

THE HONORABLE MICHAEL K. RYAN
Department 37
Hearing Date: May 23, 2025
Hearing Time: 11:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JANE DOE and JOHN DOE, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

VIRGINIA MASON MEDICAL CENTER, and
VIRGINIA MASON HEALTH SYSTEM,

Defendants.

NO. 19-2-26674-1 SEA

**DECLARATION OF JEFFREY A. KONCIUS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES, LITIGATION COSTS,
AND SERVICE AWARD**

I, Jeffrey A. Koncius, declare as follows:

1. I am a Partner at the law firm of Kiesel Law LLP ("Kiesel Law") and co-counsel of record for Plaintiffs in this matter. I am admitted to practice before this Court *pro hac vice* and am a member in good standing of the bars of the states of California, New York and New Jersey. I respectfully submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Litigation Costs, and Service Award. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

1 **Kiesel Law’s Work on this Case**

2 2. Kiesel Law was actively involved in the proceedings herein as co-counsel of
3 record, with responsibilities that include assisting with discovery, key motions, settlement
4 negotiations, and trial preparation throughout the course of the litigation.

5 3. Because Kiesel Law has litigated similar cases against other health care
6 providers, the firm’s attorneys drew on their experience in their cases in assisting with overall
7 case strategy, targeting discovery requests to Virginia Mason and third parties, and assisting in
8 the drafting and review of briefing in this case, and preparing for trial.

9 4. Kiesel Law played a key role in discovery, including drafting discovery requests to
10 Virginia Mason, preparing subpoenas to third parties, preparing for, defending, and attending
11 depositions, reviewing expert materials, and conferring with co-counsel regarding Plaintiffs’
12 discovery responses. Additionally, Kiesel Law participated in a focus group session, and
13 contacted class members to discuss their experiences with the websites at issue to develop
14 evidence for trial.

15 5. The parties mediated on February 20, 2024, with Judge Laura Inveen, and Kiesel
16 Law participated in the negotiations that led to the class settlement.

17 6. The parties were preparing for trial when they negotiated the settlement, and
18 Kiesel Law contributed to these preparation efforts.

19 **Kiesel Law’s Experience**

20 7. Kiesel Law has a long history of advocating for plaintiffs and consumers in class
21 actions, mass actions and individual actions, nationally and state-wide. This is evidenced by
22 their extensive track record in prosecuting complex consumer class actions in both State and
23 Federal Courts around the country. In that regard, Kiesel Law has held lead, liaison or co-lead
24 positions in a variety of actions. In addition, I personally have been appointed class counsel in
25 many cases both in Federal and State Courts in California, New York, and New Jersey. Examples
26 of the firm’s experience includes:
27

- 1 a. *In re Meta Pixel Healthcare Litig.*, United States District Court,
2 Case No. 3:22-cv-03580-WHO (N.D. Cal.): I was appointed to
3 Executive Committee in proposed class action filed on behalf of
4 all patients whose information was allegedly intercepted and
5 transmitted to Meta without their consent when those patients
6 were engaged in what they thought were secure
7 communications with their medical providers. Expert research
8 showed that at least 664 hospital systems or medical provider
9 web properties sent such HIPAA-protected data to Meta via the
10 Facebook Pixel which is an invisible piece of code that was
11 placed on the medical websites.
- 12 b. *John Doe I, et al. v. Google, LLC*, United States District Court,
13 Case No. 3:23-cv-02431-VC (N.D. Cal.): Kiesel Law serves as
14 counsel for plaintiffs and the proposed Class in class action
15 lawsuit against Google LLC for its unauthorized and unlawful
16 tracking, collection, and monetization of Americans' private
17 health information.
- 18 c. *In re Facebook Internet Tracking Litig.*, United States District
19 Court, Case No. 5:12-md-02314 (N.D. Cal.): Kiesel Law was
20 appointed to Plaintiffs Steering Committee in a class action
21 alleging interception of Facebook users' internet
22 communications and activity after logging out of Facebook. The
23 matter was settled and final approval granted for settlement
24 providing for \$90 million and deletion of the data. Appeal is
25 pending.
- 26 d. *Southern California Gas Leak Cases*, California JCCP No. 4861
27 (L.A.S.C.): The Porter Ranch gas leak has widely been reported
as the single worst natural gas leak in U.S. history. The Court
appointed Kiesel Law as Liaison Counsel for the private
plaintiffs, which includes the business class action complaints
filed by local businesses for economic losses, individual class
action complaints, and more than 38,000 individual plaintiffs'
claims. The matter has been settled for approximately \$1.8
billion.
- e. *John Doe v. Partners Healthcare System, Inc., et al.* (Suffolk
Superior Court, Mass.): Kiesel Law served as Class Counsel in
privacy action alleging Defendant medical providers did not
obtain sufficient consent when placing third-party analytics
tools, cookies, and pixels on their websites. Plaintiffs further
alleged that the code caused browsers to disclose information

1 about their internet use to third parties through these analytics
2 tools, cookies, pixels, and related technologies. A settlement of
\$18.4 million was approved.

3 f. *JUUL Labs Product Cases*, California JCCP No. 5052, Lead Case
4 No. 19STCV22935 (Los Angeles Superior Court). Kiesel Law was
5 appointed as Co-Lead Plaintiffs' Counsel for the private plaintiffs
6 in the JUUL JCCP where there were thousands of cases pending.
7 The JUUL JCCP working together with leadership in the JUUL
8 MDL was able to resolve these cases. While the JCCP and MDL
9 personal injury cases settled for an undisclosed amount, the
10 MDL class action resolved for \$300 million.

11 g. *The Rick Nelson Co., LLC v. Sony Music Entm't*, United States
12 District Court, Case No. 1:18-cv-08791-LLS (S.D.N.Y.): Kiesel Law
13 was appointed as class counsel for artists who alleged that Sony
14 improperly reduced and failed to adequately pay foreign
15 streaming royalties for use of their artistic works. Class
16 settlement of more than \$12 million in cash and an increase of
17 royalty rates for future foreign streaming was approved.

18 h. *Clergy Cases I, II, & III*, California JCCPs 4286, 4297, and 4359
19 (L.A.S.C.): Kiesel Law litigated childhood sexual abuse cases
20 against Los Angeles Archdiocese with total settlement exceeding
\$1.2 billion.

21 i. *In re: Wright Medical Tech., Inc., Conserve Hip Implant Prods.*
22 *Liab. Litig.*, MDL No. 2329 (N.D. Ga.): Kiesel Law was appointed
23 as Co-Lead Counsel in the MDL arising out of injuries sustained
24 as a result of defective metal-on-metal hip devices. Kiesel Law
25 was then part of bellwether trial team that obtained an \$11
26 million verdict in Atlanta, GA, in November 2015, including \$10
27 million in punitive damages.

8. Additional information about class actions litigated by Kiesel Law is available on
our website, www.kbla.com.

A. Qualification of other Kiesel Law attorneys.

9. **Nicole Ramirez Jones**, a Partner at Kiesel Law LLP, specializes in consumer class
actions, catastrophic personal injury, and complex litigation in both federal and state courts.
With extensive experience in data privacy class actions, including representing clients against
hospital systems, she has been actively involved in drafting pleadings, arguing motions,

1 negotiating protective orders, and assisting with settlements. Additionally, she has led cases in
2 multidistrict litigation and represented consumers in class actions against automobile
3 manufacturers. Her civil litigation experience includes jury trials, appellate work, and prior
4 representation of clients in general liability and consumer finance litigation. Mrs. Ramirez Jones
5 earned her J.D. from Loyola Law School and is admitted to practice in California and the U.S.
6 District Courts for the Central, Southern, Northern, and Eastern Districts, as well as the 9th
7 Circuit. She serves on the Class Action Preservation Project Committee for the Public Justice
8 Foundation and has held leadership roles with the Women Lawyers Association of Los Angeles.

9 10. **Mahnam Ghorbani** joined Kiesel Law as an associate in 2023 and focused her
10 practice on catastrophic personal injury, consumer class actions, mass tort litigation, and other
11 complex civil litigation. Prior to joining Kiesel Law, Mrs. Ghorbani represented hundreds of
12 wildfire victims throughout Southern California, including those affected by the 2017 Thomas
13 Fire in Ventura and Santa Barbara counties and subsequent debris flows in Montecito,
14 California as well as the victims of the 2018 Woolsey Fire in Los Angeles and Ventura Counties.
15 Mrs. Ghorbani received her Juris Doctor from Southwestern Law School's two-year SCALE
16 program. Mrs. Ghorbani was also a member of Southwestern's TAHP Program. As a TAHP
17 advocate, Mrs. Ghorbani participated in various regional and national trial competitions. She is
18 a member of Consumer Attorneys Association of Los Angeles as well as Women Lawyers
19 Association Los Angeles.

20 11. **Kevin D. Zipser** joined Kiesel Law as an associate in 2021. His practice focuses on
21 consumer class actions, mass tort litigation, and catastrophic personal injury. Before joining
22 Kiesel Law, Mr. Zipser worked at a large insurance litigation firm in Los Angeles, where he
23 focused on general casualty and business litigation. Mr. Zipser earned his Juris Doctorate from
24 Loyola Law School, Los Angeles, where he was selected for membership on the Scott Moot
25 Court Honors Board, and served as a staffer and editor for the International & Comparative Law
26 Review. While in law school, Mr. Zipser worked as a judicial extern to the Honorable James J. Di
27 Cesare of the Superior Court of California of the County of Orange. Mr. Zipser received his

1 Bachelor of Arts in Cognitive Sciences from the University of California, Irvine. Mr. Zipser is a
2 member of the Consumer Attorneys Association of Los Angeles, Association of Business Trial
3 Lawyers, and the Los Angeles County Bar Association where he also serves on the Law Student
4 Outreach Committee.

5 12. **Morgan Calcagnie** is a paralegal at Kiesel Law with more than 2 years of
6 experience in the legal field. She received her Bachelor of Arts in Psychology with a minor in
7 Public Affairs from University of California, Los Angeles in 2023.

8 **Kiesel Law's Attorneys' Fees and Costs**

9 13. Since the beginning of this case, Kiesel Law has worked with no guarantee of
10 being compensated for its time and efforts. Payment of Kiesel Law's fees and incurred litigation
11 costs has always been contingent on successfully obtaining relief for the plaintiffs and class
12 members. As a result, there was a substantial risk of non-payment, particularly in light of the
13 challenges inherent in this type of case. The firm's work on this case has necessarily been to the
14 exclusion of work on other matters that likely would have generated fees. Kiesel Law has also
15 been denied use of the fees it earned over the course of this case.

16 **A. Kiesel Law's lodestar**

17 14. I reviewed the firm's billing records and reduced and eliminated time where
18 appropriate. I eliminated time that was administrative in nature, or that appeared to be
19 redundant or inefficient. It is my firm belief that the time billed was reasonably necessary to
20 litigate this case and secure a settlement on behalf of plaintiffs and the class.

21 15. The work performed by paralegal Morgan Calcagnie was work that I or an
22 attorney would have had to perform absent her assistance. This work was important to
23 developing the facts and claims at issue in the case. Ms. Calcagnie is qualified to perform
24 substantive legal work based on her training and experience working in the legal field.

25 16. The following table identifies the attorneys and staff members from Kiesel Law
26 who worked on this case and for whom the recovery of fees is sought. For each of the
27 timekeepers below I have stated the current hourly rate, the number of hours worked through

November 1, 2024, and the total amount of fees. These time summaries are taken from contemporaneous, daily time reports prepared and maintained by Kiesel Law in the regular course of business.

NAME AND POSITION	DESCRIPTION OF WORK PERFORMED	RATE	HOURS BILLED	TOTAL
ATTORNEYS				
Jeffrey A. Koncius, Partner J.D. from Benjamin N. Cardozo School of Law, 1995	Worked on reviewing and discussing key case materials, including expert reports, class certification motions, and declarations. Coordinated with co-counsel on deposition preparation, expert discussions, and trial strategy. Participated in discussions to address notice plans, subpoenas, appeals and settlement.	\$1,195	80.9	\$96,675.50
Nicole Ramirez Jones, Partner J.D. from Loyola Law School, 2011	Worked on case preparation and coordination, collaborating with co-counsel on depositions, subpoenas, expert reports, and trial strategy. Managed communications with potential class representatives, plaintiffs, and discovery. Participated in focus groups, mediations, and meetings to plan next steps, and reviewed key documents for class certification.	\$800	74.0	\$59,200.00
Mahnam Ghorbani, Former Associate J.D. from Southwestern Law School, 2022	Worked on case preparation, including trial coordination, document revisions, and class member outreach. Participated in discussions with co-counsel, opposing counsel, and potential plaintiffs. Conducted research	\$395	12.7	\$5,016.50

NAME AND POSITION	DESCRIPTION OF WORK PERFORMED	RATE	HOURS BILLED	TOTAL
	for deposition and managed document access and intake.			
Kevin D. Zipser, Former Associate J.D. from Loyola Law School, 2020	Worked on notice procedure coordination, reviewed and compared bid proposals, and reviewed and analyzed drafted legal briefs.	\$395	11.7	\$4,621.50
PARALEGALS/LEGAL ASSISTANTS				
Morgan Calcagnie, Paralegal 2 years legal experience	Worked on class member outreach and data collection.	\$160	24.5	\$3,920.00
TOTAL			203.8	\$169,433.50

17. Kiesel Law sets rates for attorneys and staff members based on a variety of factors, including among others: the experience, skill and sophistication required for the types of legal services typically performed; the rates customarily charged in the markets where legal services are typically performed; and the experience, reputation and ability of the attorneys and staff members. California state and federal courts have approved fee requests based on Kiesel Law's standard rates at the time of the application in many cases over the years.

18. Kiesel Law's hourly rates were recently approved by the court in *Salas v. Toyota Motor Sales U.S.A., Inc.*, No. 15-cv-08629-HDV-E (C.D. Cal. Jan. 7, 2025), ECF No. 305. The hourly rates were set forth in the declaration and motion at ECF Nos. 276 and 276-7. Attached as **Exhibit 1** is a true and correct copy of the Order Granting Motion for Attorneys' Fees, Costs, and Class Representative Service Awards and the brief filed in support of the motion. Additionally, Kiesel Law LLP's rates have been consistently approved in various federal and state courts. *See, e.g., Kevin Risto v. Screen Actors Guild – American Federation of Television and Radio Artists, et al.*, Case No. 2:18-cv-07241-CAS-PLZx (C.D. Cal.), ECF No. 183 (approving Paul Kiesel's hourly rate of \$1,280); *The Rick Nelson Company, LLC v. Sony Music Entertainment*, Case No. 1:18-cv-08791-LLS (S.D.N.Y.) (approving Kiesel Law LLP hourly rates of \$480 to \$1,150), ECF No. 97;

1 *Mount v. Wells Fargo Bank, N.A., Los Angeles Superior Court*, Case No. BC395959 and was
2 discussed in a California Court of Appeal opinion, albeit unpublished (*Mount v. Wells Fargo*
3 *Bank, N.A.*, 2016 Cal. App. Unpub. LEXIS 969 at *40 (“Here, there was sufficient evidence to
4 support the court’s approval of the hourly rates” which included Paul Kiesel’s hourly rate of
5 \$1,100 per hour); *Martindale, et al. v. Sony Pictures Entm’t, Inc., Los Angeles Superior Court*,
6 Case No. BC499182; *Stanley Donen Films, Inc. v. Twentieth Century Fox Film Corp.*, Los Angeles
7 Superior Court, Case No. BC499181 (approving attorney hourly rates of \$325 to \$1,100); and
8 *Sherman Grove Apartments, LLC v. WASH Multifamily Laundry Systems, LLC*, Los Angeles
9 Superior Court, Case No. 18STCV00129 (approving Kiesel Law LLP hourly rates of \$480 to
10 \$1,150).

11 **B. Kiesel Law’s Litigation Costs**

12 19. Kiesel Law has incurred out-of-pocket litigation expenses totaling \$165.25 to
13 cover expenses related to electronic research. The following chart summarizes Kiesel Law’s
14 litigation costs:

Category of Expense	Total
Research	\$165.25
TOTAL	\$165.25

19 I declare under penalty of perjury under the laws of the State of Washington and the
20 United States of America that the foregoing is true and correct.

21 EXECUTED at Beverly Hills, California and DATED this 26th day of February, 2025.

23 By: /s/ Jeffrey A. Koncius
24 Jeffrey A. Koncius

DECLARATION OF SERVICE

I, Beth E. Terrell, hereby certify that on February 26, 2025, I caused true and correct copies of the foregoing to be served via the means indicated below:

Paul G. Karlsgodt, WSBA #40311
Email: pkarlsgodt@bakerlaw.com
BAKER & HOSTETLER LLP
1801 California Street, Suite 4400
Denver, Colorado 80202
Telephone: (303) 861-0600
Facsimile: (303) 861-7805

- U.S. Mail, postage prepaid
- Hand Delivered via Messenger Service
- Overnight Courier
- Facsimile
- Electronic Mail
- Via King County Electronic Filing Notification System

Logan F. Peppin, WSBA #55704
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- U.S. Mail, postage prepaid
- Hand Delivered via Messenger Service
- Overnight Courier
- Facsimile
- Electronic Mail
- Via King County Electronic Filing Notification System

Attorneys for Defendants

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

DATED this 26th day of February, 2025.

By: /s/ Beth E. Terrell, WSBA #26759
Beth E. Terrell, WSBA #26759

EXHIBIT 1

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALFRED SALAS and GLORIA ORTEGA,
individually, and on behalf of a class of
similarly situated individuals,

Plaintiffs,

vs.

TOYOTA MOTOR SALES, U.S.A., INC., a
California corporation,

Defendant.

Case No.: 15-cv-08629-HDV-E

Judge: Hon. Hernán D. Vera

~~PROPOSED~~ ORDER GRANTING MOTION
FOR ATTORNEYS' FEES, COSTS, AND
CLASS REPRESENTATIVE SERVICE
AWARDS [276]

ORDER

1
2 On October 30, 2024 and January 7, 2025, this Court conducted hearings on Plaintiffs’
3 Motion for Attorneys’ Fees, Costs, and Class Representative Service Awards. Having carefully considered
4 the papers, evidence, and arguments presented by the parties, the Court finds and orders as follows:

5 1. Plaintiffs have entered into a proposed Settlement Agreement with Defendant Toyota
6 Motor Sales, U.S.A., Inc. (“Toyota” or “Defendant”) that has been final approved by separate order as fair,
7 adequate, and reasonable to the certified Settlement Class. Plaintiffs now seek entry of an order for
8 attorneys’ fees, costs, and service awards.

9 2. The Court exercises diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332.
10 Accordingly, Plaintiffs’ right to an award of attorneys’ fees and costs as well as the method of calculating
11 the amount of that award is governed by California law. *Mangold v. California Public Utilities*
12 *Commission*, 67 F.3d 1470, 1478 (9th Cir. 1985).

13 3. The Court finds that the Settlement provides substantial relief and benefits for Class
14 Members, therefore Plaintiffs are the prevailing party for purposes of being awarded attorneys’ fees and
15 costs under California law.

16 4. The Court applies California’s lodestar/multiplier method to calculate the appropriate
17 attorneys’ fees to be awarded to Plaintiffs. Under this method, the Court first determines the lodestar by
18 multiplying the number of hours reasonably spent by Class Counsel by reasonable hourly rates. The Court
19 then may apply a multiplier to the lodestar.

20 5. The Court has reviewed Plaintiffs’ submissions and finds that Class Counsel’s time was
21 reasonably spent and that their hourly rates are commensurate with the hourly prevailing rates for private
22 attorneys in the community conducting class action litigation. Multiplying the documented hours
23 reasonably spent by Class Counsel litigating this case by their hourly rates, the Court finds that the lodestar
24 for Class Counsel, \$3,869,533, is reasonable.

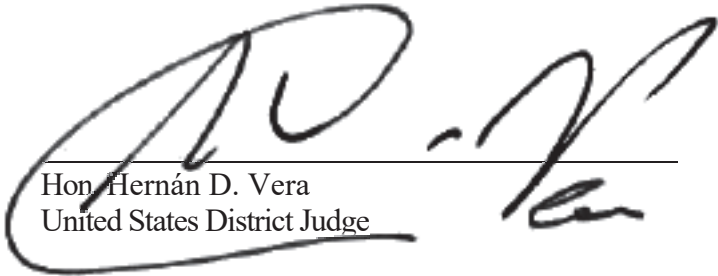
25 6. The Court finds that, due to the contingent risk borne by Class Counsel and the results
26 achieved, the application of a multiplier of 1.06 is reasonable and appropriate under the circumstances.
27 Applying a 1.06 multiplier to Class Counsel’s lodestar of \$3,869,533 yields the requested fee amount of
28 \$4,100,000, which the Court finds to be reasonable attorneys’ fees for the services rendered.

1 7. Federal Rules of Civil Procedure 23(h) and 54 governs the determination of costs and
2 expenses in a diversity action in federal court. *Aceves v. Allstate Ins. Co.*, 68 F.3d 1160, 1167 (9th Cir.
3 1995). The Court has reviewed the evidence of Class Counsel’s costs and expenses and concludes that
4 they were reasonably necessary to the conduct of the litigation and are the type of expenses that firms
5 ordinarily bill to a paying client. The Court therefore awards Class Counsel their requested costs and
6 expenses in the sum of \$350,000.

7 8. And for services rendered on behalf of the Settlement Class, the Court hereby awards
8 Plaintiffs service awards of \$7,500 for Plaintiff Alfred Salas and \$5,000 for Plaintiff Gloria Ortega.

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10 **IT IS SO ORDERED.**

11 Dated: January 7, 2025



Hon. Hernán D. Vera
United States District Judge

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14 Attorneys for Plaintiffs and the Class

15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18

19 ALFRED SALAS and GLORIA ORTEGA,
individually, and on behalf of a class of
20 similarly situated individuals,

21 Plaintiffs,

22 vs.

23 TOYOTA MOTOR SALES, U.S.A., INC., a
California corporation,

24 Defendant.
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Case No.: 15-cv-08629-HDV-E

Judge: Hon. Hernán D. Vera

**NOTICE OF MOTION AND MOTION
FOR ATTORNEYS' FEES, COSTS, AND
CLASS REPRESENTATIVE SERVICE
AWARDS; MEMORANDUM OF POINTS
AND AUTHORITIES**

Date: October 30, 2024

Time: 10:00 a.m.

Place: Courtroom 10B

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

3 **PLEASE TAKE NOTICE** that on October 30, 2024, at 10:00 a.m., in Courtroom 10B of the
4 above-captioned Court, located at 350 West 1st Street, Los Angeles, California 90012, the Honorable
5 Hernán D. Vera presiding, Plaintiffs Alfred Salas and Gloria Ortega will, and hereby do, move this
6 Court to award attorneys’ fees, litigation costs, and a service award. Plaintiffs seek reasonable
7 attorneys’ fees of \$4,100,000 and litigation costs of \$350,000, and service awards in the amounts of
8 \$7,500 for Plaintiff Alfred Salas and \$5,000 for Plaintiff Gloria Ortega. The requested fees are
9 reasonable under the lodestar method, as they are a product of reasonable hours and reasonable rates
10 enhanced by a multiplier of 1.06. The requested fees are also reasonable as a percentage of the benefits
11 conferred on the Class.

12 This Motion is based on: (1) this Notice of Motion and Motion; (2) the Memorandum of Points
13 and Authorities in Support of Motion for Attorneys’ Fees, Costs, and Class Representative Service
14 Awards; (3) the Declaration of Tarek H. Zohdy; (4) the Declaration of Jeffrey A. Koncius; (5) the
15 Declaration of Alfred Salas; (6) the Declaration of Gloria Ortega; (7) the [Proposed] Order submitted
16 concurrently herewith; (8) the records, pleadings, and papers filed in this action; and (9) on such other
17 documentary and oral evidence or argument as may be presented to the Court at the hearing of this
18 Motion.

19

20 Dated: August 30, 2024

Respectfully submitted,

21

By: */s/Tarek H. Zohdy*

22

Tarek H. Zohdy
Cody R. Padgett
Laura E. Goolsby
CAPSTONE LAW APC

23

24

Paul R. Kiesel
Jeffrey A. Koncius
Cherisse H. Cleofe
Haley G. Clark
KIESEL LAW LLP

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Attorneys for Plaintiffs and the Class

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FEDERAL CASES

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25 15 U.S.C. §§ 2301 *et seq.* (Magnuson-Moss Warranty Act)..... 4
 26 Fed. R. Civ. P. 23(h)..... 2

27

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1 **STATE STATUTES**

2 Cal. Civ. Code §§ 1750 *et seq.* (Cons. Legal Remedies Act (CLRA)) 3

3 Cal. Civ. Code §§ 1790-1795.7 (Song-Beverly Consumer Warranty Act) 4

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Alfred Salas and Gloria Ortega litigated this certified class action to the eve of trial, ultimately delivering substantial relief to a Class of persons in California who purchased or leased a 2012-2015 Toyota Camry XV50 vehicle (“Subject Vehicle”) from an authorized Toyota dealer with allegedly defective Heating, Ventilation, and Air Conditioning (“HVAC”) systems. Plaintiffs’ Settlement successfully addresses the alleged HVAC defect in the Subject Vehicles by creating a reimbursement program for Class Members to recoup both future and past out-of-pocket expenses for qualifying repairs.

Plaintiffs and their counsel believe the settlement is fair and reasonable, and provides Class Members similar, if not superior, remedies to what they could otherwise have expected to receive if the case had been successfully tried, but without the delay and risks associated with trial. This highly contentious action was taken close to the eve of trial before a settlement was reached. Having litigated this action since 2015 on a contingency basis, Class Counsel now move to be compensated for their successful advocacy on behalf of the Class, and for service awards to the named Plaintiffs who prosecuted this action. Plaintiffs seek an award of attorneys’ fees and costs in the amount of \$4,100,000 and \$350,000, respectively, and service awards in the amount of \$7,500 for Plaintiff Alfred Salas and \$5,000 for Plaintiff Gloria Ortega, for their service on behalf of the Class.

The fees, costs, and service awards will be paid by Defendant Toyota Motor Sales, U.S.A., Inc. (“Defendant” or “Toyota”), and not from a common fund. Awarding the requested amounts in attorneys’ fees and costs will not affect the benefits for Class Members and will fairly compensate Class Counsel for their work in this case, as confirmed under the prevailing lodestar method for calculating fees. The lodestar is based on reasonable hours multiplied by reasonable rates, enhanced by a modest 1.06 multiplier for contingent risk and other factors. Class Counsel have expended a collective 5,808.3 hours prosecuting this case—a reasonable number given that Class Counsel litigated this certified class action for almost nine years and up to the eve of trial. In this hard-fought litigation, Class Counsel have engaged in substantial motion practice, including motions for summary judgment and partial summary judgment, motions to dismiss the pleadings, motions to strike, and briefing over class certification and opposed decertification. Class counsel completed discovery, including review of voluminous documents produced by Defendant and multiple

1 depositions, prepared for trial including drafting and opposing *motions in limine*, and responded to numerous
2 inquiries by Class Members, which includes reviewing Class Members’ repair orders and answering
3 questions about the alleged defect and the settlement.

4 Class Counsel’s hourly rates are reasonable and are within the range of rates repeatedly approved
5 by the Central District. A modest multiplier is merited in light of the high contingent risk presented by this
6 case and the outstanding results achieved. Class Counsel diligently litigated this case without receiving any
7 payment for nearly nine years without any guarantee of victory. Indeed, Class Counsel persisted in this case
8 even after Toyota prevailed against plaintiffs in another class action with the same allegations prosecuted in
9 Florida, which further enhanced counsel’s contingency risk.

10 Plaintiffs have incurred \$401,212.62 in hard costs. However, Class Counsel is seeking only
11 \$350,000 in reimbursement, per the Parties’ agreement. Because these costs would typically be billed to a
12 paying client, they should be reimbursed. Finally, the requested service awards of \$7,500 and \$5,000,
13 respectively, to Salas and Ortega, are reasonable and modest and, as such, should be approved.

14 **II. ARGUMENT¹**

15 **A. The Parties Have Separately Negotiated Fees That Will Not Affect Class Benefits**

16 At the conclusion of a successful class action, the plaintiff may apply to the Court for an award of
17 “reasonable attorneys’ fees and non-taxable costs that are authorized by law or the parties’ agreement.” Fed.
18 R. Civ. P. 23(h). In considering the fee application, courts must ensure that the fees awarded are reasonable.
19 *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). In their evaluation,
20 however, courts must account for the fact that “the parties are compromising to avoid litigation.” *Laguna v.*
21 *Coverall North America*, 753 F.3d 918, 922 (9th Cir. 2014) *vac’d as moot*, 2014 U.S. App. LEXIS 21950
22 (9th Cir. Nov. 20, 2014). Accordingly, “the district court need not inquire into the reasonableness of the fees
23 even at the high end with precisely the same level of scrutiny as when the fee amount is litigated.” *Id.*
24 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 966 (9th Cir. 2003)). This standard is consistent with the strong
25 policy discouraging a “second major litigation” arising from a request for attorneys’ fees. *Hensley v.*
26 *Eckerhart*, 461 U.S. 424, 437 (1983) (“Ideally, of course, litigants will settle the amount of a fee”).

27
28 ¹ The procedural history and settlement benefits are summarized in the concurrently filed Motion
for Final Approval.

1 Further, as the *en banc* court in *Hyundai* recently found, separate settlement and fee negotiations
2 provide another indication of non-collusiveness. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 568
3 (9th Cir. 2019); Here, the agreed-upon attorneys’ fees in the amount of \$4,100,000 (*See SA*, § VIII.), are the
4 product of non-collusive, adversarial negotiations conducted at arm’s-length before Mediator and
5 Settlement Special Master Patrick A. Juneau. Additionally, by agreeing to resolve attorneys’ fees amicably,
6 Defendant’s counsel averted the possibility that Class Counsel might apply for, and receive, a much larger
7 award, and thus avoided a “second major litigation” on attorneys’ fees. *See Hensley* 461 U.S. at 437 (“A
8 request for attorney’s fees should not result in a second major litigation.”).

9 Importantly, because the fees are separate from the class benefit, any reduction in fees would not
10 benefit the Class but would instead revert to Toyota, who had already agreed to not contest the fees. *See e.g.*,
11 *Martin v. Toyota Motor Credit Corp.*, 2022 WL 17038908, at *14 (C.D. Cal. Nov. 15, 2022) (awarding \$19
12 million in fees, with a 6.33 multiplier, partly because the fee award “will not result in reducing the recovery
13 of any Class Member.”).

14 Accordingly, this Court’s review of the reasonableness of the fee request should take into
15 consideration the Parties’ bargain, including, notably, that the attorneys’ fees are discrete from relief funds
16 for the Class and that reducing the size of the fee award would not benefit the Class.

17 **B. The Fee Request is Reasonable Under the Lodestar Method**

18 “In diversity actions, federal courts look to state law in determining whether a party has a right to
19 attorneys’ fees and how to calculate those fees.” *Mangold v. Calif. Public Utilities Comm’n*, 67 F.3d 1470,
20 1478 (9th Cir. 1995). The state law governing the underlying claims in a diversity action “also governs the
21 award of fees.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Here, California law
22 governs, as Plaintiffs have sued for relief under, *inter alia*, the Consumers Legal Remedies Act (“CLRA”)
23 and, as prevailing parties, are entitled to fees under the CLRA’s one-way fee-shifting provision.²

24
25 ² Under the mandatory fee-shifting provision of the CLRA, the Court “shall award court costs
26 and attorneys’ fees to a prevailing plaintiff in a litigation” under that section. Cal. Civ. Code § 1780(e).
27 There is no dispute that Plaintiffs, having obtained the relief they sought when they filed suit, are the
28 prevailing parties. *See Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160, 1171 (C.D. Cal. 2010) (authorizing fees under CLRA when the plaintiff obtained relief sought by way of a class action settlement). Defendant has also recognized Plaintiffs’ right to recover fees by entering into the S.A.,

1 Under California law, lodestar is the “starting point of every fee award.” *Serrano v. Priest*, 20 Cal.
2 3d 25, 48 n.23 (1977) (“*Serrano III*”). For any fee application subject to a statutory award, courts should
3 “presume that the Legislature intended courts to use the prevailing lodestar adjustment method.” *Ketchum*
4 *v. Moses*, 24 Cal. 4th 1122, 1136 (2001); accord *In re Bluetooth*, 654 F.3d at 941 (“The ‘lodestar method’
5 is appropriate in class actions brought under fee-shifting statutes.”). This presumption exists because the
6 lodestar method most effectively compensates successful counsel for “all the hours reasonably spent.”
7 *Ketchum*, 24 Cal.4th at 1133. “Anchoring the analysis to [lodestar] is the only way of approaching the
8 problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.”
9 *Serrano III*, 20 Cal. 3d at 48 n.23.

10 To determine lodestar, the Court must first multiply “the number of hours reasonably expended on
11 the litigation ... by a reasonable hourly rate.” *In re Bluetooth*, 654 F.3d at 941. However, because the base
12 lodestar does not capture the full market value of the services rendered, California policy strongly
13 encourages “a fee-enhancement reflecting the risk that the attorney will not receive payment if the suit does
14 not succeed.” *Ketchum*, 24 Cal. 4th at 1138 (citing Posner, *ECONOMIC ANALYSIS OF LAW* 534, 537 (4th ed.
15 1992)).

16 **1. The Hours Expended Are Reasonable**

17 In evaluating the reasonableness of the hours Class Counsel expended, courts must “focus on
18 providing an award of attorneys’ fees reasonably designed to fully compensate plaintiffs’ attorneys for the
19 services provided.” *Horsford v. Board of Trustees of California State Univ.*, 132 Cal. App. 4th 359, 395
20 (2005). Courts do so by looking at “the entire course of the litigation, including pretrial matters, settlement
21 negotiations, discovery, [and] litigation tactics...” *Vo v. Las Virgenes Municipal Water Dist.*, 79 Cal. App.
22 4th 440, 445 (2000). Generally, “the attorney who takes [a statutory fee-shifting] case can anticipate
23 receiving full compensation for every hour spent litigating a claim even against the most polemical
24 opponent.” *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128, 1175 (1998). However, courts should not
25 be “enmeshed in a meticulous analysis of every detailed facet of the professional representation.” *Serrano*
26

27 _____
28 under which it would not oppose Plaintiffs’ request for attorneys’ fees of \$4.1 million and costs/expenses
in an amount not exceeding \$350,000. (S.A., § VIII.B and C.) Plaintiffs are also entitled to fees under the
Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(2) and the Song-Beverly Consumer Warranty Act,
Cal. Civ. Code § 1794(d).

1 v. *Unruh*, 32 Cal. 3d 621, 642 (1982) (“*Serrano IV*”). Rather, “[t]he essential goal in shifting fees (to either
2 party) is to do rough justice, not to achieve auditing perfection.” *Fox v. Vice*, 131 S. Ct. 2205, 2216 (2011).

3 Class Counsel have expended approximately 5,808.3 hours thus far to prosecute this action and
4 secure benefits for the Class, exclusive of the hours that will be spent preparing further briefing (including
5 any supplement in support of the motion for final approval and supervising the continued administration of
6 the settlement). Class Counsel have reviewed billing entries describing tasks performed which attorneys
7 entered contemporaneously into Class Counsel’s billing program. (*See* Declaration of Tarek Zohdy (“Zohdy
8 Decl.”) ¶¶ 35-36, Exs. 1-2; *see also* Declaration of Jeffrey A. Koncius (“Koncius Decl.”) ¶¶ 15-18, Exs. 2-
9 3.) Following review of these voluminous records, Class Counsel sorted the entries by task categories,
10 summarizing those tasks for the Court’s convenience.³ (*Id.*)

11 The hours incurred reflect Class Counsel’s exceptional efforts in surmounting a number of
12 obstacles, including strong resistance from a well-financed opponent represented by highly experienced and
13 skilled counsel, to secure a high-value Settlement for the Class. The following are the most time-intensive
14 categories:

15 **Discovery and Investigation (1256.9 Hours)**. Both before and after the action was filed, Class
16 Counsel thoroughly investigated and researched these claims to better evaluate both the design and
17 functionality of the subject HVAC system as well as evaluate Toyota’s representations and omissions
18 concerning the alleged clutch defect in the case. (Zohdy Decl. ¶ 20.) Among other tasks, Class Counsel
19 fielded numerous inquiries from putative class members and investigated many of their reported claims. (*Id.*
20 at ¶ 21.) Counsel also consulted and retained both liability and damages experts to assist in identifying the
21 exact defect, devise appropriate mitigative measures, and quantify the damages suffered by the Class for the
22 purpose of filing a motion for class certification. (*Id.*) Counsel also researched publicly available materials
23 and information provided by the National Highway Traffic Safety Administration (“NHTSA”) concerning
24 consumer complaints about the Subject Vehicles. Counsel reviewed and researched consumer complaints
25 and discussions of related problems in articles and forums online, in addition to various manuals and
26 technical service bulletins (“TSBs”) discussing the alleged defect. (*Id.*) Finally, counsel conducted research
27

28 ³ Additional detail and breakdown across categories, pursuant to this Court’s standing order, is provided in the Declarations of Tarek Zohdy and Jeffrey A. Koncius, filed concurrently herewith.

1 into the various causes of actions and other similar automotive actions. (*Id.*)

2 Pursuant to Plaintiffs’ written discovery efforts, Class Counsel reviewed voluminous documents
3 and related databases produced by Toyota, including spreadsheets with thousands of rows of data, owners’
4 manuals, maintenance and warranty manuals, internal Toyota investigation reports, TSBs, field reports,
5 warranty data, and related communications. (*Id.* at ¶ 22.) All of this information was thoroughly and
6 meticulously reviewed by Class Counsel. (*Id.*)

7 In addition to written discovery, Plaintiffs’ independent experts tore down, rebuilt, analyzed and
8 evaluated the heating, ventilation, and air conditioning systems and submitted reports about their findings.
9 (*Id.* at ¶ 23.) Plaintiffs’ Counsel took the depositions of five Toyota personnel, including Toyota corporate
10 representatives Russell Suzuki (Manager of the Vehicle and Component Quality Electrical Department) and
11 Stefan Young (General Manager of Vehicle Product Development, Performance Development 2), and
12 Toyota employees David Cosgrove (Engineer, Vehicle Product Development), Barry Hare (Manager of the
13 “Technical Analysis Group”), and Dwayne Kinsey (Field Engineer). (*Id.*) Plaintiffs’ Counsel also deposed
14 Toyota’s experts. (*Id.*) Class Counsel also defended the depositions of each Plaintiff. (*Id.*) In addition, Class
15 Counsel defended the depositions of all Plaintiffs’ expert witnesses. (*Id.*)

16 In reviewing the above discovery, evidence, and testimony, Plaintiffs identified information that
17 was instrumental to the case and to Plaintiffs’ efforts during mediation. Finally, over the course of litigation,
18 Class Counsel responded to Class Members who contacted Class Counsel to report problems with their
19 Subject Vehicles and seek relief. Class Counsel also conducted detailed interviews with Class Members
20 regarding their pre-purchase research, their purchasing decisions, and their repair histories, and developed a
21 plan for litigation and settlement based in part on Class Members’ reported experiences with their Subject
22 Vehicles and with Toyota dealers. (Zohdy Decl. ¶ 24; Koncius Decl. ¶ 15.)

23 By engaging in a thorough investigation and evaluation of Plaintiffs’ claims, Class Counsel is
24 confident that the instant Settlement, for the consideration and on the terms set forth in the Settlement
25 Agreement, is, under all of the pertinent considerations, fair, reasonable, and adequate, as well as worthy of
26 final approval herein. (Zohdy Decl. at ¶ 25; Koncius Decl. ¶ 24.)

27 **Motion Practice (651.40 Hours)**. There has been substantial motion practice in this action
28 requiring time and resources. (Zohdy Decl. at ¶ 26.) Class Counsel opposed motions to dismiss the

1 pleadings, including motions to dismiss the FAC and the SAC. (*Id.*) Class Counsel also expended time with
2 respect to motions to strike, applications to seal, and *ex parte* applications. (*Id.*) In addition, Class Counsel
3 opposed motions for summary judgment and partial summary judgment. (*Id.*) These potentially dispositive
4 motions required counsel to devote a substantial amount of time to research, legal and factual analysis, and
5 crafting and refining arguments. (*Id.*)

6 **Class Certification and Appeal (695.5).** Plaintiffs expended a considerable amount of time and
7 resources to successfully garner class certification over Defendant’s opposition. (*Id.* at ¶ 27.) Class Counsel
8 consulted and retained a damages expert to assist in quantifying the damages suffered by the Class for
9 purposes of certification. After garnering class certification, Class Counsel opposed Defendant’s attempt to
10 seek permission to appeal the decision in the Ninth Circuit. (*Id.*) Class Counsel also opposed Defendant’s
11 subsequent motion to decertify the class and motion to narrow the class to exclude certain class members.
12 Thus, in addition to securing certification, Class Counsel devoted significant efforts to maintaining that
13 certification and defending any attempts to undermine it. (*Id.*)

14 **Advising Class Members (477.30 Hours).** Class Counsel has devoted substantial resources to this
15 case, particularly in response to Class Members seeking a remedy for the alleged defect in their vehicles.
16 Class Counsel has responded to numerous inquiries from Class Members and will continue to do so. (*Id.* at
17 ¶ 28.) During the litigation itself, Class Counsel advised Class Members as to the status of the litigation,
18 reviewed their relevant documents, and documented their complaints in a detailed database. (*Id.*) Following
19 preliminary approval and the dissemination of the Class Notice, Class Counsel has continued to regularly
20 field calls and emails from Class Members seeking further explanation and advice regarding the Settlement
21 and its terms. (*Id.*) During this time—still ongoing as of the date of this filing—multiple attorneys have
22 worked on this case, including responding to Class Members’ inquiries. (*Id.*)

23 **Trial Preparation (1763.50 Hours).** Class Counsel has spent considerable time preparing for trial,
24 including gathering all appropriate evidence and documents, preparing trial briefs and proposed jury
25 instructions, and briefing and arguing *motions in limine*. (Zohdy Decl. at ¶ 29; Koncius Decl., Ex. 2.)

26 **Settlement Negotiations and Settlement Motions (454.80 Hours).** Class Counsel has also spent
27 considerable time drafting the Settlement documents and associated motions. (Zohdy Decl. at ¶ 30; Koncius
28 Decl., Ex. 2.) This expenditure is reasonable and necessary given the nature of the Settlement negotiations

1 and the Settlement drafting process. Class Counsel has also expended many hours preparing the Motion for
2 Preliminary Approval, as well as the instant Motion. (*Id.*)

3 **2. The Hourly Rates are Reasonable**

4 Class Counsel’s hourly rates, which range from \$395 to \$1280 for associates, senior attorneys, and
5 partners, are also reasonable.⁴ (*See* Zohdy Decl. ¶¶ 35-41; *see also* Koncius Decl. ¶¶ 19-20, Exs. 2-3.)
6 Counsel is entitled to their requested hourly rates if those rates are within the range of rates charged by and
7 awarded to attorneys of comparable experience, reputation, and ability for similar work, *i.e.*, complex class
8 action litigation. *Children’s Hospital and Med. Center v. Bonta*, 97 Cal. 4th 740, 783 (2002) (affirming rates
9 that were “within the range of reasonable rates charged by, judicially awarded to, comparable attorneys for
10 comparable work”); *accord Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984) (determining reasonable rate
11 by examining the rate “prevailing in the community for similar services by lawyers of reasonably
12 comparable skill, experience, and reputation”).

13 Regarding rates, Class Counsel has provided their lodestar under both historical and current rates to
14 comport with the Court’s standing order. (Zohdy Decl. ¶¶ 35-36; Koncius Decl. ¶ 18.) However, Class
15 Counsel advises that assessing the lodestar under current rates is the preferred approach because it
16 compensates counsel for any delay in the receipt of fees. *See Welch v. Metro. Life Ins. Co.*, 480 F.3d 942,
17 947 (9th Cir. 2007). This is because contingency attorneys advance a loan of their services to the
18 plaintiff and the Class, and so that “delay in payment” can be accounted “by ... applying the
19 attorneys' current rate to all hours billed during the course of the litigation.” *Id.*

20 This action was initiated in November 2015. Class Counsel thus advanced their services to the Class
21 in contentious, prolonged litigation for over eight years. During this time, inflation climbed for several years
22 and interest rates sharply increased. According to the Bureau of Labor Statistics’ consumer price index
23

24 ⁴ Counsel is also charging \$160 for Esteban Urzua and \$225 for Lance Rubin, who are on staff.
25 Their rates are reasonable. Mr. Urzua, a bi-lingual law clerk, assisted in ensuring the Spanish translations
26 of Class Notice were proper (Koncius Decl. ¶ 7) and Mr. Rubin assisted with crucial trial technology
27 preparation. (*Id.* at ¶ 8) Mr. Rubin’s hourly rate of \$225 has been approved before. *See, Kevin Risto v.*
28 *Screen Actors Guild – Am. Fed’n. of TV & Radio Artists*, United States District Court, Case No. 2:18-cv-
07241-CAS-PLAx (C.D. Cal.); *see also Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-07098-AB SHX,
2015 WL 1746484, at *21 (C.D. Cal. Mar. 24, 2015), *aff’d*, 847 F.3d 657 (9th Cir. 2017) (finding support
staff rates of \$240 to \$290 reasonable and an hourly rate of \$345 for a paralegal with over two decades of
experience reasonable).

1 (“CPI”) calculator, costs have increased by 33% in the United States since November 2015.⁵ This
2 exacerbated the challenges faced by high-stakes contingency law firms like Class Counsel which, unlike
3 traditional law firms, must pay their attorneys without receiving any regular payment (or any guarantee of
4 ever receiving payment). Under these circumstances, the Court should apply current rates to account for the
5 delay in payment. *See Gates v. Deukmejian*, 987 F.2d 1392, 1407 (9th Cir. 1992) (affirming the district
6 court's application of current rates where plaintiff's attorneys “waited over three years to be compensated”);
7 *Downey Surgical Clinic, Inc. v. Optuminsight, Inc.*, No. CV09-5457 PSG (JCx), 2016 WL 5938722, *13
8 (C.D. Cal. May 16, 2016) (granting joint motion for final approval and for attorneys’ fees, finding that
9 “having already determined that [counsel] charged reasonable rates for this litigation, the Court finds that ...
10 it may use the most recent of those rates to calculate the lodestar value.”); *Newton v. Equilon Enterprises,*
11 *LLC*, 411 F. Supp. 3d 856, 882 (N.D. Cal. 2019) (“In calculating the lodestar, it is appropriate for counsel
12 to use their current hourly rates at the time of the fee motion.”).

13 Moreover, prior judicial orders are probative evidence of market rates. *See Margolin v. Regional*
14 *Planning Com.*, 134 Cal. App. 3d 999, 1005 (1982) (rejecting the defendant’s attacks on prior court orders
15 and deeming such orders to be highly probative of rates). Class Counsel’s rates are wholly consistent with
16 rates approved by courts in this district for major consumer class actions. *See Hashemi v. Bosley, Inc.*, No.
17 CV 21-946 PSG (RAOX), 2022 WL 18278431, at *10 (C.D. Cal. Nov. 21, 2022) (finding that, in Los
18 Angeles, partners litigating consumer-related matters... have hourly rates ranging from \$304 to \$965, and
19 associates have hourly rates ranging from \$287 to \$719); *Alvarez v. Sirius XM Radio Inc.*, No. CV 18-8605
20 JVS(SSX), 2021 WL 1234878, at *11 (C.D. Cal. Feb. 8, 2021) (finding hourly rates ranging from \$450 for
21 an associate to \$950 for a partner “are reasonable given prevailing rates in the Los Angeles region”);
22 *Marshall v. Northrup Grumman Corp.*, No. 16-cv-06794, 2020 WL 5668935, at *7 (C.D. Cal. Sept. 18,
23 2020) (approving attorney rates between \$490 and \$1,060 per hour).⁶

24
25 ⁵ <https://data.bls.gov/cgi-bin/cpicalc.pl> Plaintiffs used November 2015 to July 2024 as the date
26 ranges for the CPI calculations.

27 ⁶ *See also In re MacBook Keyboard Litig.*, No. 5:18-CV-02813-EJD, 2023 WL 3688452, at *15
28 (N.D. Cal. May 25, 2023) (approving rates in a consumer class action of \$875–\$1,195 per hour for
partners; \$385–\$850 per hour for associates); *Smith v. Keurig Green Mountain, Inc.*, No. 18-CV-06690-
HSG, 2023 WL 2250264, at *10 (N.D. Cal. Feb. 27, 2023) (finding rates requested are between \$300 to

1 Here, Capstone Law’s charged rates have been approved by California district courts in
2 approving settlements involving automotive defects. *See, e.g., Moran v. FCA US LLC*, No. 3:17-CV-
3 02594-JO-AHG, 2023 WL 2145526, at *1 (S.D. Cal. Feb. 21, 2023) (approving Class Counsel’s same
4 rates for many of the same attorneys as here, finding “hourly rates are commensurate with the hourly
5 prevailing rates for private attorneys in the community conducting class action litigation.”); *Wylie v.*
6 *Hyundai Motor America*, No. 8:16-cv-02102-DOC-JCG, 2020 WL 11032419, *1 (C.D. Cal. March 2,
7 2020) (approving Class Counsel’s rates for Associates (\$295 to \$445) and Senior Counsel/Partners
8 (\$545 to \$775)); *MacDonald v. Ford Motor Co.*, No. 13 -02988-JST, 2016 WL 3055643, *9 (May 31,
9 2016) (approving rates of \$370 to \$695 for many of the same attorneys as here on a contested catalyst
10 motion); *Aarons v. BMW of North America*, No. 11-7667-PSG, 2014 U.S. Dist. LEXIS 118442, *40-
11 41 (C.D. Cal. Apr. 29, 2014) (same). In *Aarons*, the district court also approved rates for comparable
12 plaintiffs’-side firms such as Baron & Budd (rates ranging from \$775 for the requested partner to \$390-
13 \$630 for non-partners), Wasserman, Comden, Casselman, & Essensten (rates ranging from \$670-750
14 for partners and \$300-500 for associates), and Blood Hurst & O’Reardon (\$510-695 for partners).

15 Additionally, Kiesel Law LLP’s rates have been consistently approved in this district. *See, e.g.,*
16 *Kevin Risto v. Screen Actors Guild – American Federation of Television and Radio Artists, et al.*, Case
17 No. 2:18-cv-07241-CAS-PLZx (C.D. Cal.) (approving Paul Kiesel’s hourly rate of \$1,280); *Mount v.*
18 *Wells Fargo Bank, N.A.*, Los Angeles Superior Court, Case No. BC395959 and was discussed in a
19 California Court of Appeal opinion, albeit unpublished (*Mount v. Wells Fargo Bank, N.A.*, 2016 Cal.
20 App. Unpub. LEXIS 969 at *40 (“Here, there was sufficient evidence to support the court’s approval
21 of the hourly rates” which included Paul Kiesel’s hourly rate of \$1,100 per hour); *Martindale, et al. v.*
22 *Sony Pictures Entm’t, Inc.*, Los Angeles Superior Court, Case No. BC499182; *Stanley Donen Films,*
23 *Inc. v. Twentieth Century Fox Film Corp.*, Los Angeles Superior Court, Case No. BC499181
24 (approving attorney hourly rates of \$325 to \$1,100); and *Sherman Grove Apartments, LLC v. WASH*
25 *Multifamily Laundry Systems, LLC*, Los Angeles Superior Court, Case No. 18STCV00129 (approving

26
27 _____
28 \$575 for associates and \$720 to \$925 for partners); *Gutierrez v. Wells Fargo Bank, N.A.*, No. 07-cv-
05923, 2015 WL 2438274, at *5 (N.D. Cal. May 21, 2015) (rates ranging \$475-\$975 for partners, \$300-
\$490 for associates).

1 Kiesel Law LLP hourly rates of \$480 to \$1,150).

2 The rates are also consistent with orders approving rates of comparable firms doing a similar type
3 of work. *In re MacBook Keyboard Litig.*, No. 5:18-CV-02813-EJD, 2023 WL 3688452, at *15 (N.D. Cal.
4 May 25, 2023) (approving rates in a consumer class action of \$875–\$1,195 per hour for partners; \$385–
5 \$850 per hour for associates); *Smith v. Keurig Green Mountain, Inc.*, No. 18-CV-06690-HSG, 2023 WL
6 2250264, at *10 (N.D. Cal. Feb. 27, 2023) (finding rates requested are between \$300 to \$575 for associates
7 and \$720 to \$925 for partners).

8 Moreover, Class Counsel are respected and accomplished plaintiffs’-side firms responsible for
9 numerous class action settlements and significant appellate decisions. (*See* Zohdy Decl. ¶¶ 44-47; Ex.
10 5; *see also* Koncius Decl. ¶¶ 9-15, Ex. 1.)

11 In sum, Class Counsels’ hourly rates are within the range of hourly rates charged by comparable
12 attorneys and approved by multiple jurisdictions, including by courts in the Southern District of
13 California. As such, the requested rates should be approved.

14 **3. Class Counsel’s Lodestar Should Be Enhanced by a Contingent Risk**
15 **Multiplier**

16 Class Counsel are also entitled to the application of a positive multiplier. In determining whether a
17 multiplier should be applied, the Court must consider a number of factors, including: (1) the contingent
18 nature of the fee and the complexity of the case; (2) the results achieved and the awards made in similar
19 cases; and (3) a percentage cross-check. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir.
20 2002); *accord In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 551 (2009). While no single factor is
21 determinative of reasonableness, these factors also support Class Counsel’s fee request. Indeed, as detailed
22 *infra*, a multiplier of 2.0 (or higher) for Class Counsel would be justified. *See, e.g., MacDonald*, 2016 WL
23 3055643, at *10 (applying a 2.0 multiplier for contingent risk and results achieved by Class Counsel
24 (Capstone Law APC) on a contested catalyst fee motion against Ford).

25 Here, Class Counsel requested fees of \$4,100,000 would require the Court to apply a 1.06 multiplier
26 to their base lodestar of \$3,869,533.00 under current rates.⁷ This request, seeking the application of an

27
28 ⁷ The multiplier would be 1.31 if the Court were to apply historical rates. The multiplier is the

1 exceedingly modest multiplier, is reasonable and should be approved. Under California law, a risk multiplier
2 is meant to compensate the contingency attorney for the risk he or she undertakes to enforce important public
3 rights:

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

7 *Ketchum*, 24 Cal. 4th at 1132-33; see *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 580 (2014)
8 (explaining California’s policy of adjusting the lodestar upward to account for contingent risk). A court
9 abuses its discretion if it fails to apply a risk multiplier where the attorneys undertook the case with the
10 expectation that they would receive a risk enhancement if they prevailed, the case was risky, and the hourly
11 rate does not reflect that risk. See *Fischel v. Equitable Life Assur. Society of U.S.*, 307 F.3d 997, 1008 (9th
12 Cir. 2002).

13 The contingent risk factor is the single most important enhancement factor under California law for
14 actions where statutory fees are available, and it must be considered by the court in fixing fees. See *Horsford*,
15 132 Cal. App. 4th at 399 (reversing a trial court order for failure to consider contingent risk for statutory
16 fees); *Vizcaino*, 290 F.3d at 1049-1050. This enhancement stems from the “established practice in the private
17 legal market to reward attorneys for taking the risks of non-payment by paying them a premium over their
18 normal hourly rates for winning contingency cases.” *In re Washington Public Power Supply Sys. Sec. Litig.*,
19 19 F.3d 1291, 1299 (9th Cir. 1994). This risk is particularly acute for contingency fee attorneys because they
20 “must use savings or incur debt to keep their offices afloat and their families fed during the years-long
21 litigation.” *Horsford*, 132 Cal. App. 4th at 400. Because attorneys pursuing claims in contingency will
22 sometimes lose after expending thousands of hours and advancing tens of thousands of dollars in expenses,
23 despite litigating diligently and expertly, an enhancement ensures that the risks do not outstrip the incentive
24 to pursue claims on behalf of consumers.

25 Here, the contingent risk that Class Counsel assumed is particularly notable. Strikingly, the same
26 claims at issue here were tried and resulted in a defense verdict in federal court in Florida. See *Cardenas v.*

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28 quotient of the request amount, \$4,100,000, and the base lodestar of \$3,130,473.00 (applying historical
rates). This multiplier is similarly modest and reasonable and should be approved. If the Court were to
apply historical rates, a multiplier would account for the detriment of counsel’s delay in payment.

1 *Toyota Motor Corp.*, Case No. 18-cv-22798 (S.D. Fla.). The result in *Cardenas* underscores the risk Class
2 Counsel undertook—similarly positioned counsel lost their nearly identical case and received nothing
3 despite investing thousands of hours of attorney time.

4 Indeed, while Plaintiffs believe that the case is strong on the merits notwithstanding *Cardenas*,
5 Toyota has raised a number of substantive defenses that present serious dangers to Plaintiffs’ claims. These
6 defenses include, among others, that no HVAC defect exists, or that, even if an issue were found, Plaintiffs
7 would not be able to show that it would lead to legal liability under federal or state statutes. Moreover, there
8 are multiple other defenses under applicable state laws, such as privity, manifestation, lack of a duty to
9 disclose, and the like, that could prevent or substantially reduce a putative class member’s recovery, if any,
10 if this matter were to be litigated. There is also risk that if the litigation proceeds, class certification may not
11 be maintained through trial and appeal.

12 Toyota would have raised a number of contentions supporting a further attempt at decertification,
13 including many predominating individual issues such as each putative class member’s purchase or leasing
14 decision-making; what information, if any, was viewed and/or relied upon prior to purchase/lease; and the
15 inherently individualized issues concerning each putative class member and subject vehicle such as each
16 owner’s vehicle and HVAC maintenance, each owner’s use and manner of driving, and additional factors,
17 all of which may significantly affect the performance of any vehicle’s HVAC. Other inherently
18 individualized issues include whether, and if so, to what extent, any putative class vehicle has, or would
19 ever, experience any of the alleged HVAC-related issues; what issue, if anything, any given owner may
20 have presented to any dealership under the vehicle’s warranty; and whether any applicable warranty was
21 breached under each putative class member’s specific circumstances.

22 While Plaintiffs would vigorously dispute these arguments, they cannot refute that consumers
23 bringing automotive defect actions are frequently denied class certification due to a lack of common proof.⁸
24 Recently, a California district court denied class certification involving a theory based on material omission
25

26 ⁸ See, e.g., *Grodzitsky v. Am. Honda Motor Co.*, 2014 WL 718431 (C.D. Cal. Feb. 19, 2014)
27 (denying certification due to lack of evidence that common materials were used for all defective “window
28 regulators” in the class); *Cholakyan v. Mercedes-Benz USA, LLC*, 281 F.R.D. 534, 553 (C.D. Cal. 2012)
 (“There is also no evidence that a single design flaw that is common across all of the drains in question is
responsible for the alleged water leak defect...”).

1 of an automotive defect. *See Stockinger v. Toyota Motor Sales, U.S.A., Inc.*, 2020 WL 1289549, at *6 (C.D.
2 Cal. Mar. 3, 2020) (finding plaintiffs failed to satisfy the commonality and predominance requirements of
3 Rule 23 in a similar automotive defect action alleging material omissions and breaches of the implied
4 warranty of merchantability). *Stockinger* underscores the heightened litigation risk for a plaintiff seeking
5 class certification, and here, this would translate into a risk of decertification. In contrast, class certification
6 in the settlement context is different because, unlike litigation, the court does not need to be concerned with
7 manageability issues that predominating individual factors might cause. *See Amchem Prods. v. Windsor*,
8 521 U.S. 591, 620 (1997); *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at 556 (en banc).

9 This body of recent case law demonstrates that, had the case continued, “plaintiffs [would] face[] a
10 substantial risk of incurring the expense of a trial without any recovery.” *In re Toys “R” Us-Del FACTA*
11 *Litig.*, 295 F.R.D. at 451. Indeed, the risk of continuing litigation, including the risk of new adverse statutory
12 or case law, increased costs, and expiration of a substantial amount of time, weigh heavily in favor of
13 settlement. *Rodriguez*, 563 F.3d at 966.

14 Aside from the risk of maintaining certification in the litigation context, Plaintiffs could face the
15 termination of this action at trial or appeal. As discussed, termination occurred in a similar action in Florida
16 federal court in *Cardenas*. *See also, In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, *3 (N.D. Cal.
17 Nov. 26, 2007) (recognizing that “inherent risks of proceeding to... trial and appeal also support the
18 settlement”). And, if Plaintiffs prevail in some fashion at trial, appeals would be likely and any benefits to
19 which certain Class Members may be entitled could be significantly eroded, delayed, or offset by substantial
20 additional vehicle use, mileage, and ordinary wear and tear by the time any such recovery might occur.

21 In short, Class Counsel has faced the crippling, if not termination, of their action at every stage of
22 the instant litigation. For this type of contingent risk, courts have applied multipliers of 2.0 or above for the
23 “return expected by lawyers.” *Fadhli v. City and County of San Francisco*, 859 F.3d 649, 650 (9th Cir. 1988)
24 (awarding a 2.0 multiplier); *see Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal.
25 1995) (stating the existence of a “3-4 range [of] common” multipliers for sophisticated class actions); *Steiner*
26 *v. American Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (affirming fee award where the lodestar
27 multiplier was 3.65); *see also Graham*, 34 Cal. 4th at 581 (affirming a 2.25 multiplier for work on the
28 merits); *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52

1 multiplier in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 60 (2008) (applying a
2 2.5 multiplier in a consumer class action).

3 The fees are also reasonable given the “novelty and difficulty of the questions involved, and the skill
4 displayed is presenting them.” *Serrano III*, 20 Cal. 3d at 49. (finding that this existence of this factor justifies
5 a multiplier to the lodestar). There is little question that this action presented both novel and difficult
6 questions of law. In investigating and prosecuting this action, Class Counsel was required to understand the
7 advanced technology at issue and structure a sophisticated and unique settlement that addressed a range of
8 harms. Class Counsel’s skill, particularly in creating the Settlement and managing the Settlement process,
9 also supports the requested multiplier.

10 Finally, considering the lengthy claims’ period and the number of Class Members who have already
11 contacted Class Counsel, Class Counsel expects to expend many hours after final approval (assuming it is
12 granted). The requested multiplier would help compensate Class Counsel for the expected future work
13 aiding class members in submitting claims for relief and answering questions. *See Browne v. Am. Honda*
14 *Motor Co.*, No. 09-06750 MMM, 2010 WL 9499073, at *11 (C.D. Cal. Oct. 5, 2010) (approving a 1.5
15 multiplier in part on future “work with class members as they seek reimbursement under the settlement over
16 the coming months”).

17 In sum, Class Counsel’s requested multiplier of 1.06 is modest and reasonable, especially
18 considering that they would be entitled to a multiplier of 1.5 or greater in light of the risk factors and results
19 achieved. The requested multiplier should be approved.

20 **C. The Expenses Advanced by Class Counsel Should be Reimbursed**

21 For litigation expenses, prevailing parties may recover, as part of statutory attorneys’ fees recovery,
22 “litigation expenses...when it is ‘the prevailing practice in the given community’ for lawyers to bill those
23 costs separate from their hourly rates.” *Trs. of the Constr. Indus. and Laborers Health and Welfare Trust v.*
24 *Redland Ins. Co.*, 460 F.3d 1253, 1258 (9th Cir. 2006) (citation omitted). Attorneys are reimbursed for out-
25 of-pocket expenses “such as ‘1) meals, hotels, and transportation; 2) photocopies; 3) postage, telephone, and
26 fax; 4) filing fees; 5) messenger and overnight delivery; 6) online legal research; 7) class action notices; 8)
27 experts, consultants, and investigators; and 9) mediation fees.’” *Johnson v. General Mills, Inc.*, No. 10-
28 00061-CJC, 2013 U.S. Dist. LEXIS 90338, *20-*21 (C.D. Cal. June 17, 2013) (quoting *In re Immune*

1 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007) (both courts awarding the requested
2 expenses, including for expert witnesses, mediation, photocopying and computerized research).

3 Here, Class Counsel have incurred \$401,212.62 in costs and expenses that would typically be billed
4 to a paying client and is categorized for the Court's benefit in the accompanying declarations. (Zohdy Decl.
5 ¶ 42; Koncius Decl. ¶ 21, Ex. 4.) These expenses include, among other items, \$223,857.54 charged by the
6 Class Action Administrator for administering the class notice following class certification. (Zohdy Decl. ¶
7 43.) Because Plaintiffs and Defendant have agreed not to litigate costs and have agreed to \$350,000 in costs
8 reimbursement, Plaintiffs have agreed to write off the sum of \$51,212.62 advanced for the benefit of the
9 Class. Thus, Class Counsel requests that \$350,000 of the costs they incurred on behalf of the Class should
10 be reimbursed. (*Id.*)

11 **D. The Requested Service Award Is Fair and Reasonable and Should Be Approved**

12 Incentive awards are routinely awarded as compensation for named plaintiffs' undertaking the risk
13 and expense of litigation to advance the class's interests. *See Rodriguez v. W. Pub. Corp.*, 563 F.3d 948,
14 958-59 (9th Cir. 2009). In light of the valuable benefits conferred to Class Members, the sum of \$7,500 for
15 Plaintiff Salas and \$5,000 for Plaintiff Ortega is modest and well within the range of service awards that
16 have been approved in similar cases.

17 Plaintiffs are entitled to a service award for their time and effort to support a case in which they had
18 a modest personal interest, but which provided considerable benefits to Class Members—a commitment
19 undertaken without any guarantee of recompense. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d
20 934, 943 (9th Cir. 2015). For example, Plaintiffs familiarized themselves with the facts and legal theories in
21 this action and are aware of the duties and responsibilities that they undertook by seeking to serve as class
22 representatives and have carried them out. (“Declaration of Alfred Salas [“Salas Decl.”] Decl. ¶ 7;
23 Declaration of Gloria Ortega [“Ortega Decl.”], ¶ 9.) Plaintiffs searched for, reviewed, and provided
24 documents to, and consulted with, Counsel about the claims in this case and assisted throughout the course
25 of the litigation. (Salas Decl. ¶ 8; Ortega Decl. ¶ 10.) Plaintiffs reviewed the allegations, kept in constant
26 contact with Class Counsel regarding the status of the case, and responded to inquiries regarding
27 Defendant's efforts to remedy the problems Plaintiffs experienced. (Salas Decl. ¶ 9; Ortega Decl. ¶ 11.)

28 Further, Plaintiffs thoroughly prepared for deposition and subsequently were deposed. (Salas Decl.

1 ¶ 10; Ortega Decl. ¶ 12.) Plaintiff worked with Class Counsel to provide written discovery responses. (Salas
2 Decl. ¶ 11; Ortega Decl. ¶ 13.) Plaintiffs provided their vehicles for more than one inspection lasting many
3 hours by Plaintiffs’ expert, and for more than one inspection lasting many hours by Defendant. (Salas Decl.
4 ¶¶ 12-13 ; Ortega Decl. ¶¶ 14-15.) Plaintiffs also submitted a declaration in support of the Motion for Class
5 Certification. (Salas Decl. ¶ 14; Ortega Decl. ¶ 16.) Before settlement of the instant action, Plaintiffs had
6 begun preparing for their testimony at trial and working with Class Counsel to do so. (Salas Decl. ¶ 15;
7 Ortega Decl. ¶ 17.) Plaintiffs have also stayed abreast of Settlement negotiations, reviewed the Settlement
8 terms, and approved the Settlement on behalf of the Class. (Salas Decl. ¶ 16; Ortega Decl. ¶ 18.) Finally,
9 throughout the litigation, Plaintiffs kept their defective and undrivable class vehicles to maintain the
10 evidence needed to successfully assist Class Counsel at trial. (Salas Decl. ¶ 17; Ortega Decl. ¶ 19.)

11 **III. CONCLUSION**

12 For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs’ motion and
13 award fees of \$4,100,000 and costs of \$350,000, as well as a service awards, in the amounts of \$7,500 for
14 Plaintiff Salas and \$5,000 for Plaintiff Ortega, in recognition of their exceptional service on behalf of the
15 Class.

16 Dated: August 30, 2024

Respectfully submitted,

18 By: /s/Tarek H. Zohdy

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ATTESTATION PURSUANT TO CIVIL L.R. 5-4.3.4.

I, Jeffrey A. Koncius, am the ECF User whose identification and password are being used to file this document. Pursuant to Civil L.R. 5-4.3.4., I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing’s content and have authorized the filing.

By: /s/ Jeffrey A. Koncius
Jeffrey A. Koncius

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains 6,978 words, which complies with the word limit of L.R. 11-6.1.

Date: August 30, 2024 /s/ Jeffrey A. Koncius
Jeffrey A. Koncius