¶¶ 60-63 (declining to consider risk in assessing  
 requested multiplier here given uncertain and conflicting law).

1                   **d. Class Counsel worked on a contingent basis.**

2                   “Attorneys are entitled to a larger fee award when their compensation is  
3 contingent in nature.” *In re Toyota*, 2013 WL 12327929, at \*32 (citing *Vizcaino*, 290  
4 F.3d at 1048-50); *see also Kissel*, 2018 WL 6113078, at \*5. “[W]hen counsel takes  
5 cases on a contingency fee basis, and litigation is protracted, the risk of non-payment  
6 after years of litigation justifies a significant fee award.” *Bellinghausen v. Tractor*  
7 *Supply Co.*, 306 F.R.D. 245, 261 (N.D. Cal. 2015). The potential of receiving little  
8 or no recovery in the face of increasing risk weighs in favor of the requested fee. *See*  
9 *In re WPPSS*, 19 F.3d 1291, 1299; *Ching v. Siemens Indus., Inc.*, No. 11-cv-04838,  
10 2014 WL 2926210, at \*8 (N.D. Cal. June 27, 2014) (“Courts have long recognized  
11 that the public interest is served by rewarding attorneys who assume representation  
12 on a contingent basis with an enhanced fee to compensate them for the risk that they  
13 might be paid nothing at all for their work.”); *Brown v. 22nd Dist. Agric. Ass’n*, No.  
14 15-cv-02578, 2017 WL 3131557, at \*8 (S.D. Cal. July 24, 2017) (recognizing that  
15 “class counsel was forced to forego other employment in order to devote necessary  
16 time to this litigation” and the substantial risk associated with taking the matter on a  
17 contingent basis warranted “an upward adjustment to the fee award”). Forgoing other  
18 work, Class and Plaintiffs’ Counsel litigated this class action over close to three years  
19 on a purely contingent basis (*see* Berman Decl. ¶ 34; Fegan Decl. ¶ 94), and the risk  
20 of non-recovery is sufficiently substantial to justify the instant fee request.

21                   **e. The reaction of the Settlement Classes also supports the fee**  
22                   **request.**

23                   “The absence of objections or disapproval by class members to Class  
24 Counsel’s fee request further supports finding the fee request reasonable.” *In re*  
25 *Heritage Bond Litig.*, No. 02-ml-01475, 2005 WL 1594403, at \*21 (C.D. Cal. June  
26 10, 2005). As of the filing this Motion, Class and Plaintiffs’ Counsel are not aware  
27 of any Class member that has filed an objection to the Settlement, which impacts  
28 more than three million vehicles. This absence of objections is further evidence their



1 fee request is reasonable. *See, e.g., Jarrell v. Amerigas Propane, Inc.*, No. 16-cv-  
2 01481, 2018 WL 1640055, at \*3 (N.D. Cal. Apr. 5, 2018).

3 **C. The attorneys’ fee request is also reasonable under the percentage-of-  
4 recovery approach.**

5 Should the Court choose to apply a percentage-of-recovery method in  
6 determining the fee award here or for cross-checking its lodestar analysis, Class and  
7 Plaintiffs’ Counsel’s \$8.69 million request is still reasonable. The fee request  
8 represents just 3.01 of the most valuable aspect of the Settlement (the \$288,697,701  
9 extended warranty), which does not include the other Settlement elements valued by  
10 Thompson (ranging from \$38,125,814 to \$381,258,137), and those elements she  
11 could not value at this time without claims data. *See Fegan Decl.* at Ex. 1 (S.  
12 Thompson Mar. 17, 2023 expert report at 4-5). Applying the same Ninth Circuit  
13 factors under this methodology already analyzed above, *see Vizcaino*, 290 F.3d at  
14 1048-50 (noting that exceptional results, risk, benefits, including nonmonetary  
15 benefits, secured for the class, prevailing market rate for such work, and the  
16 contingent nature of the representation are all relevant factors when determining if  
17 fee requests are reasonable), the conclusion is the same: Class and Plaintiffs’  
18 Counsel’s \$8.69 million request should be approved as reasonable. *See Klonoff Decl.*  
19 ¶¶ 68-75 (analyzing results achieved, risk of litigation, skill required, contingent  
20 nature of the litigation, and awards in similar cases in concluding Class and Plaintiffs’  
21 Counsel’s fee request here reasonable).

22 **D. The costs were reasonable, and Class and Plaintiffs’ Counsel should be  
23 reimbursed.**

24 “Attorneys may recover their reasonable expenses that would typically be  
25 billed to paying clients in non-contingency matters.” *Kissel*, 2018 WL 6113078, at  
26 \*6. “Expenses such as reimbursement for travel, meals, lodging, photocopying, long-  
27 distance telephone calls, computer legal research, postage, courier service,  
28 mediation, exhibits, documents scanning, and visual equipment are typically  
recoverable.” *Rutti v. Lojack Corp., Inc.*, No. 06-cv-00350, 2012 WL 3151077, \*12

1 (C.D. Cal. July 31, 2012). Defendants have agreed to pay Plaintiffs their litigation  
 2 expenses awarded by the Court separate and apart from the Settlement benefits to  
 3 Class members. S.A. ¶ 14.3. As of filing, Plaintiffs have paid \$172,767.60 in  
 4 litigation costs, incurred (but not yet paid) an estimated \$67,000 (*see* summary chart  
 5 below), and will incur additional costs through claims administration. Berman Decl.  
 6 ¶¶ 21-22; Fegan Decl. ¶ 83; Rivas Decl. ¶ 15; Jagher Decl. ¶ 14; Carroll Decl. ¶ 16.

Firm	Paid Expenses	Incurred Expenses Estimate (not yet paid)
Hagens Berman Sobol Shapiro LLP	\$81,566.92	Experts: \$67,000
Fegan Scott LLC	\$71,729.90	
Freed Kanner London & Millen LLC	\$14,318.35	
Lynch Carpenter LLP	\$5,152.43	
Gibbs Law Group	\$0.00	
Shindler, Anderson, Goplerud & Weese, PC	\$0.00	
<b>TOTAL:</b>	<b>\$172,767.60</b>	<b>\$67,000</b>

14 These declarations describe in more detail the various expenses, which  
 15 included retention of six experts, storage facility fees for vehicles, taking and  
 16 defending depositions, attending multiple private mediation sessions, and litigating  
 17 the case through discovery. As with their allocation of work, Class and Plaintiffs'  
 18 Counsel were careful to share in costs to avoid unnecessary and duplicative expense.  
 19 Berman Decl. ¶ 25; Fegan Decl. ¶ 85.

20 Courts routinely approve reimbursement of expenses of much greater  
 21 magnitude in auto class actions. *See, e.g., In re Chrysler-Dodge-Jeep EcoDiesel*  
 22 *Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 17-md-02777, 2019 WL 2554232, at  
 23 \*2 (N.D. Cal. May 3, 2019) (approving \$7 million in expenses); *In re Toyota*, 2013  
 24 WL 12327929, at \*31-33 (awarding \$27 million in expenses); *In re Volkswagen*  
 25 *“Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, MDL No. 2672, 2016 WL  
 26 6248426, at \*26 (N.D. Cal. Oct. 25, 2016) (approving up to \$8.5 million in expenses);  
 27 Plaintiffs' cost request is reasonable and should be approved. *See* Klonoff Decl.  
 28 ¶¶ 76-77.

1 **E. The service award requests are reasonable.**

2 Finally, Class and Plaintiffs' Counsel request the Court approve service  
3 awards ranging from \$2,500 to \$5,000 for each plaintiff. Service awards are typical  
4 in class actions, and "are intended to compensate class representatives for work done  
5 on behalf of the class, to make up for financial or reputational risk undertaken in  
6 bringing the action, and, sometimes, to recognize their willingness to act as a private  
7 attorney general." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir.  
8 2009). Plaintiffs here provided declarations outlining their work and best estimates  
9 of time devoted to the case. Berman Decl. ¶ 43, Exs. 3-5; Fegan Decl., Exs. 3-11;  
10 Rivas Decl. ¶¶ 22, Exs. 2-7.

11 Plaintiffs seek \$5,000 service awards for the nine *Zakikhani* Plaintiffs because  
12 each spent at least an estimated ten to twenty hours on the case, much of which  
13 occurred when they assisted counsel respond to discovery requests. They reviewed  
14 pleadings, reviewed and responded to verified interrogatories, reviewed requests for  
15 production, and collected and completed production of hardcopy documents and  
16 electronically stored information. Although the Settlement was reached before any  
17 of the plaintiffs were deposed, they had begun to prepare for depositions. Plaintiffs  
18 seek \$2,500 service awards for the nine *Evans* and *Pluskowski* plaintiffs. Although  
19 these plaintiffs were not subject to discovery, they each spent an estimated 5-14 hours  
20 on the case providing information and reviewing the complaint, communicating with  
21 counsel about case developments via phone and email, and reviewing and discussing  
22 the Settlement terms with counsel. All 18 plaintiffs agreed to publicly add their names  
23 to this lawsuit, provided vital information and assistance in filing these cases, stayed  
24 informed of the litigation via regular communication with counsel, and reviewed and  
25 discussed the Settlement terms with counsel.

26 These plaintiffs' commitment to the classes' interests and desire to remedy  
27 these issues, not just for themselves, but also all class members, was essential to the  
28 successful and timely prosecution of this class action and, in Class Counsel's view,

1 warrants recognition in the form of the service awards requested. The proposed  
2 service awards are reasonable, within the normal range of awards, and should be  
3 approved. See Klonoff Decl. ¶ 78; *Canava v. Rail Delivery Servs. Inc.*, No. 19-cv-  
4 00401, 2022 WL 18359143, at \*2 (C.D. Cal. Dec. 2, 2022) (recognizing that “[a]  
5 service award of \$5,000 to named plaintiffs is considered presumptively reasonable  
6 in the Ninth Circuit” (citations omitted)) (Blumenfeld, J.).

7  
8 **IV. CONCLUSION**

9 For the foregoing reasons, Plaintiffs respectfully request the Court grant their  
10 motion for an order awarding Settlement Class Counsel and Plaintiffs’ Counsel  
11 \$8,696,551.50 in attorneys’ fees, actual litigation costs up to \$239,767.60, and \$5,000  
12 service awards to Plaintiffs Kimberly Elzinga, Theodore Maddox, Jr., Jacqueline  
13 Washington, Patti Talley, Ana Olaciregui, Elaine Peacock, Melody Irish, Donna  
14 Tinsley, Ramtin Zakikhani, and \$2,500 to Plaintiffs Brenda Evans, Anthony Vacchio,  
15 Minda Briaddy, Adam Pluskowski, Ricky Barber, Lucille Jacob, Carla Ward, Pepper  
16 Miller, and Cindy Brady.

17 DATED: March 20, 2023

Respectfully submitted,

18 /s/ Steve W. Berman

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