

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

KEITH YAEGER, MICHAEL
SCHULER, JOSEPH
MONTGOMERY, BRYAN BAIR,
THOMAS VANLAARHOVEN,
LAURA HEGLE, KIM MARIE PAPA,
ROBERT TEDESCO, and NATALIE
TUZOVSKEYA, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., a New
Jersey Corporation, and FUJI HEAVY
INDUSTRIES, LTD., a Japanese
Corporation,

Defendants.

No. 1:14-cv-4490-JBS-KMW

CLASS ACTION

**DOCUMENT ELECTRONICALLY
FILED**

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

PLEASE TAKE NOTICE that at the Final Fairness Hearing scheduled for 10:00 a.m. on July 26, 2016, Plaintiffs will move to have the Court enter the proposed order submitted herewith that will grant their unopposed motion seeking (1) the payment of \$1,500,000 to Plaintiffs' Counsel for the payment of their attorneys' fees and reimbursement of expenses, and (2) the payment of incentive awards in the amount of \$3,500 each for Plaintiffs Keith Yaeger, Michael Schuler,

Joseph Montgomery, Bryan Bair, Thomas Vanlaarhoven, Laura Hegle, Kim Marie Papa, Robert Tedesco, and Natalie Tuzovskaya (\$31,500 total).¹

PLEASE FURTHER NOTE that Plaintiffs will rely on the Memorandum of Law, Declarations of Counsel and other related materials in support of this motion.

PLEASE FURTHER NOTE that Defendants do not oppose this motion.

Dated: May 27, 2016

Respectfully submitted,

By: //s// Matthew D. Schelkopf
Joseph G. Sauder
Matthew D. Schelkopf
Joseph B. Kenney
McCuneWright LLP
1055 Westlakes Drive
Suite 300
Berwyn, PA 19312
Telephone: (909) 557-1250
Email: jgs@mccunewright.com
mds@mccunewright.com
jbk@mccunewright.com

Benjamin F. Johns
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Telephone: (610) 642-8500

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

E-mail: BFJ@chimicles.com

Eric Gibbs

Girard Gibbs LLP

601 California St #1400

San Francisco, CA 94108

Telephone: (415) 981-4800

E-mail: ehg@classlawgroup.com

*Attorneys for Plaintiffs
and the Settlement Class*

CERTIFICATE OF SERVICE

I, Matthew D. Schelkopf, hereby certify that the foregoing **PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARDS** was filed on this 27th day of May, 2016 using the Court's CM/ECF system, thereby electronically serving it on all counsel of record in this case.

/s/ Matthew D. Schelkopf
Matthew D. Schelkopf

**IN THE UNITED STATES DISTRICT COURT
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**[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED
MOTION FOR FEES, EXPENSES AND INCENTIVE AWARDS**

WHEREAS, Plaintiffs and Defendants executed an agreement to settle this matter, subject to Court approval, on December 7, 2015;

WHEREAS, the Court reviewed the parties' Settlement Agreement and issued an order granting preliminary approval to it on January 19, 2016. *See* Docket Entry No. 53;

WHEREAS, section XIII, Paragraph 51 of the Settlement Agreement provides that Subaru has agreed to pay, subject to Court approval, the amount of up to \$1,500,000 to Plaintiffs' Counsel for their attorneys' fees and expenses;

WHEREAS, the Settlement Agreement also provides, in section XIII, Paragraph 52, that Subaru agrees to pay (and shall pay, if approved by the Court), incentive awards totaling \$3,500 to each of the nine Class Representatives (\$31,500 total);

WHEREAS, after considering Plaintiffs' motion, memorandum of law and supporting materials (including declarations from counsel) as well as any material(s) that may be filed in opposition thereto, the Court having concluded that Plaintiffs' request for fees, expenses, and the payment of incentive awards is reasonable, permissible under the applicable law, and in accordance with the Settlement Agreement.

IT IS ORDERED AS FOLLOWS:

1. Plaintiffs' Unopposed Motion for Fees, Expenses, and Incentive Awards to Plaintiffs is **GRANTED**.

2. Subaru shall pay Plaintiffs' counsel \$ _____ for their attorneys' fees and expenses, in accordance with the Settlement Agreement.

3. Subaru shall also make an additional payment of \$ _____ to Plaintiffs' counsel for the incentive awards for the Class Representatives, which

amounts shall then be remitted by Plaintiffs' counsel to the Plaintiffs in accordance with the Settlement Agreement.

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

IT IS SO ORDERED.

Dated: _____

HON. JEROME B. SIMANDLE
CHIEF UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
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No. 1:14-cv-4490-JBS-KMW

CLASS ACTION

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

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I. INTRODUCTION

After litigating this case since July 16, 2014, on a wholly contingency fee basis – and after successfully negotiating a settlement that creates substantial benefits for a class of hundreds of thousands of consumers – Plaintiffs now seek an Order that provides for Defendant Subaru of America, Inc., (“Defendant” or “Subaru”) to pay (a) \$1,500,000 to Plaintiffs’ Counsel for the payment of their attorneys’ fees and reimbursement of expenses, pursuant to Section XIII, Paragraph 51 of the Settlement Agreement and Release (the “SA”), and (b) \$3,500 each for Plaintiffs Keith Yaeger, Michael Schuler, Joseph Montgomery, Bryan Bair, Thomas Vanlaarhoven, Laura Hegle, Kim Marie Papa, Robert Tedesco, Jr., and Natalia Tuzovskaya, as Service Awards pursuant to Section XIII, Paragraph 52 of the SA.¹

The parties negotiated at arms’ length and reached agreement regarding these provisions only after they had agreed upon all other material terms of the SA. Significantly, these payments – if approved – will not reduce or impact the settlement consideration made available to the Class pursuant to the SA.

Consistent with the terms of the SA, Subaru does not oppose these requests by Plaintiffs, and agrees to pay them if approved by the Court. *See* SA § XIII, ¶¶

¹ The SA was submitted with Plaintiffs’ Unopposed Motion for Preliminary Approval, and is set forth at Docket Entry No. 49. The capitalized terms used in this Memorandum are defined in Section II of the SA.

51-52. In addition, Class Members were told that Plaintiffs would request these amounts in the Notice that was provided to Class Members pursuant to the Notice Program, and is posted on the Settlement Website.² Significantly, no Class Members have objected to Class Counsel's fee request.

As discussed below, given the amount of work performed by Class Counsel, the outstanding results achieved and other applicable factors, the fee and expense requests are reasonable and should be approved. The incentive awards requested by Plaintiffs are also within the range of those awards approved by this Court, and are warranted here to recognize the time and effort Plaintiffs committed to this case, which was indispensable to its successful resolution. Plaintiffs respectfully request that the Court enter the proposed Order submitted herewith granting each of these requests.

II. FACTUAL BACKGROUND

A. Plaintiffs' Allegations and Pre-Litigation Investigation.

This class action lawsuit was commenced on July 16, 2014.³ It was filed after an extensive pre-suit investigation by Plaintiffs' counsel that began in

² See <http://www.oilconsumption.settlementclass.com/files/Class%20Notice.pdf> (last visited May 2, 2016).

³ The initial action was filed by the *Yeager* plaintiffs on July 16, 2014. On October 8, 2014, the *Tedesco* plaintiffs filed their action, 1:14-cv-06317, which mirrored approximately 135 of the 237 paragraphs in the *Yeager* complaint, including all of allegations related to the alleged defect described in the *Yeager* complaint, which

November 2013. This investigation included, *inter alia*, speaking with class members, reviewing their documents, and reviewing Subaru engine, piston, and piston ring designs in conjunction with automotive experts.

The initial complaint was brought by Plaintiffs Yaeger and Schuler against Subaru of America, Inc., and Fuji Heavy Industries, Ltd. Subsequently, the *Yeager* action and the *Tedesco* action were consolidated, and the operative Master Consolidated Complaint (the “Complaint”) was filed on November 17, 2014. (ECF No. 29.) That Complaint was brought by nine (9) named Plaintiffs who are among the many thousands of purchasers and lessees of 2011-2014 Subaru Forester 2.5L, 2013 Legacy 2.5L, 2013 Outback 2.5L, 2012-2013 Impreza 2.0L, and 2013 XV Crosstek 2.0L vehicles at issue in the proposed settlement (the “Settlement Class Vehicles”). Plaintiffs alleged in the operative Complaint that the Settlement Class Vehicles suffer from an engine defect that caused these vehicles to consume excessive engine oil. (*See* Complaint ¶ 1.)

The named Plaintiffs are residents of California, Florida, Pennsylvania, New Jersey, New York, and Connecticut. (*Id.* at ¶¶ 10, 20, 28, 40, 46, 56, 69, 80, and 87.) Between 2011 and 2013, these Plaintiffs leased or purchased new Settlement Class Vehicles from independent Subaru dealerships. (*Id.* at ¶¶ 11, 21, 29, 41, 47,

the *Tedesco* complaint substantially reproduced verbatim. The two actions were consolidated by order of this Court on November 17, 2014. (DE #30.)

57, 70, 81 and 88.) As described in the Complaint, each Plaintiff experienced an engine defect that caused his/her Settlement Class Vehicle to consume excessive amounts of engine oil. (*Id.* at ¶¶ 13, 22, 31, 42, 48, 60, 73, 83, and 90.) Nearly all of the named Plaintiffs had oil consumption tests conducted on their Settlement Class Vehicles by Subaru, some more than once. (*Id.* at ¶¶ 14, 24, 33, 37, 43, 51, 61, 66, 75, and 84.)

The Complaint sought class certification for a Nationwide Class and an Emissions Warranty Class, (*Id.* at ¶ 163), and for sub-classes for residents of California, Florida, New Jersey, Pennsylvania, New York, and Connecticut. (*Id.* at ¶ 164.) It asserted claims for violations of the New Jersey, California, Florida, New York, and Connecticut consumer fraud statutes, California's warranty statutes, and also sought recovery under the Magnuson-Moss Warranty Act, for breach of express warranty, breach of the implied warranty of merchantability, and breach of the duty of good faith and fair dealing. (*Id.* at ¶¶ 172-298.)

The Complaint described in detail the precise nature of the alleged defects in the engines that resulted in the excessive oil consumption. (*Id.* at ¶¶ 99-120.) In general, the Complaint explained that the engine oiling system did not work properly thereby allowing engine oil to enter the combustion chamber of the engine during the combustion cycle. As a result, engine oil would burn off during the combustion cycle rather than be returned to the engine's oil pan where it would

further lubricate the engine. (*Id.* at ¶¶ 111-112.) Plaintiffs alleged that Defendants were aware of this engine defect, but failed to disclose it to consumers and then failed to honor their warranty obligations. (*Id.* at ¶¶ 121-122, 130-131.) The Complaint recited numerous consumer complaints about the alleged defect. (*Id.* ¶ at 129.).

B. History of the Litigation.

Subaru filed a motion to dismiss the initial complaint on December 5, 2014. (ECF No. 31.) Plaintiffs filed their memorandum in opposition on January 9, 2015, (ECF No. 34), and Subaru filed its reply brief on January 20, 2015. (ECF No. 37.) In addition, Plaintiffs' counsel filed a motion for appointment of interim lead counsel pursuant to Federal Rule of Civil Procedure 23(g) on November 14, 2014, (ECF No. 28), which was granted by the Court on November 17, 2014 (ECF No. 30).

The Parties commenced discovery, including the production of documents. The Parties first negotiated and agreed upon a Discovery Confidentiality Order, which was filed with the Court and approved by Magistrate Judge Williams on April 15, 2015. (ECF No. 39.) Plaintiffs' counsel then served interrogatories and document requests on Subaru. Defendants responded to this written discovery, and produced approximately 12,000 pages, including: vehicle service and warranty history for each of the named Plaintiffs; oil consumption test forms from Subaru

dealers; original and revised Technical Service Bulletins specifically dealing with the oil consumption issue; owners' manuals and warranty manuals for each of the Settlement Class Vehicles; warranty claims data for the Settlement Class Vehicles; and documents identifying Defendants' internal investigation, analysis, and conclusions.

As noted above, Plaintiffs' counsel also independently analyzed the subject oil consumption issue, including with the assistance of automotive industry experts. In addition, Plaintiffs' counsel interviewed non-party witnesses and responded to inquiries from putative class members; over one thousand putative class members have directly contacted Plaintiffs' counsel as of the date of this filing.

C. Settlement Negotiations.

While Defendant's Motion to Dismiss was pending, counsel for the Parties discussed the possibility of resolving this litigation. This eventually resulted in several meetings between counsel and, ultimately, resulted in a class-wide settlement. The terms of this settlement have since been memorialized in the Settlement Agreement. All of the terms of the Settlement Agreement are the result of extensive, adversarial, and arm's-length negotiations between experienced counsel for both sides. Before the Settlement Agreement was executed, Plaintiffs' counsel took the 30(b)(6) deposition of a Subaru designee to confirm key

information underlying their conclusion that the proposed settlement provides relief to the class that is fair, reasonable, and adequate.

D. Terms of the Settlement Agreement.

If approved, the settlement will provide substantial benefits to the following Class: All current and former owners and lessees of Settlement Class Vehicles (as defined in the Settlement Agreement) originally purchased or leased in the continental United States and Alaska. It excludes officers, directors, or employees of Subaru or affiliated companies, as well as any independent dealers that currently own a Settlement Class Vehicle.

The valuable benefits made available pursuant to the Settlement Agreement squarely address the issues raised in this litigation. As set forth more fully below, Subaru has agreed to cover repairs as needed to correct excessive Oil Consumption during an extended warranty period of eight (8) years or one hundred thousand (100,000) miles, whichever comes first (the “Extended Warranty”). This Extended Warranty is more than twice the length of Subaru’s New Vehicle Limited Warranty, and a significant increase over Subaru’s Powertrain Limited Warranty. And for those Class Vehicles that have already exceeded the term of the newly extended warranty, the Settlement Agreement provides owners the opportunity to nevertheless obtain free repairs for a period of one year from the notice date. This Extended Warranty will cover all Oil Consumption Tests as well as repairs

performed pursuant to Technical Service Bulletins (“TSBs”) issued by Subaru related to the Oil Consumption issue. Moreover, subject to reasonable proofs and conditions, Subaru has also agreed to reimburse Settlement Class Members for 100 percent of all out-of-pocket expenses they incurred for any Oil Consumption Tests or TSB repairs, as well as for out-of-pocket expenses incurred for the cost of additional engine oil purchased up to a maximum of six (6) quarts. Subaru has also agreed, subject to reasonable proofs and conditions, to reimburse Settlement Class Members for towing costs and rental car expenses (up to \$45 per day for a maximum of two (2) days) that were incurred as a result of an Oil Consumption repair. Finally, Subaru has agreed to free Oil Consumption Testing for all qualifying Settlement Class Members during the Extended Warranty period. The benefits made available to the Settlement Class Members are summarized in the chart below:

Warranty Extension for Current Owners and Lessees	Eight (8) years or one hundred thousand (100,000) miles, whichever comes first, for Oil Consumption Tests and TSB Repairs. If a Class Vehicle has exceeded eight (8) years or one hundred thousand (100,000) miles at the time of the notice date, Subaru will perform Oil Consumption Tests and TSB Repairs for a period of one (1) year from the notice date, without regard to mileage.
Reimbursement for Out-of-Pocket Expenses for Current and Past Owners and Lessees	With appropriate proof, Settlement Class Members are entitled to reimbursement for 100 percent of all out-of-pocket expenses incurred for: <ol style="list-style-type: none"> 1. Oil Consumption tests or TSB Repairs conducted prior to the Notice Date; 2. Additional oil purchased by Settlement Class Members, up to a maximum of six (6) quarts; and

	3. Towing costs and rental car fees up to \$45 per day for a maximum of two (2) days.
Free Oil Consumption Tests and TSB Repairs for Qualifying Class Vehicles	All current owners and lessees can bring their Settlement Class Vehicles to an Authorized Subaru Dealer for free Oil Consumption Tests and TSB Repairs.

Reimbursement payments to Settlement Class Members will be via checks, which will be distributed within 60 days of receipt of a Claim, or within 60 days of the Effective Date, whichever is later. The Settlement Agreement also gives Subaru the right to augment the settlement at its discretion to provide further benefits to Settlement Class Members, and to provide goodwill benefits to Settlement Class Members as it sees fit.

E. Notification to Settlement Class Members.

The Settlement Agreement contains a comprehensive notice plan, to be paid for and administered by Subaru. And during the claims administration process, Class Counsel has the right to monitor the process to ensure that Subaru is acting in accordance with the Settlement Agreement.

Settlement Class Members have been notified by direct mail. Subaru identified Class Members via R.L Polk – a third party that maintains and collects the names and addresses of automobile owners – and sent the notice to them by first-class mail. If a forwarding address was provided for a Settlement Class Member, Subaru re-mailed the notice. For those notices for which a forwarding

address was not provided, Subaru performed an advanced address search (e.g., skip trace) and re-mailed any undeliverable notice to the extent any new and current address could be located. In addition, Subaru set up a dedicated website that included the notice, claim form, settlement agreement, and other relevant documents. Class Counsel also provided a link to the settlement website on their respective law firms' websites. As noted above and in the Settlement Agreement, Subaru has agreed to pay the costs of notice and other settlement administration costs.

As will be detailed in a forthcoming report from Subaru, notification to Settlement Class Members commenced soon after the Court provided preliminary approval of the proposed settlement on January 19, 2015, and has since been completed. Subaru has also provided notice of the settlement to the appropriate state and federal officials, as required by the Class Action Fairness Act, 28 U.S.C. § 1715. To date, there has been no substantive comment or response received from any of the attorneys general or other notified officials.

The Settlement Agreement clearly delineates the process and procedure in the event that Subaru rejects a claim for full reimbursement of out-of-pocket expenses. Subaru will provide notice of its decision to the claimants and provide them with 30 days to cure any defect. Should Subaru again reject the claim, Subaru will advise the claimants of the right to a Second Review. The claimants may then

accept Subaru's decision, or request the Second Review by sending the requisite form within thirty (30) days of receipt of this notice of right to Second Review. If that does not resolve the dispute, claimants may submit their claims to the Better Business Bureau, whose findings will be final and binding on both parties.

The Settlement Agreement also accounts for any Settlement Class Members who wish to object or exclude themselves from the settlement. Any such request must be postmarked by June 13, 2016, for those who wish to opt-out of the settlement and July 6, 2016, for those who wish to object to the settlement. Those Class Members who do not opt-out have an additional 60 days after the date of the final approval hearing to submit a Claim Form.⁴ The Settlement Agreement requires that any objection or opt-out request contain sufficient information to reasonably demonstrate that the submission is made by a person who actually has standing as a Settlement Class Member.⁵

⁴ If the final approval hearing occurs as scheduled on July 26, 2016, Settlement Class Members will have until October 1, 2016, to submit claims.

⁵ If one thousand (1,000) Class Members opt out of the Settlement, the parties have the right – but not the obligation – to terminate the settlement. Within seven (7) days prior to the final approval hearing, Subaru is to provide the Court and Class Counsel with a complete exclusion list.

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

As mentioned above, on January 19, 2016, the Court issued an order that granted preliminary approval to the parties' settlement, authorized the proposed notification to the class, and set the final approval hearing for Tuesday, July 26, 2016 at 10:00 a.m. (*See* ECF No. 53.) While the deadline for objections and opt-outs has not yet passed, Class Counsel is aware of just eight (8) Class Members who have objected to the terms of the proposed settlement and zero requests for exclusion. As discussed below, the objections do not warrant denying final settlement approval. Instead, the overall highly positive reaction by the Settlement Class, and the relative dearth of objections and opt-outs, further supports Plaintiffs' request for final approval.

III. ARGUMENT

Rule 23(h) of the Federal Rules of Civil Procedure provides that in a class action settlement, "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." FED. R. CIV. P. 23(h). "The awarding of fees is within the discretion of the Court, so long as the Court employs the proper legal standards, follows the proper procedures, and makes findings of fact that are not clearly erroneous." *In re Philips/Magnavox TV Litig.*, No. 09-3072 (CCC), 2012 U.S. Dist. LEXIS 67287, at *42 (D.N.J. May 14, 2012) (citing *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 727 (3d Cir.

2001)). In the class action settlement context, the Court is “required to clearly articulate the reasons that support its fee determination.” *Henderson v. Volvo Cars of N. Am., LLC*, No. 09-4146 (CCC), 2013 U.S. Dist. LEXIS 46291, at *40-41 (D.N.J. Mar. 22, 2013) (citations omitted).

Pursuant to that rule and the SA, Plaintiffs now apply for a total fee and expense award of \$1,500,000.00, which accounts for both the attorneys’ fees for all of the law firms representing Plaintiffs (who have amassed a collective lodestar of \$1423,099), and the reimbursement of over \$34,398.43 in their cumulative litigation expenses. Plaintiffs also request Court approval of an additional \$3,500.00 each as incentive awards for the nine Class Representatives.

These requests are reasonable considering the work performed and the results achieved, and are consistent with similar awards recently approved by this Court. The SA is the product of strenuous and efficient efforts by Plaintiffs’ Counsel through difficult phases of investigation, discovery, and adversarial litigation, in a case involving complex issues of fact and law. In addition, these fees, costs, and incentive awards will be paid separately from – and in addition to – the benefits made available to the Settlement Class. For the reasons that follow, these requests should be approved.

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

In class action settlements, “[a]ttorneys’ fees are typically assessed through the percentage-of-recovery method or through the lodestar method.” *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006) (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005)). Under the lodestar method, the district court “determines an attorney’s lodestar by multiplying the number of hours he or she reasonably worked on a client’s case by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer.” *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000).⁶ In undertaking this approach, the Court is “is not required to engage in this analysis with mathematical precision or ‘bean-counting’” and “may rely on summaries submitted by the attorneys” without “scrutinize[ing] every billing record.” *Henderson*, 2013 U.S. Dist. LEXIS 46291, at *43-44 (quoting (*In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306-07)).

The lodestar method “has appeal where . . . the nature of the settlement evades the precise evaluation needed for the percentage of recovery method.” *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 590 (D.N.J. 2010) (citations omitted), *rev’d on other grounds*, *Dewey v. Volkswagen Aktiengesellschaft*, 681

⁶ The percentage-of-recovery methodology, on the other hand, “is favored in common fund cases,” and is calculated by applying “a certain percentage to the settlement fund.” *Milliron v. T-Mobile United States*, 423 Fed. Appx. 131, 135 (3d Cir. 2011).

F.3d 170 (3d Cir. 2012). It is “designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that a percentage-of-recovery method would provide inadequate compensation.” *Welch & Forbes, Inc. v. Cendant Corp. (In re Cendant Corp. Prides Litig.)*, 243 F.3d 722, 732 (3d Cir. 2001) (quoting *Krell v. Prudential Ins. Co. of Am. (In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions)*, 148 F.3d 283, 333 (3d Cir. 1998)). Which one of these two methodologies to use “will rest within the district court’s sound discretion.” *Charles v. Goodyear Tire & Rubber Co.*, 976 F. Supp. 321, 324 (D.N.J. 1997).

While either methodology will confirm the reasonableness of the fee requested here, Plaintiffs respectfully submit that the Court should use the lodestar method in this case. *See In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, at *44 (determining fees based on the lodestar method); *Dewey*, 728 F. Supp. 2d at 593 (“[I]f the settlement’s value is certain, the Court can use the percentage-of-recovery method to calculate attorneys’ fees, but if the value is too uncertain, then the Court must use the lodestar method.”). *See also In re Schering-Plough/Merck Merger Litig.*, No. 09-CV-1099 (DMC), 2010 U.S. Dist. LEXIS 29121, at *47, *52-54 (D.N.J. Mar. 25, 2010) (noting that the existence of complexities in valuing a settlement supports use of the lodestar method).

B. Class Counsel’s Lodestar Figure is Reasonable.

The lodestar method involves two initial steps. The first step is to determine the appropriate hourly rate, based on the attorneys’ usual billing rate and the “prevailing market rates” in the relevant community. *See In re Schering-Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121, at *54 (citations omitted). The second step is to assess whether the billable time was reasonably expended. *Id.* “Time expended is considered ‘reasonable’ if the work performed was ‘useful and of a type ordinarily necessary to secure the final result obtained from the litigation.’” *Id.* at *54-55 (quoting *Public Interest Research Group of N.J., Inc. v. Windall*, 51 F.3d 1179, 1188 (3d Cir. 1985)). The lodestar figure is “presumptively reasonable” where it arises from a reasonable hourly rate and a reasonable number of hours. *Planned Parenthood of Cent. New Jersey v. Attorney General of the State of New Jersey*, 297 F.3d 253, 265 n.5 (3d Cir. 2002) (citations omitted).⁷ Here, fact that the fees were vigorously negotiated between the parties also supports approval of Plaintiffs’ request. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (“Ideally, of course, [class] litigants will settle the amount of a fee.”).

⁷ The final step in the lodestar analysis, discussed *infra*, is to determine whether to increase or decrease the lodestar amount by applying a lodestar multiple. *In re Schering-Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121, at *55.

There are five declarations filed by counsel in support of this Fee Petition. Plaintiffs' Counsel billed their time at their current billing rates charged to their clients,⁸ and all of the billable time was necessary to secure the results obtained. The following represents Plaintiffs' Counsel's fees and costs in this matter:⁹

The law firm of McCuneWright LLP billed 528.20 hours at a total lodestar of \$301,051.75. The firm's expenses are \$3,077.00. *See* Exhibit 1 for the Declaration of Richard McCune, at ¶¶ 42, 44.

⁸ The hourly billable rates of Plaintiffs' Counsel used to calculate these lodestar values are entirely consistent with hourly rates routinely approved by this Court in complex class action litigation. Indeed, the Court's final approval and fee approval petition in *Henderson* found that Chimicles & Tikellis' (and its co-counsel's) "billing rates to be appropriate and the billable time to have been reasonably expended." 2013 U.S. Dist. LEXIS 46291, at *45. *See also, In re Merck & Co. Vytarin ERISA Litig.*, No. 08-CV-285 (DMC), 2010 U.S. Dist. LEXIS 12344, at *45 (D.N.J. Feb. 9, 2010) (approving rates between \$250 and \$835 per hour); *McGee v. Cont'l Tire N. Am., Inc.*, No. 06-6234 (GEB), 2009 U.S. Dist. LEXIS 17199, at *50 (D.N.J. Mar. 4, 2009) (approving hourly rates of \$ 495 and \$ 600); *In re Schering-Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121, at *57 ("...an overall hourly lodestar non-weighted average ranging from \$ 465.68 to \$ 681.15 is not unreasonable in light of similar rates charged in the market and in light of the usual billing rates documented in counsel's declarations to the Court.").

⁹ This reported time does not include any of the billable time for the work that will be performed by Plaintiffs' counsel going forward, including the future work that will be associated with claims and settlement administration. *See In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, at *47 (observing, in analyzing a fee request, that the submitted figures did not include time and expenses incurred by counsel subsequent to the submission of that motion); *Henderson*, 2013 U.S. Dist. LEXIS 46291, at *44, n.11 (same).

The law firm of Chimicles & Tikellis LLP billed 1201.75 hours at a total lodestar of \$538,403.75. The firm's total expenses are \$13,682.70. *See* Exhibit 2 for the Declaration of Benjamin F. Johns, at ¶¶ 6, 9.

The law firm of Girard Gibbs billed 838.00 hours at a total lodestar of \$391,893.50. The firm's expenses are \$16,016.10. *See* Exhibit 3 for the declaration of Eric H. Gibbs, at ¶¶ 4, 22.

The law firm of Berger & Montague, P.C. billed 229.3 hours at a total lodestar of \$159,850.00. The firm's total expenses are \$1,541.25. *See* Exhibit 4 for the Declaration of Eric Lechtzin, at ¶¶ 8-9.

The law firm of Mazie Slater Katz & Freeman, LLC billed 58 hours at a total lodestar of \$31,900.00. The firm's total expenses are \$81.38. *See* Exhibit 5 for the Declaration of Matthew R. Mendelsohn, at ¶¶ 10, 13.

The combined lodestars for those firms is \$1,423,099. They have collectively incurred \$34,398.43 in unreimbursed expenses, and have billed over 2,855 contingency fee hours on this case. All of these fees and expenses will be paid from the \$1,500,000.00 amount requested.

C. The *Gunter* Factors Confirm the Reasonableness of the Fee Request.

In addition to determining the method of calculating the fee award, the court is obliged to ensure that the fee awarded is reasonable. *In re Cendant Corp. Litig.*,

264 F.3d 201, 283 (3d Cir. 2001). In *Gunter v. Ridgewood Energy Corp.*, the Third Circuit provided a series of non-exhaustive factors for district courts to consider in this regard:

- (1) the size of the fund created and the number of persons benefitted;
- (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel;
- (3) the skill and efficiency of the attorneys involved;
- (4) the complexity and duration of the litigation;
- (5) the risk of nonpayment;
- (6) the amount of time devoted to the case by plaintiffs' counsel; and
- (7) the awards in similar cases.

Gunter, 223 F.3d 190, 195 n.1.¹⁰ In addition to these factors, the Third Circuit has listed three other factors that may be relevant: “(1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations; (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained; and (3) any ‘innovative’ terms of settlement.” *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 165 (3d Cir. 2006) (internal citations omitted).

These factors “need not be applied in a formulaic way...and in certain cases, one factor may outweigh the rest.” *In re Insurance Brokerage Antitrust Litig.*, 579

¹⁰ These *Gunter* factors were cited and applied by the Third Circuit in reviewing whether a percentage of the total recovery fee was reasonable. *See In re Insurance Brokerage Antitrust Litig.*, 579 F.3d 241, 279-80 (3d Cir. 2009).

F.3d at 280. District courts are to engage in “robust assessments of the fee award reasonableness factors when evaluating a fee request.” *Id.* (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 302 (3d Cir. 2005)).

As set forth below, each of the *Gunter* factors support the fee request here.

1. *The Size of the Fund Created and the Number of Persons Benefitted.*

The SA in this case makes available substantial relief. There are approximately 577,860 Class Vehicles that were sold and leased throughout the United States and the Settlement Administrator disseminated a total of 665,730 notices, yielding approximately 1.15 notices per Settlement Class Member. All of these Settlement Class Members will be entitled to the relief described above, and can be assured of immediate and certain compensation under the terms of the SA.

2. *The Presence or Absence of Substantial Objections by Members of the Class.*

As discussed above, the deadline by which class members may object to the SA – including Plaintiffs’ request for attorneys’ fees – is July 6, 2016. While this fee petition is being filed before the expiration of the objection period, as of the date of this filing there have been eleven letters filed with the Court.¹¹ Of the

¹¹ Plaintiffs reserve the right to address any objection(s) that may be filed in their motion seeking final approval of the settlement, and will also be prepared to address any questions or concerns the Court may have about any such objection at the Final Approval Hearing on July 26, 2016.

665,730 notices sent, the ten letters represent approximately 0.0017% of the Settlement Class members.

First, two of the letters simply seek clarification from Class Counsel regarding the settlement. The letter from Randall Thorne seeks a clarification regarding which 2011 Subaru Foresters are included in the SA. ECF No. 58. Class Counsel reached out to Mr. Thorne on April 15, 2016 and informed him that his 2011 Forester is included in the Settlement. The letter from Susan Murphy states that she has a Class Vehicle and seeks advice regarding how to remedy the oil consumption issue in her Class Vehicle. ECF No. 59. Class Counsel sent a letter to Ms. Murphy on May 3, 2016 and advised her to submit a claim if she had out-of-pocket expenses that needed to be reimbursed and attached a claim form.

The eight letters objecting to the settlement do not provide any basis for the settlement not to receive final approval. Moreover, the letters do not object to, or even discuss, Class Counsel's attorneys' fee request. The objections are grouped into categories and discussed in detail below.

Objections Contending the Relief is Inadequate. The letters from Vincent Jalpert (ECF No. 57), Kenneth Kurkoski (ECF No. 62), Edward Kreider (ECF No. 65), Michael Siemiatkowski (ECF No. 67), and Silvija Pipiras (ECF No. 68) all object to the settlement on the grounds that that the settlement relief is inadequate and should provide more. The Jalpert, Kurkoski, and Kreider objections all seek a

warranty extension in excess of the warranty extension offered under the settlement. This, however, is not a valid basis for an objection.¹² See *Hall v. AT & T Mobility LLC*, No. 07–5325(JLL), 2010 U.S. Dist. LEXIS 109355, at *30, 2010 WL 4053547 (D.N.J. Oct. 13, 2010) (“[The settlement terms] were the result of an arm’s length negotiation between Class Counsel and ATTM. Such negotiations resulted in a compromise.... Thus, the fact that the Harter Objectors would prefer that all Class Members receive greater cash benefits ... has no bearing on whether the terms of the Settlement Agreement itself are fair and reasonable. After all, a settlement is, by its very nature, a compromise that naturally involves mutual concessions.”); *Henderson v. Volvo Cars of N. Am., LLC*, No. CIV.A. 09-4146 CCC, 2013 WL 1192479, at *9 (D.N.J. Mar. 22, 2013) (“This Court’s role is to determine whether the proposed relief is fair, reasonable and adequate, not whether some other relief would be more lucrative to the Class. A settlement is, after all, not full relief but an acceptable compromise.”) (quoting *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 242 (D.N.J. 2005)).

¹² In addition to the length of the warranty extension, Mr. Siemiatkowski seeks Subaru to admit fault for a “mechanical defect” and expresses a hypothetical fear that Subaru will shirk its duties under the settlement agreement at a later date, Mr. Kurkoski seeks a \$1,000 refund on his current Subaru or a \$1,000 rebate on a new Subaru, Mr. French seeks reimbursement of the purchase of an extended warranty on his Class Vehicle (which covers more than just the oil consumption defect at issue in this litigation), Ms. Goss seeks reimbursement of future engine oil purchases (after the fix under this settlement has been implemented), and Mr. Pipiras wants to exchange his vehicle.

Objections to the Receipt Requirement. The letters from John French, Kenneth Kurkoski, and Stacy Goss object to the requirement that Settlement Class Members must submit receipts to receive reimbursement for engine oil purchases. Requiring documentation to receive reimbursement under a settlement, however, is reasonable and instituted to prevent fraudulent claims. *See, e.g., In re Groupon, Inc. Marketing and Sales Practice Litigation*, No. 11-md-2238-DMS, 2012 U.S. Dist. LEXIS 185750, at *22-23 (S.D. Cal. Sept. 28, 2012) (rejecting objection to proof-of-purchase requirement and stating “proof of purchase serves ‘to ensure that money is fairly distributed for valid claims.’”).

Objections Without Experiencing Oil Consumption or Presenting Class Vehicle for Oil Consumption Test. The letters from John French, Kenneth Kurkoski, Stacy Goss, Edward Kreider, and Michael Siemiatkowski all indicate that they are experiencing oil consumption in their Class Vehicles and either have not presented their Class Vehicles to Subaru for repair or they have undergone oil consumption tests but have been informed they are not experiencing unreasonable levels of oil consumption. *See, e.g.,* ECF No. 62 (Mr. Kurkoski states he would be satisfied with an engine rebuild to remedy the oil consumption issue in his vehicle). Class Counsel reached out to each of these Settlement Class Members and advised they present their Class Vehicles to the dealership for an oil consumption test if they have not yet, and if they had already, to continue

monitoring their engine oil levels and undergo an additional oil consumption test at a later date under the extended warranty offered by the settlement.¹³

In addition, Ms. Michalek states that she believes she has a “legitimate claim under this Settlement” and indicates she is seeking reimbursement of \$4,774.46 paid for replacement engine but does not state she submitted the claim form attached to her objection to the Settlement Administrator. ECF No. 61. Class Counsel reached out to Ms. Michalek on May 26, 2016, to advise her to submit a claim form for reimbursement under the settlement.

Finally, the letter from Andrew Crown objects to the settlement because he is “very happy with [his] Subaru and ha[s] not noticed any excess oil consumption issues” and he objects “to our current legal system that allows a group of lawyers to sue or threaten to sue a company or individual without any recourse for their actions.” ECF No. 66. Class Counsel appreciates that Mr. Crown has not experienced any oil consumption issues with his Class Vehicle but, as the claims rate will show in Plaintiffs’ motion for final approval of the settlement, many consumers have experienced oil consumption issues with their Class Vehicles.

The dearth of objections as well as the lack of meritorious objections support approval of the requested fee. *See Reinhart v. Lucent Techs., Inc. (In re Lucent*

¹³ Class Counsel reached out to Mr. French on May 3, 2016, Mr. Kurkoski, Ms. Goss, Mr. Kreider, and Mr. Siemiatkowski on May 26, 2016.

Techs., Inc. Sec. Litig.), 327 F. Supp. 2d 426, 435 (D.N.J. 2004) (“[T]he Court concludes that the lack of a significant number of objections is strong evidence that the fees request is reasonable.”); *see also Weber v. Gov’t Emples. Ins. Co.*, 262 F.R.D. 431, 451 (D.N.J. 2009) (“The Court relies upon the representations of Class Counsel, the lack of objection to the reasonableness of the lodestar calculation, and its own experience in fee applications in other class actions of similar duration, scope, and complexity, to conclude that these claimed hours and rates are correct and reasonable.”).

3. *The Skill and Efficiency of the Attorneys Involved.*

The “single clearest factor reflecting the quality of class counsels’ services to the class are the results obtained.” *In re Safety Components Sec. Litig.*, 166 F. Supp. 2d 72, 96 (D.N.J. 2001). Related factors include “the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.” *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 476 (D.N.J. 2008) (quoting *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 465 (E.D. Pa. 2008)). The goal of this *Gunter* factor is to ensure “that competent counsel continue to undertake risky, complex and novel litigation” for the benefit of large

numbers of class members who might otherwise lack reasonable access to justice.

Gunter, 223 F.3d at 198.

The result obtained in this case is in large measure a reflection of the tenacity with which Plaintiffs' Counsel attended to this litigation. Plaintiffs' Counsel has achieved enormous benefits for Settlement Class Members, which speaks volumes for Plaintiffs' Counsel's abilities. And Plaintiffs' Counsel respectfully submits that their submissions to the Court in this case were of high quality. As such, this factor supports the fee request.

4. The Complexity and Duration of the Litigation.

This complex class action litigation lasted nearly a year and a half, and required extensive work by Plaintiffs' Counsel (including motion practice, discovery, a 30(b)(6) deposition, and an in-person settlement conferences) to result in a successful conclusion. Several courts have recognized that "any class action presents complex and difficult legal and logistical issues which require substantial expertise and resources." *Stalcup v. Schlage Lock Co.*, 505 F. Supp. 2d 704, 707 (D. Colo. 2007). *See also, McCoy*, 569 F. Supp. 2d at 477. The amount of compensation sought by the Class Counsel is reasonable when assessed in light of these factors. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (district court did not abuse its discretion in concluding that – in light of legal

issues, duration of the case, discovery, and the necessity of resorting to mediation to reach a final settlement – the matter was complex).

5. *The Risk of Nonpayment.*

Class Counsel brought this litigation on a purely contingency fee basis and the risk of non-recovery was sufficiently substantial to justify the instant fee request. *See O'Keefe v. Mercedes-Benz United States, LLC*, 214 F.R.D. 266, 309 (E.D. Pa. 2003) (“Any contingency fee includes a risk of non-payment. That is why class counsel will be paid a percentage that is several times greater than an hourly fee in this case.”). Indeed, in *In re Ins. Brokerage Antitrust Litig.*, this Court observed that “Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees.” No. 04-5184 (CCC), 2012 U.S. Dist. LEXIS 46496, at *135 (D.N.J. Mar. 30, 2012) (citations omitted). In addition, there is no question that Subaru is financially stable and able to pay claims made under the settlement. *See O'Keefe*, 214 F.R.D. at 309 (observing that “[t]his factor more properly addresses the concern that class counsel risks non-payment after securing class recovery because of the precarious financial position of the defendant” and stating “[Mercedes] is financially stable and no one has questioned its ability to pay. This factor is not relevant in this case.”).

6. *The Amount of Time Devoted to the Case by Class Counsel.*

In terms of the sheer amount of genuine labor involved on the part of the Plaintiffs, there were over 2,855 hours of contingent work performed by Class Counsel in litigating this matter. In addition to the motion practice in this case, Plaintiffs received (and reviewed) discovery from Subaru related to the settlement and took the 30(b)(6) deposition of a Subaru employee. This commitment of time and effort clearly supports Class Counsel's fee request.

7. *The Awards in Similar Cases.*

A review of similar cases demonstrates that the fee request here is reasonable and appropriate. *See, e.g., Davitt v. Honda N. Am.*, No. 2:13-cv-00381-MCA-JBC, ECF No. 71 (D.N.J. May 8, 2015) (approving a requested \$1.4 million fee and expense award); *Henderson*, 2013 U.S. Dist. LEXIS 46291, at *55 (approving a requested \$3 million fee and expense award); *McGee, supra* (\$2,274,983.70 in fees and expenses, representing a multiplier, justified in a consumer class action); *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 304 (E.D. Pa. 2003) (\$4,896,783.00 in fees justified in class action involving allegedly defectively design rear lift-gate latch). Accordingly, this and the other *Gunter* factors strongly support granting the requested fee.

D. The Requested Fees Are Reasonable Under a Cross-Check.

The Third Circuit has recommended that district courts perform a “cross-check” of a fee award. *Briggs v. Hartford Fin. Servs. Group, Inc.*, No. 07-CV-5190, 2009 U.S. Dist. LEXIS 66777, at *55, n.98 (E.D. Pa. July 31, 2009). *See also, In re Linerboard Antitrust Litig.*, 2004 WL 1221350 at *48 (E.D. PA. June 2, 2004) (“While the Court adopts the percentage of recovery method, the Court will also subject petitioners’ proposed fee to a cross-check using the lodestar method”). The purpose of doing a lodestar cross-check is “to insure that plaintiffs’ lawyers are not receiving an excessive fee at their clients’ expense.” *Gunter*, 223 F.3d at 199.

Under the “cross-check” method, the Court multiplies the hourly rates by the applicable hours to get a lodestar amount. The lodestar multiplier is then obtained by dividing the proposed fee award by the lodestar amount. *In re Insurance Brokerage Antitrust Litig.*, 579 F.3d at 280. *See also, Larson v. Sprint Nextel Corp.*, No. 07-5325, 2010 U.S. Dist. LEXIS 3270, at *89-90 (D.N.J. Jan. 15, 2010) (“The lodestar multiplier is calculated by dividing the attorneys' fees that Class Counsel seeks by Class Counsel's associated lodestar.”).

In this case, the lodestar “cross-check” confirms the propriety of the fee sought. Class Counsel are reporting their lodestar using a method by which hours expended by each attorney are multiplied by the attorney’s hourly rate. Based on

these figures, the requested fee amount (\$1.5 million) is approximately 105% of Plaintiffs' counsel's actual lodestar (\$1,423,099). If the additional \$34,398.43 in total expenses are included in this calculation, the requested multiplier becomes 102.91%.

Courts routinely find in complex class action cases that a multiplier of one to four of counsel's lodestar is fair and reasonable. *See Boone v. City of Phila.*, 668 F. Supp. 2d 693, 714 (E.D. Pa. 2009). *Accord, In re Prudential*, 148 F.3d 283, 341 (3d Cir. 1998) (quoting 3 Herbert Newberg & Alba Conte, *Newberg on Class Actions*, Section 14.03 at 14-5 (3d ed. 1992)). The Third Circuit has observed that it has "approved a multiplier of 2.99 in a relatively simple case." *Milliron v. T-Mobile United States*, 423 Fed. Appx. 131, 135 (3d Cir. 2011) (citing *Cendant PRIDES*, 243 F.3d at 742). *See also, In re Schering-Plough Corp.*, No. 08-1432 (DMC)(JAD), 2012 U.S. Dist. LEXIS 75213, at *22 (D.N.J. May 31, 2012) (noting that a 1.6 multiple "is an amount commonly approved by courts of this Circuit," and approving it as reasonable); *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 479 (D.N.J. 2008) (finding a multiplier of almost 2.3 to be reasonable); *Henderson*, 2013 U.S. Dist. LEXIS 46291, at *47 (approving a lodestar multiple of 1.13). The 1.029 multiplier sought here is at the low end of this range, is reasonable, and should be approved.

E. Plaintiffs' Counsel's Expenses Should be Approved.

There is little question that “[c]ounsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.” *Careccio v. BMW of N. Am. LLC*, Case No. 08-2619, 2010 U.S. Dist. LEXIS 42063, at *22 (D.N.J. Apr. 29, 2010) (quoting *In re Safety Components Int'l Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001)); accord *In re Ins. Brokerage Antitrust Litig.*, 2012 U.S. Dist. LEXIS 46496, at *144-45 (recognizing the same principle, and approving an expense request of \$394,192.76).

In this case, Plaintiffs' Counsel have incurred \$34,398.43 in properly documented expenses for the common benefit of Class Members. The requested expenses will be paid from the total \$1.5 million fee and expense request. Plaintiffs' counsel put forward these necessary out-of-pocket costs without assurance that they would ever be repaid. The requested amount is therefore reasonable and should be approved. *See, e.g., In re Schering-Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121, at *58 (approving expenses that were “adequately documented and reasonably and appropriately incurred in the prosecution of the case.”); *In re Datatec Sys. Sec. Litig.*, No. 04-CV-525 (GEB), 2007 U.S. Dist. LEXIS 87428, at *27 (D.N.J. Nov. 28, 2007) (approving “costs associated with experts, consultants, investigators, legal research, mediation,

meals, hotels, transportation, word processing, court fees, mailing, postage, telephone, telephone, and the costs of giving notice.”).

F. The Requested Incentive Awards Should be Approved.

The service provided by the Class Representatives in this action should not go without financial recognition. While service as a representative plaintiff is not a profit-making position, the law recognizes that it is appropriate to make modest payment in recognition of the services that such plaintiffs perform in successful class litigation. *See, e.g., J/H Real Estate*, 951 F. Supp. 63, 66 (E.D. Pa. 1997); *In re GNC Shareholder Litig.*, 668 F. Supp. 450, 451 (W.D. Pa. 1987).

The SA here recognizes this principle by providing incentive award payments of \$3,500 to each of the nine Class Representatives. These Class Representatives were a key catalyst to achieving this result for the Class. They participated in conferences and meetings with their attorneys, searched for and produced documents relevant to their claims in the litigation, and stayed abreast of significant developments in the case. And like Plaintiffs’ fee and expense request, these incentive awards will be paid separate from the consideration in the SA, and will not reduce the recovery to any Settlement Class Member. *See In re LG/Zenith Rear Projection TV Class Action Litig.*, No. 06-5609 (JLL), 2009 U.S. Dist. LEXIS 13568, at *25 (D.N.J. Feb. 18, 2009) (approving incentive award that “will not decrease the recovery of other class members.”).

Consistent with the law and the terms of the SA, it is appropriate to make these payments to these class representatives. *See Bredbenner v. Liberty Travel, Inc.*, No. 09-905 (MF), 2011 U.S. Dist. LEXIS 38663, at *63-68 (D.N.J. Apr. 8, 2011) (approving incentive award payments of \$10,000 to each of the named plaintiffs); *In re Ins. Brokerage Antitrust Litig.*, 2012 U.S. Dist. LEXIS 46496, at *146 (approving incentive awards totaling \$85,000 – which amounted to \$5,000 to each of the class representatives). Recently, in a similar consumer automobile case, Judge Cecchi approved incentive awards ranging between \$5,000 to \$6,000 each to a total of six class representatives. *Henderson*, 2013 U.S. Dist. LEXIS 46291, at *56-57. Plaintiffs respectfully request that the Court likewise approve the requested incentive awards here.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court award Plaintiffs' counsel the payment of \$1.5 million in attorneys' fees and expenses, and approve the total payment of \$3,500 in incentive awards to each of the nine Class Representatives. A proposed order granting this requested relief is submitted herewith.

Dated: May 27, 2016

Respectfully submitted,

By: //s// Matthew D. Schelkopf
Joseph G. Sauder
Matthew D. Schelkopf

Joseph B. Kenney
McCuneWright LLP
1055 Westlakes Drive
Suite 300
Berwyn, PA 19312
Telephone: (909) 557-1250
Email: jgs@mccunewright.com
mds@mccunewright.com
jbk@mccunewright.com

Benjamin F. Johns
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Telephone: (610) 642-8500
E-mail: BFJ@chimicles.com

Eric Gibbs
Girard Gibbs LLP
601 California St #1400
San Francisco, CA 94108
Telephone: (415) 981-4800
E-mail: ehg@classlawgroup.com

*Attorneys for Plaintiffs
and the Settlement Class*

CERTIFICATE OF SERVICE

I, Matthew D. Schelkopf, hereby certify that the foregoing
**MEMORANDUM OF LAW IN SUPPORT OF THEIR UNOPPOSED
MOTION FOR ATTORNEYS' FEES, EXPENSES AND INCENTIVE
AWARDS** was filed on this 27th day of May, 2016 using the Court's CM/ECF
system, thereby electronically serving it on all counsel of record in this case.

/s/ Matthew D. Schelkopf
Matthew D. Schelkopf

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

KEITH YAEGER, MICHAEL
SCHULER, JOSEPH MONTGOMERY,
BRYAN BAIR, THOMAS
VANLAARHOVEN, LAURA HEGLE,
KIM MARIE PAPA, ROBERT
TEDESCO, JR., and NATALIA
TUZOVS KAYA, individually and on
behalf of others similarly situated,

Plaintiffs,

vs.

SUBARU OF AMERICA, INC., a New
Jersey Corporation, and FUJI HEAVY
INDUSTRIES, LTD., a Japanese
Corporation,

Defendants.

No. 1:14-cv-04490-JBS-KMW

CLASS ACTION

JURY TRIAL DEMANDED

**DECLARATION OF RICHARD D. McCUNE IN SUPPORT OF IN SUPPORT OF
PLAINTIFF'S COUNSEL McCUNEWRIGHT, LLP'S MOTION FOR AWARD
OF ATTORNEYS FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

I, Richard D. McCune, hereby declare as follows:

1. I am an attorney licensed to practice law before all of the courts of the State of California, admitted *pro hac vice* to appear in the District of New Jersey in this action, and I am a senior partner of McCuneWright, LLP. I am in good standing with the State Bar of California, and I have been admitted *pro hac vice* in a number of states and federal courts throughout the United States. The following facts are within my personal knowledge or are based on records and files at my law firm, and, if called upon as a witness, I could and would testify competently thereto.

BACKGROUND AND EXPERIENCE

Richard D. McCune

1. I am a partner of McCuneWright, LLP. I obtained my J.D. from the University of Southern California in June 1987 and became a member of the California Bar in November 1987. I have more than twenty-five years of litigation and trial experience and am AV rated. Over the last decade, I have focused my practice on representing consumers in class action litigation. Prior to that, I represented Plaintiffs in a variety of complex litigation matters, with particular emphasis in auto product liability actions.

2. McCuneWright is an 11-attorney firm located in Redlands, California, representing plaintiffs in consumer fraud class actions, product liability, and other complex class action litigations in California and across the United States.

3. I have been appointed class counsel in numerous state and federal class actions. In 2010, I served as co-class counsel and co-trial counsel in a consumer fraud class action against Wells Fargo Bank, N.A., on behalf of over one million customers, in which Plaintiffs obtained a \$203 million bench trial verdict. In 2011, I was class and trial class counsel in a consumer class action trial that resulted in a Plaintiffs' verdict on behalf of a class of California Correct Craft, Inc. boat owners. I have been appointed class counsel in certified class actions in a number of other consumer fraud class actions, including cases against Correct Craft, Gateway Computers, Kaiser Steel Retirees Benefit Trust, Bank of America, N.A., Hewlett-Packard, American Honda Motor Co., Mazda Motors of America, Inc., and JP Morgan Chase Bank, N.A. I have been lead or co-class counsel in a \$220 million settlement against Hyundai and Kia, a \$35 million settlement against Bank of America, and part of a group of attorneys that resolved overdraft cases against over a dozen of the largest banks for over \$1 billion.

4. I have had cases where I or my firm have specialized experience in automobile product liability cases. I and my firm have been Plaintiff counsel successfully resolved cases against a significant number of the major automobile

manufacturers, including Ford, General Motors, Chrysler, Toyota, Hyundai, Kia, Nissan, and Mitsubishi. Our firm was recently retained as special counsel by the Attorney General of Arizona to serve as co-special private counsel in the State of Arizona's action against Volkswagen arising from Volkswagen's use of a defeat device in emissions testing.

5. I currently serve on three MDL executive committees and have been appointed as one of two class counsel in a fourth MDL. I was appointed as co-lead counsel by District of South Carolina Judge Bruce H. Hendricks in In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation, MDL (#2613). I was appointed by Central District of California Judge James V. Selna to the Plaintiffs Personal Injury and Wrongful Death Committee In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation (MDL #2151). I was appointed by Southern District of New York Judge Kenneth M. Karas to the Plaintiffs' Executive Committee In re: Ford Fusion and C-Max Fuel Economy Litigation (MDL#2450).

6. McCuneWright has represented plaintiffs in consumer fraud, product liability and other complex class action litigations in California and across the United States for years. Its attorneys have experience in complex and class action litigation that includes successful litigation against virtually every major insurance company, against the largest banks in the United States, against every major

American and Japanese automobile manufacturer in product liability cases, as well as against many Fortune 500 companies in consumer fraud class actions.

7. My current usual hourly fee is \$825 per hour. My hourly rates on individual contingency contracts work out to significantly higher than \$825 per hour.

8. The primary attorneys from McCuneWright, LLP who have worked on this matter besides me are David C. Wright, (Eddie) Jae K. Kim), and Anushri Vyas.

David C. Wright

9. David C. Wright is a partner of McCuneWright, LLP (“McCune Wright”). He obtained his J.D. from the Pepperdine University School of Law in June 1994. Mr. Wright served as a judicial clerk to the Honorable Stephen S. Trott, United States Court of Appeals for the Ninth Circuit from 1994-1995. He became a member of the California Bar in November 1995. Mr. Wright was an associate at the law firm Morrison & Foerster from 1995-1007. From 1997-2001, he served as an Assistant United States Attorney for the Central District of California, and was assigned to the Major Crimes Division prosecuting violent offenders and crimes against children. Mr. Wright has more than twenty years of litigation and trial experience. Over the last 14 years, he has focused his practice

on representing plaintiffs in a variety of complex litigation matters, with particular emphasis in automotive product liability actions.

10. Mr. Wright has personally prosecuted a number of defective product cases against some of the nation's largest corporations, garnering several multi-million dollar verdicts and settlements on his clients' behalf, including:

- \$4.282 million ski boat manufacturing defect verdict;
- \$1.5 million settlement in a ski boat design defect case;
- \$2.25 million settlement for an SUV rollover accident;
- \$2 million settlement for a car frame failure;
- \$975,000 settlement for an SUV seat belt malfunction;
- \$800,000 trial verdict brake failure in a trucking accident case;
- \$750,000 settlement in a ski boat design defect case; and
- \$23 million court trial award in a breach of fiduciary duty case.

11. Mr. Wright's current usual hourly fee is \$825 per hour. Mr. Wright's hourly rates on individual contingency contracts work out to significantly higher than \$825 per hour.

Jae K. Kim

12. Jae K. Kim obtained his B.A. from University of California, Berkeley in 2001 before attending and graduating from Cornell Law School in 2004. Since 2004, Mr. Kim has worked at McCuneWright (or its predecessor firm Welebir &

McCune). His practice has been exclusively representing Plaintiffs in complex litigation matters, with primary emphasis in consumer class action cases. Mr. Kim has had extensive experience in all aspects of financial consumer class cases ranging from drafting pleadings to trial work.

13. Mr. Kim's current usual hourly fee is \$550 per hour.

Anushri Vyas

14. Anushri Vyas obtained her B.A. from the University of California, Los Angeles, and her J.D. from Loyola Law School in May 2014. Ms. Vyas was admitted to practice before the California bar in December 2014.

15. Ms. Vyas's current usual hourly fee is \$350 per hour.

Daniel Chang

16. Daniel Chang obtained a Bachelor of Arts degree from the University of California, Los Angeles in 1991, and received his J.D. from Golden Gate University School of Law, in 1996, where he was a Law Merit Tuition Scholar. Mr. Chang has been approved as class counsel in both federal and state court throughout California. Since 2005, and prior to joining McCuneWright, Mr. Chang's practice was primarily devoted to representing plaintiffs in class actions, including wage and hour and consumer warranty matters. Mr. Chang's practice focuses on the representation of clients in business and consumer fraud cases.

17. Mr. Chang's current usual hourly fee is \$650 per hour.

Joseph B. Kenney

18. Joseph B. Kenney obtained his B.A. from Ursinus College and his J.D. from Villanova University School of Law in 2013. Mr. Kenney was admitted to practice before the Supreme Courts of Pennsylvania and New York in 2013.

19. His practice has been exclusively representing plaintiffs in complex litigation matters, with primary emphasis in consumer class action cases. Mr. Kenney has had extensive experience in all aspects of class action litigation.

20. Mr. Kenney's current usual hourly fee is \$350 per hour.

Vanessa Hooker

21. Vanessa Hooker obtained her Bachelor of Arts in from Loyola Marymount University and received her J.D. from Loyola (Chicago) Law School. Ms. Hooker is currently working as a law clerk at McCuneWright.

22. Vanessa Hooker's current usual hourly billing rate is \$300 per hour.

Rhonda Espinosa

23. Rhonda Espinosa has worked for McCuneWright and its predecessor law firm for more than 20 years. Ms. Espinosa specializes in litigation support, graphic arts production, and trial presentation support.

24. Ms. Espinosa's current usual hourly billing rate is \$225 per hour.

Jesse D. Royer

25. Jesse Royer is an employee of McCuneWright specializing in litigation support and investigation.

26. Mr. Royer's current usual hourly billing rate is \$200 per hour.

McCUNEWRIGHT'S WORK IN THIS LITIGATION

27. McCuneWright first involvement in this case came in approximately June 2014 when it began investigating complaints of Subaru prematurely burning off and/or consuming abnormal and excessive amounts of engine oil. The investigation included the technical aspects, legal aspects, and extensive communication with damaged class members.

28. Following that investigation, McCuneWright decided to commit the significant resources that would be needed to litigate this claim.

29. McCuneWright was aware and believed that this would be a heavily contested action with an unpredictable outcome.

30. Following the investigation, McCuneWright opted to pursue the litigation of this case with co-lead counsel Joseph Sauder and Matthew Schelkopf, then with Chimicles & Tikellis, and Eric Gibbs and Dylan Hughes of Girard Gibbs, LLP, and an amended complaint in this action was filed on September 17, 2014, which included McCuneWright's clients Joseph Montgomery and Bryan Blair as Plaintiffs and Class Representatives.

31. Following the filing of a Second Amended Complaint on November 14, 2014, Defendants filed a motion to dismiss on December 5, 2015, vigorously disputing Plaintiffs' contentions. McCuneWright and co-lead counsel opposed this motion, filing an opposition on January 9, 2015.

32. After the completion of briefing on the motion to dismiss, but prior to the hearing on the motion, the parties began settlement discussions, in which McCuneWright was directly involved. On July 19, 2015, the parties informed the Court that they had made substantial progress toward resolving the matter and that they would be conducting confirmatory discovery in order to bring a joint motion for preliminary approval of a proposed class settlement.

33. Subsequently, McCuneWright conducted extensive confirmatory discovery process, including reviewing thousands of documents produced by Defendants, and investigating and speaking with a number of class members.

34. Following the completion of the confirmatory discovery and after significant negotiations in reaching agreement on the material terms of a settlement, the parties filed a motion for preliminary approval of class action settlement on January 4, 2016, which the Court granted on January 19, 2016.

35. In addition to its involvement to all aspects of the case, McCuneWright has been heavily involved in the preparation of the motion for final approval of class action settlement and this fee application.

36. In summary, McCuneWright's involvement in this litigation consisted of the following:

- conducted extensive technical, factual investigation and legal research;
- was appointed co-lead interim counsel;
- reviewed thousands of pages of confirmatory discovery;
- litigated multiple important motions, including Subaru's motion to dismiss and the joint motion for preliminary approval of class action settlement; prepared for and participated in mediation and other settlement efforts; and
- secured the Court's preliminary approval of the proposed Settlement.
- provided notice to the class
- communicated with individual class members who had received class notice of the settlement

McCUNEWRIGHT'S TIME AND EXPENSES

37. During the time that this litigation has been pending, McCuneWright has spent considerable time working on this litigation that could have been spent on other matters. Throughout the litigation, the active prosecution of this matter has consumed a significant percentage of my billable time that could otherwise

have been spent on other fee-generating work. In addition to a substantial percentage of my time, this litigation has also required considerable work by other lawyers, paralegals, and staff at McCuneWright that could have otherwise been spent on other fee-generating work.

38. All of this work and time performed by McCuneWright was undertaken on a contingency basis with a risk of non-payment, as well as the risk of considerably delayed payment even if the case ultimately resulted in a favorable fee award. McCuneWright has not been paid for any of its time spent on this litigation, nor has it been reimbursed for any of its expenses incurred in this litigation.

39. In connection with this litigation, the attorneys at McCuneWright have spent 528.2 hours (through May 26, 2016), for a total lodestar \$301,051.75. This information is derived directly from McCuneWright's time records. McCuneWright has a policy in place for timely inputting of time records, and the above time is reflected in the time records maintained by McCuneWright in the ordinary course of business.

40. The aforementioned totals do not include the lodestar for the preparation and attendance at the hearing on this fee motion, the ongoing and significant time spent responding to class member communication, review of the

notice and claims process, the filing of the final approval motion, preparing for and attending the final approval hearing, and overseeing the payment of claims process.

41. Further, it does not account for the lodestar for opposing any objections and appeals of the settlement, as certain counsel have signaled that they intend to file. Assuming the Court approves the settlement and there are not any appeals of the approval of the settlement, I anticipate McCuneWright's lodestar will be over \$350,000 by the time any attorney fees are paid. If appeals are filed and briefed, the lodestar could easily reach \$450,000. However, in order to provide the class notice of the attorney's fees sought and to avoid additional supplemental filing that would require additional notice, we have used \$325,000 as the requested lodestar figure.

42. The following is the summary listing each lawyer and staff person for which McCuneWright is seeking compensation for legal services in connection with this litigation, the hours each individual has expended as of May 26, 2016, and the hourly rate at which compensation is sought for each individual. The hourly rate is the current hourly rate for each lawyer and staff:

Attorney/Staff	Hours	Rate	Lodestar
Richard D. McCune	167.5	\$ 825.00	\$ 138,187.50
Anushri Vyas	203.7	\$ 350.00	\$ 71,302.00
David C. Wright	63.35	\$ 825.00	\$ 52,263.75
Jae K. Kim	24.5	\$ 550.00	\$ 13,475.00
Daniel Chang	14.1	\$ 650.00	\$ 9,165.00
Joseph B. Kenney	22.25	\$ 350.00	\$ 7,787.50
Vanessa M. Hooker	22	\$ 300.00	\$ 6,600.00
Jesse D. Royer	6	\$ 200.00	\$ 1,200.00
Rhonda Espinosa	4.76	\$ 225.00	\$ 1,071.00
Total	528.2		\$ 301,051.75

43. If the Court requires a detailed lodestar, McCuneWright will of course file it with the Court, but request that it be filed under seal as it contains attorney client and other confidential information.

44. McCuneWright has incurred \$3,077 in out of pocket litigation costs.

45. Should the Court require a detailed cost accounting, McCuneWright will of course file it, but request that it be filed under seal as it contains confidential information.

CLASS REPRESENTATIVE TIME SPENT

46. Class Representative Joseph Montgomery was actively engaged in the litigation. Among other things, Mr. Montgomery gathered and provided documents and information, reviewed the Complaint and other pleadings and

documents in the case, communicated with counsel, stayed updated about the litigation, and reviewed and approved the proposed Settlement.

47. Class Representative Bryan Bair was actively engaged in the litigation. Among other things, Bryan Bair gathered and provided documents and information, reviewed the Complaint and other pleadings and documents in the case, communicated with counsel, and stayed updated about the litigation.

I declare under penalty of perjury under the laws of the United States of America and the laws of California that the foregoing is true and correct. Executed this 27th day of May, 2016, at Redlands, California.


Richard D. McCune

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

KEITH YAEGER, *et al.*, individually
and on behalf of others similarly
situated,

Plaintiffs,

vs.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

No. 1:14-cv-04490-JBS-KMW

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

I, Benjamin F. Johns, declare as follows:

1. I am a partner at the law firm of Chimicles & Tikellis LLP ("C&T") in Haverford, Pennsylvania. I submit this declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses. I am admitted to practice before the Supreme Courts of Pennsylvania and New Jersey, and in this Court. I have personal knowledge of the facts set forth in this declaration, and if called as a witness would testify competently thereto.

2. On July 16, 2014, C&T filed the initial action against Subaru in this Court. *See* Docket Entry No. 1. This complaint was the product of extensive pre-suit investigation conducted by attorneys at my firm, which first began in November of 2013. Among other things, this investigation included reviewing Subaru engine, piston, and piston ring designs in conjunction with automotive experts.

3. During the course of this litigation, my firm has devoted significant resources to the prosecution of this case. The work performed by C&T includes the following:

- Performed factual and legal investigation of Plaintiffs' claims.
- Assisted in the preparation and drafting of the initial complaint, and the amended complaint filed on November 14, 2014. *See* Docket Entry No. 29.
- Researched and helped write Plaintiffs' memorandum in opposition to the defendants' motion to dismiss the amended complaint. *See* Docket Entry No. 34.

- Assisted in the drafting of the discovery confidentiality proposed order, which was entered by Magistrate Judge Karen M. Williams on April 15, 2015. *See* Docket Entry No. 39.
- Spoke with or otherwise responded to the numerous inquiries from consumers who have contacted our firm about this case. To date, our firm has received nearly a thousand inquiries about this matter.
- Worked cooperatively with other Plaintiffs' firms to efficiently organize the case.
- Researched and wrote internal memoranda about legal issues that arose over the course of the case.
- Drafted and revised discovery requests.
- Prepared a FED. R. CIV. P. 30(b)(6) deposition notice. On October 20, 2015, a C&T attorney deposed Subaru witness John Gray. The purpose of this deposition, which occurred before the settlement was executed, was to confirm that the proposed class consideration is fair, reasonable and adequate.
- Reviewed and analyzed documents produced by Subaru (over 12,000 pages).

- Participated in meetings with both our co-counsel and defense counsel.
- Worked on a vehicle inspection protocol with defense counsel.
- Served Defendant Fuji Heavy Industry Ltd., the parent company of Subaru, in Japan.
- Prepared for and participated in a lengthy meeting with defense counsel on April 20, 2015 to discuss the potential resolution of this matter. That was followed up with a second, all-day settlement meeting with defense counsel on May 19, 2015.
- Reviewed and analyzed the report of Subaru's expert, Robert Kuhn. *See* Docket Entry No. 51.
- Provided our clients with regular updates as to the status of the case.
- Helped draft, review, and edit the settlement agreement. Drafted and filed preliminary approval, class notice, and other settlement papers.
- Prepared for and participated in a call with the Court on January 19, 2016 regarding preliminary approval of the settlement.

4. The Court's January 19, 2016 order granting preliminary approval to the settlement appointed Matthew D. Schelkopf, formerly a

partner at C&T, as one of the lawyers serving as Class Counsel for the Settlement Class. *See* Docket Entry No. 53. Mr. Schelkopf left C&T effective February 5, 2016 to join the McCuneWright LLP firm. Mr. Schelkopf has agreed to continue working on this case subsequent to that date as an independent contractor for C&T. Accordingly, all of Mr. Schelkopf's billable time on this matter was performed for C&T, and is reflected in the C&T schedules and records submitted herewith.¹

5. The schedule attached as Exhibit A, and incorporated herein, is a detailed summary of the amount of time spent by C&T attorneys and professional support staff who were involved in this litigation. The lodestar calculation is based on my firm's current billing rates. Exhibit A was prepared from contemporaneous time records regularly prepared and maintained by my firm. The hourly rates for my firm's partners, attorneys and professional support staff included in Exhibit A are the usual and customary hourly rates charged for their services in similar complex class

¹ The Court's preliminary approval order also appointed Richard McCune of McCuneWright LLP as another one of the Class Counsel for the Settlement Class. Consistent with paragraph 4 above, the McCuneWright firm is separately submitting its billable time and expenses, which does not include that of Mr. Schelkopf.

actions.

6. The total amount of billable time expended on this litigation by my firm from inception to May 16, 2016 is 1,201.75 hours. The total lodestar for my firm is \$538,403.75. I anticipate that my firm will incur additional time and expenditures after this date (*e.g.*, related to the final approval proceedings), which are not accounted for herein.

7. My firm was retained to work on this matter on a contingency fee basis, and has not received any compensation for its services rendered in this case.


8. My firm's lodestar is based on the firm's current billing rates, which do not include charges for expense items. Expense items are billed separately and are not duplicated in my firm's lodestar. As noted above, my firm's lodestar does include the billable time performed by Mr. Schelkopf as an independent contractor for C&T.

9. My firm expended a total of \$13,682.70 in unreimbursed expenses necessary in connection with the prosecution of this litigation. These expenses are described in Exhibit B, which is attached hereto and incorporated herein.

10. The expenses my firm incurred in litigating this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, receipts, check records and other source materials and accurately reflect the expenses incurred.

I declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Dated: May 20, 2016

By: 

Benjamin F. Johns
(NJ ID No. 03818-2005)

**YEAGER V. SUBARU OF AMERICA, INC., ET AL.
TIME SUMMARY**

FIRM NAME: CHIMICLES & TIKELLIS LLP

REPORTING PERIOD: Inception to May 16, 2016

NAME	STATUS	HOURLY RATE	HOURS	LODESTAR
Chimicles, Nicholas E.	P	\$950.00	4.00	\$3,800.00
Sauder, Joseph G.	FP	\$700.00	97.50	\$68,250.00
Mathews, Timothy N.	P	\$600.00	0.50	\$300.00
Schelkopf, Matthew D.	FP	\$600.00	547.25	\$328,350.00
Johns, Benjamin F.	P	\$550.00	60.00	\$33,000.00
Kenney, Joseph B.	FA	\$300.00	194.75	\$58,425.00
Mastraghin, Corneliu P.	PL	\$250.00	2.25	\$562.50
Kane, Erica E.	FLC	\$225.00	6.75	\$1,518.75
Boyer, Justin P.	PL	\$175.00	55.00	\$9,625.00
Cain, Shelby R.	FPL	\$175.00	6.50	\$1,137.50
Krebs, Konrad R.	FLC	\$150.00	5.00	\$750.00
Royer, Jesse D.	FLC	\$150.00	210.00	\$31,500.00
Ngo, Phuong	FLC	\$100.00	11.25	\$1,125.00
Epstein, Blair M.	FLC	\$60.00	1.00	\$60.00
TOTALS			1201.75	\$538,403.75

P = Partner

FP = Former Partner

A = Associate

FA = Former Associate

PL = Paralegal

FPL = Former Paralegal

FLC = Former Law Clerk

YEAGER, ET AL. V. SUBARU OF AMERICA, INC., ET AL.
FIRM NAME: CHIMICLES & TIKELLIS LLP
EXPENSE SUMMARY REPORT
REPORTING PERIOD: Inception through May 16, 2016

DESCRIPTION	AMOUNT
Subpoena Service	\$6,928.90
Computer Research	\$2,516.87
Other	\$1,494.09
Deposition Transcripts	\$1,042.80
Travel/Food/Lodging	\$887.34
Filing Fees	\$550.00
Photocopies - Firm	\$167.50
Express Mail	\$52.89
Postage	\$39.45
Telephone/Facsimile	\$2.86
TOTAL:	\$13,682.70

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

KEITH YAEGER, MICHAEL
SCHULER, JOSEPH MONTGOMERY,
BRYAN BAIR, THOMAS
VANLAARHOVEN, LAURA HEGLE,
KIM MARIE PAPA, ROBERT
TEDESCO, JR., and NATALIA
TUZOVS KAYA, individually and on
behalf of others similarly situated,

Plaintiffs,

vs.

SUBARU OF AMERICA, INC., a New
Jersey Corporation, and FUJI HEAVY
INDUSTRIES, LTD., a Japanese
Corporation,

Defendants.

No. 1:14-cv-04490-JBS-KMW

CLASS ACTION

**DECLARATION OF ERIC H. GIBBS IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEY FEES AND EXPENSES**

I, Eric H. Gibbs, declare as follows:

1. I am a partner at the law firm Girard Gibbs LLP and am one of the attorneys appointed to serve as Class Counsel in this action. I make this declaration based on my personal knowledge and in support of Plaintiffs' motion for an attorney fees, costs, and incentive awards for each of the class representatives.

2. The amounts Plaintiffs are requesting are the result of arms-length negotiations and were negotiated only after the principal terms of the class settlement were agreed upon. To assist the Court's review, I am providing (i) a summary of the time my firm has spent on this litigation, including a lodestar calculation based on that time and our current billing rates, (ii) a summary of our litigation expenses, and (iii) a summary of the class representatives' contributions to the litigation.

I. SUMMARY OF TIME

3. Over the past two years, my firm has spent 838.00 hours investigating and then litigating this case, with a total lodestar of \$391,893.50 and an overall blended rate (lodestar divided by total hours) of \$468 per hour. Attorneys at the firm and I have reviewed our time records, which were maintained contemporaneously since the beginning of this matter, exercised billing discretion to remove about 8 percent of our total lodestar, and I believe the reported time to be reasonable.

A. Lodestar Calculation

4. The chart below reflects attorneys and paralegals who contributed time toward the litigation, the total number of hours they contributed, their hourly rates, and the resulting lodestar for each attorney and for my firm as a whole.

Name	Title	Bar Date	Hours	Rate	Lodestar
David Stein ¹	Partner	2008	216.80	\$520	\$112,736
Dylan Hughes ¹	Partner	2000	195.30	\$625	\$122,062.50
Steven Lopez ¹	Associate	2014	186.20	\$350	\$65,170
Jason Gibbs ¹	Paralegal	--	67.30	\$190	\$12,787
Rachel Naor	Associate	2012	49.40	\$365	\$18,031
Geoffrey Munroe ¹	Partner	2003	45.80	\$595	\$27,251
Ellen Oblatz	Paralegal	--	40.30	\$190	\$7,657
Eric Gibbs	Partner	1995	36.90	\$710	\$26,199
Total			<u>838.00</u>		<u>\$391,893.50</u>

5. To calculate each attorney's respective lodestar, I used current billing rates for all attorneys and paralegals except for those no longer employed by Girard Gibbs or Gibbs Law Group, in which case I used the attorney or paralegal's last applicable billing rate.

6. We set our billing rates based on a review of the rates charged by other plaintiffs' attorneys involved in complex litigation and those published in surveys conducted by the National Law Journal. Based on my years of experience

¹ As of June 1, 2014, Mr. Hughes, Mr. Stein, and Mr. Munroe became partners with Gibbs Law Group; they continue to contribute to Girard Gibbs as Of Counsel. Mr. Lopez became an associate at Gibbs Law Group and Of Counsel to Girard Gibbs in September 2014. Ms. Boffi and Jason Gibbs were paralegals at Girard Gibbs until June 1, 2014, when they became paralegals at Gibbs Law Group.

in consumer class actions and complex litigation, I believe these billing rates are commensurate with rates charged by other firms with similar experience and expertise. In connection with fee applications like this one, our billing rates have been regularly evaluated and approved by courts. *See, e.g., In re Mercedes-Benz Tele Aid Contract Litig.*, MDL No. 1914, No. 07-2720, ECF No. 196-4 (D.N.J. July 7, 2011); *Edwards v. Ford Motor Co.*, No 3:11-cv-1058-MMA-BLM, ECF No. 181 (S.D. Cal. May 2, 2016); *Velasco v. Chrysler Group LLC*, No. 2:13-cv-08080-DDP (VBKx), ECF No. 167 (C.D. Cal. Jan. 27, 2016); *In re Adobe Sys. Inc. Privacy Litig.*, No. 5:13-cv-05226, ECF No. 107 (N.D. Cal. August 13, 2015); *In re Hyundai and Kia Fuel Economy Litig.*, No 2:13-ml-02424-GW, ECF No. 437 (C.D. Cal. March 19, 2015); *Skold v. Intel Corp.*, No 1-05-CV-039231, Online Dkt. No. 589 (Cal. Super. Ct., Santa Clara Cty. Jan. 29, 2015).

7. Additional information about Girard Gibbs and its attorneys can be found in the firm's resume, a copy of which is attached hereto as **Exhibit A**.

8. To assist the Court's review of my firm's time, I segment the litigation into six time periods, as shown in the following table. For each period, I briefly describe what was happening in the litigation, list major tasks we devoted our time toward, and provide the hours and lodestar figures for each of the attorneys and paralegals who worked on the case during that time period. These periods largely proceed chronologically, though there is some chronological overlap for various tasks—in particular, our ongoing communications with class members around the country.

Time Period		Description	Hours	Lodestar
A.	07/14-09/14	Factual Investigation, Legal Research, and Preparation of Pleadings	240.90	\$119,789.50
B.	09/14-01/15	Case Coordination and Motion to Dismiss Briefing	214.60	\$105,902
C.	01/15-03/15	Rule 26 and Discovery	107.90	\$49,435
D.	04/15-Present	Settlement Negotiations, Preliminary Approval, and Final Approval	101.40	\$53,356
E.	Throughout	Communications with Class Members	173.20	\$63,411
Total Time			<u>838.00</u>	<u>\$391,893.50</u>

B. July – September 2014: Factual Investigation, Legal Research, and Preparation of Pleadings

9. Attorneys from Girard Gibbs began investigating this matter in July 2014 after being contacted by drivers concerned that their vehicles were consuming a substantial amount of engine oil. Many drivers described undergoing a series of unsuccessful diagnoses at Subaru dealerships and also having to pay for extra motor oil. Some drivers expressed safety concerns, including Plaintiff Laura Hegle, who reported that her Subaru stalled on the freeway as the result of an oil-clogged catalytic converter.

10. During the several months that followed, a team of attorneys and paralegals investigated the issue. Through that investigation, we obtained and reviewed a variety of documents and information (detailed below), and we discovered that Subaru had already discovered the oil consumption issue and designed special procedures for diagnoses and repairs. In the midst of this investigation, we learned that attorneys from another firm had also begun an

investigation and had recently filed this suit. We contacted those attorneys and were able to reach an agreement to coordinate our efforts and to work jointly on behalf of a proposed nationwide class.

11. During this period, our firm's efforts included the following principal tasks:

- Collected and analyzed technical literature about the oil consumption problem, including Subaru service bulletins and shop manuals;
- Reviewed online forums and the National Highway Traffic Safety Administration's (NHTSA) website to gather information about oil consumption symptoms and experiences;
- Retained and began working with an automotive consultant to understand the technology at issue, identify the vehicle engines most likely to be affected, and to ascertain the most promising areas for further investigation;
- Obtained and reviewed dealership invoices and repair records revealing the dealerships' use of oil consumption tests and corporate repair bulletins;
- Obtained and reviewed owner's manuals, warranty pamphlets, and other documentation from drivers;
- Worked with Plaintiffs Laura Hegle and Thomas Vanlaarhoven, who had retained my firm, to analyze their potential legal claims;
- Legal research into issues such as potential secret warranty and emissions warranty claims, and began drafting a proposed class action complaint;

- Contacted and negotiated a working arrangement with co-counsel, and then worked to combine our respective investigative efforts into an amended complaint; and
- Prepared a demand letter asking Subaru to notify drivers about the oil consumption issue, provide free repairs, and reimburse past repairs.

12. The table below lists the hours worked during this time period.

Partner Dylan Hughes was primarily responsible for overseeing our pre-filing investigation and the activities listed above. He was assisted by associate Rachel Naor, who drafted portions of the complaint; and by paralegal Ellen Oblatz who assisted technical research efforts. Mr. Stein drafted other portions of the complaint, oversaw the legal research, and reviewed and revised the amended complaint. I provided high-level oversight and strategy input during this period.

Name	Title	Bar Date	Hours
Dylan Hughes	Partner	2000	99.90
David Stein	Partner	2008	56.10
Rachel Naor	Associate	2012	40.40
Ellen Oblatz	Paralegal	--	33.20
Geoffrey Munroe	Partner	2003	7.80
Eric H. Gibbs	Partner	1995	3.50
Total			<u>240.90</u>

C. September 2014 – January 2015: Case Coordination and Motion to Dismiss Briefing

13. In the months after filing the amended *Yaeger* complaint, lawyers from my firm undertook the following principal tasks:
- a. Helped prepare a motion to appoint interim co-lead counsel pursuant to Federal Rule of Civil Procedure 23(g) and later a revised stipulation for appointment of counsel (after an additional putative class action was filed);
 - b. Assisted in the finalization of the Master Consolidated Complaint, which included claims brought on behalf of nine class representatives from six states;
 - c. Researched and drafted portions of, and then helped to revise and finalize, Plaintiffs' brief in opposition to Subaru's motion to dismiss, which sought dismissal of twelve causes of action and raised choice of law and preemption issues; and
 - d. Attended and supervised Subaru's inspection of Plaintiff Hegle's vehicle in Redding, California.
14. During this period, Mr. Stein was responsible for day-to-day responsibilities, and helped edit and finalize Plaintiffs' opposition to the motion to dismiss as well as the 23(g) papers. Mr. Munroe assisted in researching and drafting sections of the brief regarding the California emissions warranty statute and primary jurisdiction. Mr. Hughes continued our investigation and consultation with our industry expert, and also helped prepare the factual background section of the opposition brief. Mr. Lopez assisted the briefing team with legal research,

wrote the initial draft of sections of the 23(g) papers, and was the sole representative for Plaintiffs at Subaru's inspection of Ms. Hegle's vehicle. Finally, during this period I helped facilitate the coordination of the litigation and continued to provide high-level oversight and strategic input.

Name	Title	Bar Date	Hours
David Stein	Partner	2008	76.00
Steven Lopez	Associate	2014	69.20
Geoffrey Munroe	Partner	2003	38.00
Dylan Hughes	Partner	2000	21.30
Eric H. Gibbs	Partner	1995	7.40
Rachel Naor	Associate	2012	2.70
Total			<u>214.60</u>

D. January 2015 – March 2015: Rule 26 and Discovery

15. After the motion to dismiss, Girard Gibbs attorneys focused primarily on the Rule 26 process and crafting initial discovery requests. During this period, we undertook the following principal tasks:

- a. Researched Subaru's corporate structure, company presentations, data systems, and employment listings to prepare for Rule 26 conferences and for use in drafting targeted discovery requests;
- b. Corresponded with Subaru's counsel regarding preservation of evidence and Rule 26 obligations;
- c. Held a preliminary Rule 26 call with defense counsel; and
- d. Prepared and served Plaintiffs' First Set of Requests for Production and First Set of Interrogatories.

16. During this time period, Mr. Stein handled most of Plaintiffs' communications with defense counsel as well as the Rule 26 process. Mr. Lopez researched Subaru's corporate structure and drafted discovery requests and correspondence under the supervision of Mr. Stein and Mr. Hughes.

Name	Title	Bar Date	Hours
Steven Lopez	Associate	2014	51.60
David Stein	Partner	2006	37.20
Dylan Hughes	Partner	2000	18.00
Eric Gibbs	Partner	1995	1.10
Total			<u>107.90</u>

E. March 2015 – Present: Settlement Negotiations, Preliminary Approval, and Final Approval

17. In early 2015, Subaru approached Plaintiffs to discuss the potential for resolving the litigation. Mr. Stein and I attended a preliminary settlement conference in Philadelphia in April, at which time the parties made progress toward an eventual settlement. During the following months, I worked with our co-counsel to negotiate a settlement agreement to resolve Plaintiffs' and the class's claims. Tasks during this period included:

- a. Participated in the parties' settlement conference in Philadelphia;
- b. Assisted in negotiation of the terms of a formal settlement agreement;
- c. Reviewed and revised the preliminary approval brief and the supporting papers, including the class notice and claim form;
- d. Preparing for and attending (telephonically) the preliminary approval hearing; and

- e. Audited my firm's billing records from inception to present and prepared this declaration.

18. Mr. Stein and I helped negotiate the terms of the settlement agreement beginning at the parties' Philadelphia conference and continuing in the following months. Mr. Stein and Mr. Hughes also reviewed and revised portions of the motion for preliminary approval and supporting papers. Mr. Lopez assisted us to prepare for the conference and subsequent negotiations, and also performed the preliminary audit of the firm's billing records.

Name	Title	Bar Date	Hours
David Stein	Partner	2008	33.60
Steven Lopez	Associate	2014	31.30
Eric Gibbs	Partner	1995	24.90
Dylan Hughes	Partner	2000	11.60
Total			<u>101.40</u>

F. Communications with Class Members

19. Throughout this litigation, beginning with our earliest investigation efforts and increasing through the litigation and settlement context, we have maintained regular contact with members of the class. To date, we have been in contact with over one thousand class members. We have communicated with the vast majority of them by e-mail, and have spoken with hundreds over the phone. We have also maintained an informational webpage to help class members stay apprised of the litigation.

20. This outreach provided many benefits: (1) we were able to keep class members apprised of developments in the litigation and the eventual settlement; (2)

it provided another avenue of investigation, as many class members told us about their experience and shared documents; and (3) it provided a sounding board, as class members frequently told us what they would like to see achieved via settlement.

21. As the following table reflects, our outreach was done primarily by our paralegals and by associate Steven Lopez who stayed in steady contact with the class representatives. Mr. Hughes met with clients in person and over the phone at outset of the litigation.

Name	Title	Bar Date	Hours
Jason Gibbs	Paralegal	--	67.30
Dylan Hughes	Partner	2000	44.50
Steven Lopez	Associate	2014	34.10
David Stein	Partner	2008	13.90
Ellen Oblatz	Paralegal	--	7.10
Rachel Naor	Associate	2012	6.30
Total			<u>173.20</u>

II. SUMMARY OF COSTS

22. In addition to expending professional time on behalf of Class members, Girard Gibbs also incurred \$13,766.10 in unreimbursed expenses while litigating this case. The incurred costs are delineated in the following table:

Costs	Amount
Airfare	\$921.20
Copies and Prints	\$358.50
Experts & Consultants	\$2,250.00
Filing Fees	\$2,146.00
Ground Transportation and Parking	\$436.10

Litigation Support	\$26.50
Lodging	\$1,825.90
Meals	\$763.00
Postage & Delivery	\$20.00
Computer Research	\$7,268.90
Total	<u>\$16,016.10</u>

III. SERVICE AWARDS

23. Class Counsel is requesting that the Court authorize service awards of \$3,500 to each of the class representatives in this case. Each named plaintiff worked with our firm or co-counsel throughout the litigation. Plaintiffs Laura Hegle and Thomas Vanlaarhoven spoke with us approximately once a month to keep themselves apprised of the case's progress, regularly asked questions, reviewed filings and the terms of the proposed settlement, and promptly responded to our requests. They also provided repair and other documentation to us as necessary.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct and that this declaration was executed on May 26, 2016, in Oakland, California.

By: 
Eric H. Gibbs



Firm Resume

Girard Gibbs is a national litigation firm representing plaintiffs in class and collective actions in state and federal courts, and in arbitration matters worldwide. The firm serves individuals, institutions and business clients in cases involving consumer protection, securities, antitrust, personal injury, whistleblower laws, and employment laws.

Our clients range from individual consumers and small businesses to Fortune 100 corporations and public pension funds. In addition to English, our attorneys are proficient in French, Spanish, German, and Korean, and we are prepared to assist non-U.S. clients in finding solutions to legal issues within the U.S. and across international borders.

We have recovered over a billion dollars on behalf of our clients in class actions and non-class cases. In addition to litigation, our firm also provides consulting and strategic counseling services to institutional clients and professionals in securities litigation, corporate governance and international business matters. We are committed to achieving favorable results for all of our clients in the most expeditious and economical manner possible.

Girard Gibbs has been distinguished as a Tier 1 law firm for plaintiffs' mass tort and class-action litigation in the "Best Law Firms" list in the survey published in the U.S. News & World Report's Money Issue. And *The National Law Journal (NLJ)* has named Girard Gibbs to its elite "Plaintiffs' Hot List," a selection of top U.S. plaintiffs' firms recognized for wins in high-profile cases.

Thirteen of the firm's attorneys have been selected as Northern California Super Lawyers and Rising Stars. Three of the firm's senior attorneys, Daniel Girard, Eric Gibbs, and Michael Danko, have additionally been recognized among the "Top 100 Super Lawyers" in Northern California, and Mr. Girard and Mr. Gibbs were selected by their peers for inclusion in *The Best Lawyers in America* 2012-2016. *Best Lawyers* also designated Mr. Girard as the 2013 "Lawyer of the Year" in San Francisco for class action litigation. Mr. Girard and Mr. Gibbs have both earned AV-*Preeminent* ratings from Martindale-Hubbell, recognizing them in the highest class of attorneys for professional ethics and legal skills, and were featured in the 2012 edition of San Francisco's Top AV-*Preeminent* Rated Lawyers.

ATTORNEYS

Partners

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Senior Counsel

<i>Jordan Elias</i>	p. 7
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Associates

<i>Scott Grzenczyk</i>	p. 7
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* Former employees of the firm.

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ATTORNEYS

Partners

Daniel Girard serves as the firm's managing partner and coordinates the prosecution of various consumer protection, securities, and antitrust legal matters handled by the firm.

He has successfully represented investors and consumers in a series of precedent-setting cases. Some of the cases in which Mr. Girard served as lead counsel include *Billitteri v. Securities America, Inc.*, (\$150 million settlement), *In re American Express Financial Advisors Securities Litigation*, (\$100 million settlement), *In re Prison Realty Securities Litigation*, (\$104 million settlement), *In re i2 Technologies Securities Litigation*, (\$88 million settlement), and *In re MCI Non-Subscriber Rates Litigation*, (\$90 million). He served as a member of the executive committee charged with managing *In re Lehman Brothers Holdings Securities and ERISA Litigation*, multidistrict proceedings arising out of the collapse of Lehman Brothers Holdings, Inc., the largest bankruptcy in United States history. The Lehman litigation resulted in recoveries of over \$735 million. Mr. Girard also served as lead counsel in related litigation on behalf of Lehman noteholders



He served as a member of the Executive Committee in the *Natural Gas Antitrust Cases I, II, III and IV* antitrust litigation against numerous natural gas companies for manipulating the market for natural gas in California. The *Natural Gas* litigation resulted in total settlements of nearly \$160 million. Mr. Girard served as lead counsel in the *In re H&R Block Express IRA Litigation*, which resulted in a \$19.5 million settlement for low-income consumers. Mr. Girard also represented the California State Teachers Retirement System in litigation in a non-class securities action against Qwest Communications, Inc. and outside auditor Arthur Andersen, resulting in a recovery of \$45 million for CalSTRS.

Mr. Girard currently serves as co-lead counsel in *In re Wal-Mart Stores Derivative Litigation*, representing CalSTRS in derivative litigation arising out of alleged violations of the Foreign Corrupt Practices Act. He also serves as co-lead counsel in *In re Peregrine Financial Group Customer Litigation*, representing customers of a failed futures commission merchant. He is also on the Consumer Cases Steering Committee in *In re: Target Corporation Customer Data Security Breach Litigation* and *In re: The Home Depot, Inc. Customer Data Security Breach Litigation*, where he represents customers concerning the data security breaches at retailers Target and Home Depot. He serves as lead counsel in the Sony Pictures Entertainment data breach case. Mr. Girard also serves as counsel to several public and private institutional investors in securities litigation matters both domestically and abroad, and assists in the prosecution of several international arbitration proceedings on behalf of European clients.

Mr. Girard was appointed by the late Chief Justice Rehnquist to serve on the United States Judicial Conference Committee on Civil Rules in 2004, and was reappointed by Chief Justice John Roberts to a second three-year term on the Committee in 2007. As a member of the Civil Rules Advisory Committee's Discovery Subcommittee, he participated in the Committee's drafting of amendments

governing electronic discovery, summary judgment and expert discovery. He is also a member of the American Law Institute, and serves on the Advisory Board of the Institute for the Advancement of the American Legal System, a national, non-partisan organization dedicated to improving the process and culture of the civil justice system.

Mr. Girard is the co-author of *Limiting Evasive Discovery: A Proposal for Three Cost-Saving Amendments to the Federal Rules*, 87 DENV. U. L. REV. 473 (2010) and *Managez efficacement vos litiges d'affaires*, Extrait du magazine, Décideurs N°121, November 2010. Other published articles include: *Stop Judicial Bailouts*, The National Law Journal, December 1, 2008, and *Billions to Answer For*, Legal Times, September 15, 2008. He is a frequent speaker on issues of electronic discovery, class actions and financial fraud, and his speaking engagements in the last five years include the following presentations: *Moderator and Panelist on panels addressing proposed Rule 23 amendments*, Class Action Settlement Conference, Duke Law Center for Judicial Studies, July 2015; *Panelist on Role of Consumer Class Actions in the Herbal Supplements Industry*, HarrisMartin's MDL Conference: Herbal Supplements Litigation, May 27, 2015; *Panelist on Transferee Judge Case Management*; Multidistrict Litigation Institute, Duke Law Center for Judicial Studies, April 9-10 2015; *Roundtable Participant on Settlement Class Actions*, George Washington University Law School, April 8, 2015; *Lessons from Recent Data Breach Litigation*, Western Trial Lawyers, February 26, 2015; *Speaker in Privacy & Cybersecurity Webinar*, State Bar of California, February 24, 2015; *Panelist on Preservation Issues*, Proportionality Discovery Conference, Duke Law Center for Judicial Studies, November 13-14, 2015; *Roundtable Participant on Public and Private Enforcement after Halliburton, ATP and Boilermakers*, Duke Law Center for Judicial Studies, September 26, 2014; *Co-panelist on Consolidation and Coordination in Generic Drug Cases*, HarrisMartin's Antitrust Pay for Delay Conference, September 22, 2014; *Guest Lecturer on Civil Litigation Seminar*, UC Berkeley, Hastings School of Law, September 18, 2014; *Panel Moderator on Selection and Appointment of Plaintiff's Steering Committee*, MDL Best Practices, Duke Law Center for Judicial Studies, September 11-12, 2014; *Panel on Shareholder Class Action Lawsuits under the New Companies Act*, Joint Conference of the Society of Indian Law Firms and the American Bar Association, Delhi, India, February 14-15, 2015; *Panelist on Symposium on Class Actions*, University of Michigan Law School Journal of Law Reform, March 2013; *Co-taught Seminar on Class Actions and Complex Litigation*, Duke University Law School, January 2013; *Recent Developments in U.S. Arbitration Law*, Conference on Business Law in Africa, Abidjan, Côte d'Ivoire, October 2012; *Bringing and Trying a Securities Class Action Case*, American Association for Justice 2012 Annual Convention, July 2012; *Panel on Class Actions*, U.S. Judicial Conference Standing Committee on Rules of Practice and Procedure, Phoenix, January 2012; *Panel on Paths to (Mass) Justice*, Conference on Globalization of Class Actions and Mass Litigation, The Hague, December 2011; *Contentieux et Arbitrage International: les bons réflexes à acquérir (Litigation and International Arbitration: acquiring the right reflexes)*, Paris, France, March 2011; *Panel on Proposals for Rule Amendments and Preservation Obligations*, United States Judicial Conference Advisory Committee on Rules of Practice and Procedure, January 2011; *Panel on Dispositive Motions*, 2010 United States Judicial Conference Advisory Committee on Civil Rules, Litigation Conference, Duke Law School, May, 2010; *Iqbal/Twombly Fallout: Are General Federal Rules Passé?*, ABA, Section of Litigation Annual Conference, April 22, 2010.

Mr. Girard is a member of the Business Law Section of the American Bar Association. He is past Chair of the Business Law Section's Subcommittee on Class Actions, Co-Chair of the Business and Corporate Litigation Committee's Task Force on Litigation Reform and Rule Revision, and Vice-Chair of the Business and Corporate Litigation Committee. He has served as a guest lecturer on class actions and complex litigation at the UC Davis School of Law, UC Berkeley (Boalt Hall), UC Hastings College of the Law, and Stanford Law School.

Best Lawyers has repeatedly selected Mr. Girard for inclusion in *The Best Lawyers in America* (2012-2016) for his work in class action and securities litigation, and also named him the 2013 “Lawyer of the Year” in San Francisco for Mass Tort Litigation/Class Actions - Plaintiffs. Mr. Girard has been consistently honored as a Northern California Super Lawyer (2007-2015), and has also earned the distinction of being included in the “Top 100 Super Lawyers” in Northern California. He has been named among the highest class of attorneys for professional ethics and legal skills with an *AV-Preeminent* rating by Martindale Hubbell, and was featured in the 2012 edition of San Francisco’s Top AV-Preeminent Rated Lawyers.

He served as a member of the Board of Trustees of St. Matthew’s Episcopal Day School in San Mateo, California from 2003-2008, including three years as board chair from 2005-2008. He served as a volunteer conservation easement monitor for the Peninsula Open Space Trust from 1991 to 2010.

Mr. Girard is a 1984 graduate of the School of Law, University of California at Davis, where he served as an editor of the Law Review. He received his undergraduate degree from Cornell University in 1979. Mr. Girard is a member of the California Bar.

Eric Gibbs specializes in the prosecution of consumer protection, whistleblower, antitrust, and mass tort actions. Mr. Gibbs has served as court-appointed lead counsel, class counsel and liaison counsel in numerous class actions, collective actions, and mass torts throughout the United States.



Mr. Gibbs has successfully prosecuted more than 75 class action matters. Recent cases in which Mr. Gibbs was appointed by courts to serve the interests of the class include *In re Chase Bank U.S.A., N.A. “Check Loan” Contract Litigation*—multidistrict litigation that alleged Chase Bank wronged consumers by offering long-term fixed-rate loans, only to later more-than-double the required loan payments. He led settlement negotiations in the case, which resulted in a \$100 million settlement with Chase eight weeks prior to trial. *See also In Re Mercedes-Benz Tele Aid Contract Litig.* (certified nationwide class and then negotiated a class settlement providing cash reimbursements to the class); *Parkinson v. Hyundai Motor Am.* (achieved nationwide class certification followed by a settlement that provided cash reimbursements for repairs and related expenses to consumers); *Skold v. Intel Corp.* (ten years of litigation led to a nationwide litigation class certified followed by a settlement, in which Judge Peter Kirwan wrote: “It is abundantly clear that Class Counsel invested an incredible amount of time and costs in a case which lasted approximately 10 years with no guarantee that they would prevail.... Simply put, Class Counsel earned their fees in this case.”).

Mr. Gibbs has lectured on consumer class actions, including as a featured speaker addressing *Strategic Considerations Under CAFA following Supreme Court’s Rulings in Shady Grove and Purdue* at the Bridgeport 9th Annual Class Action Litigation Conference; *Current Issues Arising in Attorney Fee Negotiations, Including Best Practices* at the 2010 AAJ Annual Convention; *Dealing With Objectors* at the Consumer Attorneys of California 3rd Annual Class Action Seminar; *What is a Class Action?* at the CAOC Annual Ski Seminar; *After the Class Action Fairness Act* at CAOC’s 1st Annual Class Action Seminar; *Class Certification In Consumer Cases* for the Litigation Section of the Barristers Club of the San Francisco Bar Association; and *Successfully Obtaining Attorneys’ Fees Under Fee-Shifting Statutes* for the Consumer Rights Section of the Barristers Club of the San Francisco Bar Association. Mr. Gibbs is the co-author of *Consumer Class Actions in the Wake of Daugherty v. American Honda Motor Company*, CAOC’s Forum Magazine, January/February 2009.

Mr. Gibbs has been selected by his peers for inclusion in *The Best Lawyers in America* (2012-2016) for his work in Mass Tort Litigation/Class Actions, and honored as a Northern California Super Lawyer (2010-2015). He also earned the distinction of being included among the "Top 100 Super Lawyers" in Northern California. With an *AV-Preeminent* rating from Martindale-Hubbell, Mr. Gibbs has been named among the highest class of attorneys for professional ethics and legal skills, and was featured in the 2012 edition of San Francisco's *Top AV-Preeminent Rated Lawyers*.

Mr. Gibbs is a member of the Board of Governors of the Consumer Attorneys of California, the Board of Governors of the American Association for Justice, the co-chair of AAJ's Consumer Privacy and Data Breach Litigation Group, and is the former co-chair and editor of the Quarterly Newsletter for the Class Action Litigation Group of AAJ. He is also a member of the American Bar Association, the National Association of Consumer Advocates, the Alameda County Bar Association, and the San Francisco Trial Lawyers Association.

Mr. Gibbs is a 1995 graduate of the Seattle University School of Law. He received his undergraduate degree from San Francisco State University in 1991. Before entering private practice, he worked for two years as a law clerk for the Consumer Protection Division of the Washington Attorney General's Office. He is a member of the California Bar.

Dena Sharp has dedicated her practice to representing plaintiffs in complex litigation throughout the United States. She specializes in the day-to-day case management of multifaceted, high-profile cases, and has developed expertise directing complex electronic discovery projects in lawsuits including *In re Lehman Brothers Holdings Securities and ERISA Litigation*, *In re SLM Corporation Securities Litigation*, *Billitteri v. Securities America, Inc.*, *In re Oppenheimer Rochester Funds Group Securities Litigation*, and *In re Nexium Antitrust Litigation*.



Ms. Sharp is an active member of The Sedona Conference Working Group on Electronic Document Retention and Production, the leading think tank on e-discovery. She has contributed to the federal rule-making process by assisting in drafting proposed revisions to the Federal Rules of Civil Procedure, which have been presented to the United States Judicial Conference Advisory Committee on Civil Rules. Ms. Sharp is also a member of the American Bar Association, where she has served as Vice-Chair of the Young Lawyers Division Litigation Committee, and the Federal Bar Association.

Ms. Sharp has been selected every year since 2009 as a Rising Star by Northern California Super Lawyers, recognizing her as one of the best young attorneys practicing in Northern California. She speaks frequently on discovery issues around the country and has served on the faculty of The Sedona Conference Institute, a continuing legal education program featuring federal and state court judges, seasoned litigators, and in-house counsel. She is the co-author of "*Four Views of Consumer Fraud*," CAOC's Forum Magazine, May/June 2012, among other articles.

Ms. Sharp is a 2006 graduate, *cum laude*, of the University of California, Hastings College of Law, where she was a member of the Thurston Society and was the recipient of the Best Oral Advocate Award. She was also the recipient of the Witkin award in her Legal Writing and Criminal Law courses. She received her undergraduate degree in history, *magna cum laude*, from Brown University in 1997. Ms. Sharp was a summer 2005 extern for the Honorable Phyllis J. Hamilton of the United States District Court, Northern District of California. Ms. Sharp also served as a spring 2005 extern for the Honorable John E. Munter, San Francisco Superior Court. She is fluent in Spanish and German, and is admitted to the

California Bar. She is also admitted to practice before the United States District Courts for the Northern, Central, Eastern and Southern Districts of California and the District of Colorado.

Amanda M. Steiner has more than fifteen years of experience in class action and complex civil litigation. She represents plaintiffs in high-profile and complex securities, antitrust and consumer class actions in federal and state courts throughout the United States. She has been instrumental in achieving recoveries on behalf of class members in *Billitteri v. Securities America, Inc.*, (\$150 million settlement on behalf Provident Royalties and Medical Capital investors) and *In re Lehman Brothers Equity/Debt Securities Litigation* (\$120 million settlement on behalf of retail investors in Lehman structured products sold by UBS Financial Services, Inc.). She specializes in legal writing at the trial court and appellate levels, and has served as the lead brief writer for many of the firm's successful securities and consumer cases, including *Billitteri*, *Lehman*, *In re SLM Corporation Securities Litigation*, *Smith v. The Regents of the University of California*, and *In re H&R Block Express IRA Litigation*.



Ms. Steiner was selected for inclusion in Northern California Super Lawyers in 2012 and 2013, and was named to the Top 50 Women Lawyers of Northern California in 2013. She is a member of the Legal Writing Institute and the American Bar Association's Appellate Practice Committee, and is a Fellow of the American Bar Foundation.

Before joining Girard Gibbs, Ms. Steiner handled a variety of class action and complex litigation matters, including cases involving defective products, employment disputes, real estate development, construction and environmental issues, commercial and residential real estate contracts, and lender-related disputes. She served as an extern for U.S. District Court Judge Marilyn Hall Patel, and worked as a law clerk for the Criminal Division of the U.S. Attorney's Office, the Alameda County District Attorney, and the Hopi Appellate Court Clinic and Tribal Law Project.

Ms. Steiner is a 1997 graduate of the University of California, Berkeley, School of Law (Boalt Hall), where she served as an Associate Editor for the Berkeley Journal of Employment and Labor Law and Articles Editor for the Berkeley Women's Law Journal. She received her undergraduate degree, cum laude, from Carleton College in 1991. She is admitted to practice in California, New York, and Washington.

Senior Counsel

Jordan Elias specializes in the prosecution of consumer and antitrust class actions. He has authored numerous briefs that resulted in favorable decisions to consumers, including *Pavoni v. Chrysler Group, LLC*, 789 F.3d 1095 (9th Cir. 2015); *In re Cipro Cases I & II*, 61 Cal. 4th 116 (2015); and *Sullivan v. DB Investments, Inc.*, 667 F.3d 273 (3d Cir. 2011) (en banc).

Before joining Girard Gibbs, Mr. Elias spent several years at Lief Cabraser Heimann & Bernstein where he pursued claims against monopolists and price-fixing cartels and against the nation's largest banks for deceptive practices. He also served as head writer for the plaintiffs in the wrongful death litigation against Toyota over its vehicles' sudden acceleration problems.

Early in his career, Jordan clerked for the late Judge Cynthia Holcomb Hall of the U.S. Court of Appeals for the Ninth Circuit. He also successfully represented technology companies in securities and intellectual property litigation at Wilson Sonsini Goodrich & Rosati.

Mr. Elias currently serves on the San Francisco Bar Association's Executive Committee. He teaches continuing legal education courses for the American Law Institute, the Practising Law Institute, Strafford Publications, and Law Seminar International. His articles on antitrust and class action law have appeared in American Bar Association and State Bar of California publications. In 2014 and 2015, Mr. Elias was honored as a Northern California Super Lawyer, and in 2012 and 2013, he was recognized as a Rising Star.

Mr. Elias is a 2003 graduate of Stanford Law School, where he was a member of the Law Review. He received his undergraduate degree, *magna cum laude*, from Yale College in 1998. Mr. Elias is a member of the California Bar.

Associates

Scott Grzenczyk is a 2011 graduate of the University of California, Davis, School of Law, where he was the Chair of the Moot Court Board and the Executive Editor of the *UC Davis Journal of International Law and Policy*. He was the recipient of the Witkin Award for Legal Research and Writing, Best Brief and Best Advocate awards in his moot court class, and numerous awards at national moot court competitions. He was also a member of the Law School's national mock trial team and the law school faculty named him as a member of the Order of the Barristers.



Mr. Grzenczyk received his undergraduate degree in political science and certificate in political theory from Princeton University in 2006. He was selected as a Rising Star by Northern California Super Lawyers (2013-2015), recognizing him as one of the best young attorneys practicing in Northern California. Mr. Grzenczyk is admitted to the California Bar.

Chris Hikida is a 2013 graduate of the University of California, Davis, School of Law. While at UC Davis, he interned at the California Department of Fair Employment and Housing where he helped investigate and prosecute employment law violations. As an intern at the United States Department of Justice Antitrust Division, Mr. Hikida helped prosecute criminal antitrust violations. Prior to joining Girard Gibbs, he clerked for Chief

Justice Mark E. Recktenwald at the Supreme Court of Hawaii, and worked as a research attorney for the Supreme Court of Guam. Mr. Hikida is admitted to the California Bar.

Emily Jenks is a 2010 graduate of the Santa Clara University School of Law, where she served as an Associate on the *Computer and High Technology Law Journal* and focused her studies on intellectual property and high tech law. Ms. Jenks received her undergraduate degree in international relations with emphasis on global economy from San Francisco State University in 2005. Prior to joining Girard Gibbs, she managed large scale eDiscovery projects in antitrust, product liability, as well as bribery and corruption. Ms. Jenks is fluent in Japanese and is admitted to the California Bar.

Elizabeth Kramer interned at Girard Gibbs for two consecutive summers while attending the University of San Francisco School of Law, and joined the firm full time after graduating in 2013. While at USF, Ms. Kramer was a member of the Investor Justice Clinic, representing elderly and low-income individuals before FINRA and in settlement negotiations to resolve alleged wrongdoing by securities firms. She recovered \$35,000 for clients during her tenure at the Clinic. Ms. Kramer was also on the board of the Women's Law Association as chair of community outreach. She graduated with honors from the University of California at Santa Cruz with a degree in Psychology. Ms. Kramer is admitted to the California Bar.



Valerie Li is a 2014 graduate of Pepperdine University School of Law, where she served on the editorial board of *the Journal of the National Association of Administrative Law Judiciary* and as member of the Moot Court Board. While at Pepperdine, she externed for the Honorable Sheri Bluebond of the United States Bankruptcy Court, Central District of California. As an extern at the California Department of Business Oversight, Ms. Li investigated and helped prosecute securities law violations. She received her undergraduate degree with honors in Political Science from the University of Pittsburgh. Ms. Li is active in the Asian American Bar Association of Greater Bay Area and is admitted to the California Bar.



Adam Polk is a 2010 graduate of the University of California, Hastings College of the Law. While at Hastings, Mr. Polk externed for Judges Sandra Brown Armstrong and Claudia Wilken of the Northern District of California. Mr. Polk was also active in moot court, chairing the team and winning multiple awards for both oral and written advocacy. He received his undergraduate degree in English and Philosophy from UCLA.

Prior to joining Girard Gibbs, Mr. Polk spent three years at the McNamara law firm, one of the largest firms in the East Bay, where he defended and prosecuted a wide variety of civil litigation matters ranging from catastrophic injury and wrongful death to commercial liability. Mr. Polk has extensive deposition, law and motion, ADR and trial experience. Mr. Polk was selected by his peers as a Rising Star by Northern California Super Lawyers (2013-2014). He is admitted to the California Bar.



Ashley Tveit is a 2010 graduate of the University of San Francisco School of Law, where she was a member of the Investor Justice Clinic and served as a summer law clerk to the California Attorney General's Civil Antitrust division. She earned a graduate degree in international relations from Humboldt University in Berlin, Germany, and an undergraduate degree in Political Science and History from the University of California, Santa Barbara. She has previously worked for Senator Dianne Feinstein and provides pro bono services through the San Francisco Volunteer Legal Services Program. Ms. Tveit is admitted to the California Bar.



Linh Vuong is a 2012 graduate of the University of San Francisco, School of Law, where she served as Executive Editor of the *USF Law Review* and a member of the Internet and Intellectual Property Justice Clinic. She was the recipient of the CALI Award for Excellence in her Legal Ethics course, Best Oral Argument award in her moot court class, and the Intellectual Property & Technology Law Certificate with honors. Ms. Vuong was also a spring 2012 extern and post-bar volunteer law clerk for the Honorable Sandra Brown Armstrong of the United States District Court, Northern District of California in Oakland. She received her undergraduate degree in Psychology and Asian American Studies from UCLA in 2006 and was on the Winter 2004 and Winter 2006 Dean's Honor List. Ms. Vuong is admitted to the California Bar.



Rachel Naor*, formerly with Girard Gibbs LLP, is a 2012 graduate of the UCLA School of Law, where she served as a Managing Editor of the *UCLA Law Review* and as a research assistant for Professor Clyde Spillenger. She was a summer extern for the Honorable Gary A. Feess of the United States District Court for the Central District of California. Ms. Naor received her undergraduate degree in History with a minor in Spanish from UC Berkeley in 2007. Ms. Naor is admitted to the California Bar.

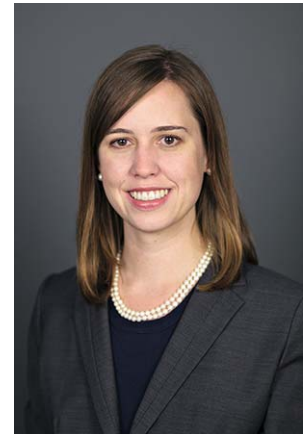


Of Counsel

David Berger is a 2008 graduate of Northwestern University School of Law. He competed on the Jessup Moot Court team and defended juveniles through the Bluhm Legal Clinic's Children and Family Justice Center. Prior to joining Girard Gibbs, Mr. Berger was a law clerk in the United States District Court for the Northern District of California. He also spent several years litigating complex commercial and intellectual property cases at Robins, Kaplan, Miller & Ciresi in Minneapolis, Minnesota. There, Mr. Berger recovered millions of dollars for the State of Minnesota by proving that a chain of dentists submitted false claims to state-funded health plans. He represented people injured by the Interstate 35-W bridge collapse in victim compensation proceedings. He also represented inter-governmental organizations and technology companies in high-stakes commercial and intellectual property disputes.



Caroline Corbitt is a 2015 graduate of the University of Southern California Gould School of Law, where she served as Executive Editor of the Southern California Interdisciplinary Law Journal. Ms. Corbitt was a summer 2013 extern for the Honorable Laurel Beeler, Magistrate Judge of the United States District Court, Northern District of California. Ms. Corbitt has also externed at the Federal Trade Commission and the California Department of Justice, Antitrust Division.



Before law school, Ms. Corbitt worked in book publishing in San Francisco, California. She received her undergraduate degree in history and literature from Harvard University in 2009. Ms. Corbitt's bar results are pending.

Michael S. Danko is a renowned trial lawyer with more than 25 years of legal experience. He represents individuals who have suffered catastrophic personal injuries, as well as families of wrongful death victims in cases involving product defects, defective medications and medical devices, airplane and helicopter accidents, and dangerous structures. He has tried cases in state and federal courts throughout the country, and has won numerous eight-figure verdicts on behalf of his clients.



Mr. Danko represents dozens of victims of a Pacific Gas & Electric gas explosion and serves on the Plaintiffs' Steering Committee in a California state coordinated proceeding *San Bruno Fire Cases*, JCCP No. 4648. He also serves on the Science Committee for Plaintiffs in *In Re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2100.

In 2009, he won a \$15 million jury verdict for a client injured by a defective aircraft part, which earned him a nomination for 2009 California Trial Lawyer of the Year by the Consumer Attorneys of California.

Mr. Danko's trial advocacy has helped bring about significant reforms and changes to corporate policies. As lead counsel in *In Re Deep Vein Thrombosis Litigation*, MDL No. 04-1606 (N.D. Cal.), he represented more than one hundred air travelers who suffered strokes, pulmonary emboli, or heart attacks as a result of airline-induced blood clots. He developed theories of liability and proof regarding the cause of his clients' injuries that led to virtually every major air carrier warning air travelers about the risks of deep vein thrombosis and measures to mitigate those risks. Mr. Danko also represented parents of children who were injured or killed by a popular candy made by a foreign manufacturer. His work in proving that the candy's unusual ingredients and consistency made it a choking hazard resulted in the candy being removed from Costco and Albertson's stores nationwide, and helped lead the FDA to ban the candy from further import into the United States.

He has been named a Northern California Super Lawyer each year since the award's inception in 2004. He is a *Lawdragon 500* finalist. In 2010, he was named one of the Best Lawyers in America. He is a member of the American Association for Justice, the Lawyer Pilots Bar Association and the Consumer Attorneys of California, where he serves on the board of governors. Mr. Danko received his AB degree from Dartmouth College, *magna cum laude*, in 1980, and earned his JD from the University of Virginia School of Law in 1983.

A.J. De Bartolomeo has more than twenty years of experience in complex litigation, including the prosecution and defense of class actions arising under the securities, communications, consumer protection and copyright laws. Her experience extends to the prosecution of pharmaceutical and medical device litigation, as well as the collection of class action recoveries and claims administration in bankruptcy proceedings. She has served as court-appointed lead counsel and class counsel in several class actions throughout the United States, and presently serves as a member of the Plaintiffs' Steering Committee in three MDL mass tort actions.



Ms. De Bartolomeo served as Lead Counsel in *Telstar v. MCI, Inc.* (S.D.N.Y) (achieved settlement for over \$2.8 million in cash on behalf of class of commercial subscribers alleging FCA violations), *Lehman v. Blue Shield* (Cal. Super. Ct. San Francisco County) (parties negotiated a settlement for over \$6.5 million in cash on behalf of class of subscribers overpaying insurance premiums), *Powers Law Offices v. Cable & Wireless, USA* (D. Mass.) (Bankr. D. Del.) (achieved settlement for over \$2.2 million in cash after Chapter 7 filing on behalf of Rule 23(b)(3) certified class of commercial customers alleging FCA violations), and *In re Cosmo Store Services*, (Bankr. C.D. Cal.) (achieved settlement for \$1 million in cash after Chapter 11 filing on behalf of class of unsecured creditor employees). Ms. De Bartolomeo has also held a leadership position in *In re American Express Advisors Securities Litigation* (S.D.N.Y), *CALSTRS v. Quest Communications, et al.* (Cal. Super. Ct. San Francisco County), *Cromwell v. Sprint Communications* (D. Kan.), and *Brennan v. AT&T Corp.* (S.D. Ill.). Ms. De Bartolomeo served as second chair in *In re MCI Non-Subscriber Rates Litigation* (MDL, S.D. Ill.) (\$88 million settlement). From 2005 to 2008, A. J. De Bartolomeo served on the Discovery and Law Committees in the *In Re Medtronic, Inc. Implantable Defibrillators Product Liability Litigation*, MDL No. 05-1726 (JMR/AJB) (D.Minn.).

Ms. De Bartolomeo is currently court-appointed to the Plaintiffs' Steering Committee in the *Yaz & Yasmin* birth control litigation (MDL 2100) and she also serves as Co-Chair of the Law and Briefing Committee. She is also court-appointed to the Steering Committee in the *Pradaxa* blood thinner personal injury and product liability lawsuits (MDL 2385), coordinated in federal court in East St. Louis, as well as *Actos* diabetes drug personal injury and product liability lawsuits (MDL 2299), coordinated in the Western District of Louisiana.

Ms. De Bartolomeo has been named among the highest class of attorneys for professional ethics and legal skills with an AV-Preeminent rating by *Martindale Hubbel*, and was honored as a *Northern California Super Lawyer* (2013). She is a member of the American Bar Association Sections on Litigation, Business Law and Communications, the American Bankruptcy Institute, Consumer Attorneys of California and the American Association for Justice. In July 2015, she became the Chair of the Women's Trial Lawyer Caucus of the American Association of Justice, where she oversees and monitors committees whose goals include leadership training; law student scholarship; membership and political outreach; and other pro-civil justice functions. She also is also a former member of the National Association of Public Pension Attorneys, where she was an active participant in the Task Force on Securities Litigation and Damage Calculation, as well as a member of the Council of Institutional Investors.

Ms. De Bartolomeo has been invited to speak on consumer and securities class actions, mass tort actions, as well as the settlement approval process before plaintiff and defense law firms, institutional investors and government committees; most recently, for Bridgeport Continuing Education, the Women's Leadership Summit at the AAJ Annual Convention and the Fact-finding Mission to Class Actions in the United States, sponsored by the Japan Federation of Bar Associations and Kyoto Bar Association. She is the author of "*Facilitating the Class Action Approval Process*," AAJ's Women Trial Lawyers Caucus Newsletter, summer 2010.

Ms. De Bartolomeo is a 1988 graduate of the University of California, Hastings College of the Law. She received her undergraduate degree from Fairfield University in 1982, and a General Course degree in Economics from the University of London, London School of Economics and Political Science (1981). Before joining Girard Gibbs, Ms. De Bartolomeo was an associate with Robins Kaplan Miller & Ciresi and a Staff Attorney with the Securities and Exchange Commission (Enforcement Division). She is admitted to the California Bar. She also is admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the First and Ninth Circuits, and the United States District Courts for the District of Michigan, the Southern District of Texas, the Eastern District of Wisconsin, and the Northern, Eastern, Central and Southern Districts of California.

Dylan Hughes specializes in the prosecution of consumer and employment class actions. He represents consumers in a variety of cases ranging from false advertising to defective products, and employees in misclassification and wage and hour cases under state and federal laws. Mr. Hughes has extensive experience prosecuting complex automobile-defect cases and helped achieve recoveries on behalf of class members in the *In Re General Motors Dex-Cool Cases* (settlement of \$50 to \$800 cash reimbursements per class member vehicle repair) and *In Re General Motors Cases*, a certified California state court class action against General Motors alleging violations of California's "Secret Warranty" law, California Civil Code § 1794.90 *et seq.* Mr. Hughes was also



involved in the *Parkinson v. Hyundai Motor America* lawsuit, in which plaintiffs certified a nationwide class alleging Hyundai sold vehicles with defective flywheel systems, before ultimately reaching a favorable settlement for the class.

Mr. Hughes has been selected for inclusion in Northern California Super Lawyers every year since 2012. He is a 2000 graduate of the University of California, Hastings College of Law. He received his undergraduate degree from the University of California at Berkeley in 1995. Mr. Hughes was a spring 2000 extern for the Honorable Charles A. Legge of the United States District Court, Northern District of California.

Before joining Girard Gibbs, Mr. Hughes was a law clerk for the Honorable Paul A. Mapes, Administrative Law Judge of the Office of Administrative Law Judges, United States Department of Labor. Mr. Hughes is a member of the American Bar Association, Consumer Attorneys of California, the Class Action Litigation Group of the American Association for Justice and the Consumer Rights Section of the Barristers Club. He is admitted to the California Bar and is admitted to practice before the United States Court of Appeals for the Ninth Circuit as well as the United States District Courts for the Northern and Central Districts of California.

Linda Lam focuses her practice on representing consumers, small businesses, and employees in complex contingency litigation. Before joining the firm, Ms. Lam was an associate attorney at a national employee benefits and employment law firm, where she represented workers and retirees.



Ms. Lam graduated *magna cum laude* from the University of California, Hastings College of the Law in 2014, where she was inducted into the Order of the Coif. In law school, Ms. Lam served as the Production Editor for the Hastings Race and Poverty Law Journal. She worked as a research assistant to Professor Reuel Schiller. Additionally, Ms. Lam worked on a team in the Refugee and Human Rights Clinic to win asylum status for a domestic violence victim from Mexico. In 2012, she externed for the Honorable Joseph Spero in the Northern District of California.

Steve Lopez is a 2014 graduate of the University of California at Berkeley School of Law (Boalt Hall), where he was a Publishing Editor for the California Law Review and an Editor for the Berkeley Journal of Employment and Labor Law. Mr. Lopez was also a member of the La Raza Law Students Association and the Legal Aid Society–Employment Law Center’s Berkeley Workers’ Rights Clinic, where he successfully argued a client’s unemployment insurance appeal in an administrative hearing. He was the recipient of the American Jurisprudence Award in Insurance Law, and the Prosser Prize in Remedies and Employee Benefits Law.



Before law school, Mr. Lopez performed research for a consulting firm specializing in improving justice programs. He received his undergraduate degree in economics and international relations from the University of Virginia in 2008.

Phyra McCandless has experience representing whistleblowers in health care fraud actions and plaintiffs in complex product liability litigation and class actions. Her practice focuses on qui tam (whistleblower) False Claims Act cases and pharmaceutical and medical device mass tort litigation.

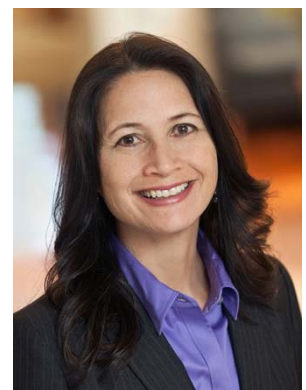


Ms. McCandless' experience with qui tam cases includes Medicare and Medicaid fraud as well as defective products subject to regulation by the Food and Drug Administration (FDA). She has worked with Assistant U.S. Attorneys and Attorneys General offices across the country. Ms. McCandless has also had instrumental roles in the coordinated Risperdal and Invega Product Liability Cases in the Los Angeles Superior Court, in addition to the Actos Multidistrict Litigation in the Western District of Louisiana.

A graduate of the University of San Francisco School of Law, where she was a member of Law Review and was selected to deliver her class commencement speech, Ms. McCandless also wrote and published "*The Fallacy of Mandating Contraceptive Equity: Why Laws That Protect Women with Health Insurance Deepen Institutional Discrimination*," 42 U.S.F. L. Rev. 1115 (2008). She received her undergraduate degree in psychology from Harvard College and earned a Master of Public Health from the Johns Hopkins Bloomberg School of Public Health. Prior to joining Girard Gibbs, Ms. McCandless was a postdoctoral fellow with the Center for Tobacco Control Research and Education at the University of California, San Francisco where she researched and co-authored "*Quid Pro Quo: Tobacco Companies and the Black Press*" in the *American Journal of Public Health*, as well as co-authored commissioned white papers on menthol for the Food and Drug Administration.

Ms. McCandless has also served as an Equal Justice Works AmeriCorps Legal Fellow, coordinating the local law student pro bono project at the Public Interest Clearinghouse (now OneJustice). She is a member of the American Public Health Association, the Consumer Attorneys of California, the San Francisco Bar Association, and holds leadership positions in the American Bar Association Tort Trial and Insurance Practice Section.

Kristine Keala Meredith is a trial attorney specializing in product liability litigation.



She served as co-lead counsel with Mr. Danko representing more than one hundred air travelers who suffered strokes, pulmonary emboli, or heart attacks as a result of airline-induced blood clots in *In Re Deep Vein Thrombosis Litigation*, MDL No. 1606.

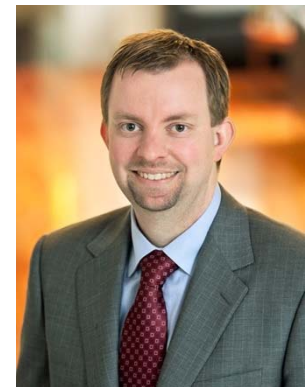
Ms. Meredith served on the Law and Motion committee in *In Re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2100, where she assisted in the successful opposition to 15 *Daubert* motions in fewer than three weeks.

Before devoting her practice to representing plaintiffs, Ms. Meredith worked on the national defense counsel teams for medical device manufacturers in multi-district litigation including *In re Silicone Gel Breast Implants Product Liability Litigation*, MDL No. 926, and *In re Orthopedic Bone Screw Product Liability Litigation*, MDL No. 1014. She also represented doctors and hospitals in defense of medical malpractice actions, where she worked with some of the world's leading medical experts.

In 2010, Ms. Meredith was named a Northern California Super Lawyer. She is currently an officer of the American Association for Justice and the San Mateo County Trial Lawyers Association. She is also a member of the San Francisco Trial Lawyers Association and the Consumer Attorneys of California. She is a former chair of the Minority Issues Committee of the San Francisco Bar Association Barrister Club.

She obtained her B.S. with honors from the University of California at Davis and was awarded a scholarship to attend Brigham Young University's J. Reuben Clark Law School. While in law school, she was awarded the Distinguished Student Service Award and spent a semester at Howard University Law School in Washington, D.C., as a member of the faculty/student diversity exchange.

Geoffrey Munroe represents plaintiffs in high-profile class action and mass tort cases in both federal and state courts throughout the United States. He was selected as a Rising Star by Northern California Super Lawyers (2010-2014), recognizing him as one of the best young attorneys practicing in Northern California, and as a Northern California Super Lawyer in 2015. He is the co-author of "*Consumer Class Actions in the Wake of Daugherty v. American Honda Motor Company*," CAOC's Forum Magazine, January/February 2009, and a frequent contributor to the Class Action Litigation Group Newsletter of the American Association for Justice.



Mr. Munroe is a 2003 graduate of the University of California at Berkeley School of Law (Boalt Hall), where he was the recipient of the American Jurisprudence Award in Torts, Business Law & Policy and Computer Law. He received his undergraduate degree in chemistry from the University of California at Berkeley in 2000. Mr. Munroe is a member of the Public Justice Class Action Preservation Project Committee, the Class Action Litigation Group of the American Association for Justice and the Consumer Attorneys of California. He is a member of the California Bar and is admitted to practice before the United States Court of Appeals for the Ninth Circuit, as well as the United States District Courts for the Northern, Central and Southern Districts of California.

Andre Mura represents plaintiffs in class action and complex litigation concerning consumers' and workers' rights, products liability, drug and medical devices, federal jurisdiction, and constitutional law.

Prior to joining Girard Gibbs, Mr. Mura was senior litigation counsel at the Center for Constitutional Litigation PC, where he represented plaintiffs in high-stakes appeals and complex litigation in state supreme courts and federal appellate courts. Mr. Mura also authored briefs filed in the U.S. Supreme Court, at both the petition and merits stages, and argued dispositive motions in trial courts nationwide.



Recently, Mr. Mura successfully opposed Wal-Mart's motion to dismiss in *Reynolds v. Wal-Mart* (N.D. Fla.), a putative class action in federal court concerning deceptive food labeling. Before the U.S. Court of Appeals for the Ninth Circuit, sitting en banc, Mr. Mura also recently represented plaintiffs injured by propoxyphene, an ingredient found in Darvocet and Darvon pain relief drugs and generic pain relievers.

Mr. Mura's advocacy before the U.S. Supreme Court includes *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011), for which he drafted merits briefing addressing whether personal jurisdiction exists over a foreign manufacturer. Mr. Mura was the lead author of an amicus curiae brief for the American Association for Justice and Public Justice in *Mutual Pharmaceutical Co., Inc. v. Bartlett*, 133 S. Ct. 2466 (2013), a case examining whether federal drug safety law preempts state-law liability for defectively designed generic drugs. In *Qwest Services Corp. v. Blood*, 132 S. Ct. 1087 (2012), Mr. Mura was counsel of record for plaintiffs in opposing Supreme Court review of an \$18 million punitive damages award. SCOTUSblog, the blog of the Supreme Court of the United States, selected Mr. Mura's petition for certiorari in *Malaterre v. Amerind Risk Management Corp.*, No. 11-441 as "Petition of the Day."

Before the Missouri Supreme Court in *Watts v. Lester E. Cox Medical Centers*, 376 S.W.3d 633 (Mo. 2012), Mr. Mura successfully argued that a state law limiting compensatory damages in medical malpractice cases violated his client's constitutional right to trial by jury. In ruling in favor of Mr. Mura's client, the high court agreed to overturn a 20-year-old precedent. In *Texaco, Inc. & Chevron Corp. v. Simon*, Mr. Mura argued before the Mississippi Supreme Court in a case concerning Texaco's and Chevron's liability for pregnant women's exposure to leaded gas. The case settled favorably after oral argument but before decision.

Mr. Mura is a member of the American Bar Association (ABA) Tort Trial and Insurance Practice Section (TIPS) Plaintiffs Policy Task Force. He serves as vice-chair of the ABA-TIPS Appellate Advocacy Committee and as chair of the ABA-TIPS Supreme Court Monitoring Subcommittee. Mr. Mura is a member and former co-chair of the Young Lawyers Committee of the National Center for State Courts, as well as a member of the American Association for Justice and the Consumer Attorneys of California. He served as an executive member of the moot court board while attending The George Washington University Law School.

Michael Schrag has nearly 20 years of experience representing individual and small business plaintiffs in complex class actions against large corporations in litigation concerning banking, credit cards, telecommunications, and real estate. Mr. Schrag has also successfully litigated product liability, personal injury, medical malpractice, employment, and contingent breach of contract cases.



Mr. Schrag currently serves as Co-Lead Counsel in *Beaver v. Tarsadia Hotels*, in which the court granted plaintiffs' summary judgment on the issue of liability in a large unfair competition class action against real estate developers. Mr. Schrag also represents a putative class of small business owners in a RICO and fraud class action against insurer AIG. The court recently denied AIG's motion to dismiss.

Mr. Schrag served as Co-Lead Counsel in *Ammari v. Pacific Bell Directory*, representing consumers who overpaid an AT&T subsidiary for advertising in Yellow Pages directories. Plaintiffs prevailed at trial and on two appeals to obtain a \$27 million judgment for class members, a result the *National Law Journal* deemed as one of the top 100 verdicts in 2009.

Mr. Schrag has helped initiate and prosecute several class actions against Visa, MasterCard, and major U.S. banks, such as Chase and Bank of America, for failing to disclose and fixing the price of currency conversion fees charged to cardholders using credit and debit cards abroad. After prevailing at trial

in *Schwartz v. Visa, et. al.*, plaintiffs were successful in obtaining a \$336 million global settlement for the class in *In re Currency Conversion Fee Antitrust Litigation* (MDL No. 1409).

Mr. Schrag helped recover over \$10 million on behalf of his clients in *In Re Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation*, a multidistrict litigation that awarded a total of \$1 billion to patients who received defective hip implants.

Mr. Schrag is a 1996 graduate of the University of California at Berkeley School of Law (Boalt Hall) and received his undergraduate degree in 1989 from Columbia College at Columbia University. Mr. Schrag began his career prosecuting securities class actions and serving as a law clerk to the Honorable Judith N. Keep, U.S. District Judge, Southern District of California. Before joining Girard Gibbs, Mr. Schrag was a partner and co-founder of Meade & Schrag, LLP, where he prosecuted class actions and also litigated personal injury, medical malpractice, breach of contract, and business litigation matters.

David Stein specializes in representing plaintiffs in consumer protection and financial fraud cases.

Mr. Stein helped generate a \$25 million settlement in an automobile defect lawsuit involving Honda and Acura vehicles, and cash reimbursements for purchasers of Prius vehicles in a lawsuit against Toyota. Currently, Mr. Stein is one of the attorneys serving as court-appointed Lead Counsel who are representing consumers against Ford Motor Company in a lawsuit alleging that the 2013 Ford Fusion Hybrid and C-MAX Hybrid vehicles do not achieve the MPG rating that Ford advertised.



Mr. Stein is also representing investors in a lawsuit against U.S. Bank arising from the collapse of Peregrine Financial Group, Inc. In two settlements, the former Peregrine customers have recovered more than \$60 million lost as a result of Peregrine's collapse. Prior to the Peregrine litigation, Mr. Stein helped secure a judgment against the Government of Guam and several of its highest ranking officials in a suit involving the government's unlawful administration of income tax refunds.

For the last three years Mr. Stein has been named a Rising Star by Northern California Super Lawyers. annually since 2013 and has been invited to speak on consumer class action issues before organizations including the American Association for Justice and the Consumer Attorneys of California. Before joining Girard Gibbs in 2009, Mr. Stein served as judicial law clerk to U.S. District Court Judge Keith Starrett and U.S. Magistrate Judge Karen L. Hayes, and published the article, *Wrong Problem, Wrong Solution: How Congress Failed the American Consumer*, 23 Emory Bankr. Dev. J. 619 (2007).

Amy Zeman represents clients in a wide variety of medical mass tort matters, including individuals harmed by transvaginal mesh, the birth-control medications Yaz and Yasmin, the diabetes drug Actos, the anti-psychotic medication Risperdal, and the Mirena intrauterine device, among others. Ms. Zeman also represents consumers in class action litigation, with experience working closely with class representatives and consumer contacts and participating in all stages of litigation. Ms. Zeman has been involved in successful actions against Chase Bank, Ducati, and Dish Network, among others. Super Lawyers Magazine recognized Ms. Zeman as a Rising Star every year since 2013.



Prior to attending law school, Ms. Zeman pursued a career in the financial sector. Ms. Zeman served the members of the Marin County Federal Credit Union for almost seven years, acting as the Accounting and Compliance Manager. She is a 2010 graduate, *magna cum laude*, of the University of California, Hastings College of Law, where she was a member of the Thurston Society and served on the *Hastings Law Journal*. She received her undergraduate degrees in German and Art History and Archaeology, *summa cum laude*, from the University of Missouri in 1998. Ms. Zeman was a spring 2010 extern for the Honorable Marilyn Hall Patel of the United States District Court, Northern District of California. Ms. Zeman is admitted to the California Bar.

Paralegals

Kristen Boffi assists with client and marketing management for Girard Gibbs LLP. Kristen creates connections between the firm, clients, and the media to highlight the firm's strengths and facilitate the delivery of legal services intended to protect consumers and keep the marketplace fair.

Kristen previously worked as the Senior Litigation Assistant at Girard Gibbs LLP, where she played a large part in the development and implementation of the firm's medical mass tort practice. During her time at Girard Gibbs LLP, Kristen developed relationships with clients represented by the firm in litigation against major pharmaceutical companies, including *In re: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*; *In re: Fresenius GranuFlo/NaturaLyte Dialysate Products Liability Litigation*; *In re: Pradaxa (Dabigatran Etexilate) Products Liability Litigation*; and *In re: Pelvic Repair System Products Liability Litigation*.



Ellen Oblatz, formerly with Girard Gibbs LLP, assisted attorneys on consumer protection and employment litigation, as well as new case development. Ellen graduated from the University of Denver in 2013 with a major in International Studies and minors in Political Science and Economics. During her undergraduate studies, Ellen interned with the district office of U.S. Congressman Ed Perlmutter (Colorado District 7), focusing on constituent services and legislative research. She also assisted with volunteer coordination on the Congressman's successful reelection campaign.



SIGNIFICANT RECOVERIES

Some of the cases in which the firm has had a leadership role are described below:

False Advertising & Deceptive Marketing

In re Hyundai and Kia Horsepower Litigation, No. 02-CC-00287 (Cal. Super. Ct. Orange Cty.). Girard Gibbs served as lead counsel in this coordinated nationwide class action against Hyundai for falsely advertising the horsepower ratings of more than 1 million vehicles over a ten year period. The case was aggressively litigated on both sides over several years. In all, over 850,000 Hyundai owners received notice of the settlement, which provided cash and other benefits, and which was had an estimated value of as much as \$125 million.

In re Chase Bank USA, N.A. "Check Loan" Contract Litigation, No. 09-2032 (N.D. Cal.). Girard Gibbs and several other firms led this nationwide class action lawsuit alleging deceptive marketing and loan practices by Chase Bank USA, N.A. After a nationwide class was certified, U.S. District Court Judge Maxine M. Chesney granted final approval of a \$100 million settlement on behalf of Chase cardholders.

Hyundai and Kia Fuel Economy Litigation, No. 2:13-md-2424 (C.D. Cal.). In a lawsuit alleging false advertising of vehicle fuel efficiency, the court appointed Eric Gibbs as liaison counsel. The firm regularly reported to the Court, coordinated a wide-ranging discovery process, and advanced the view of plaintiffs seeking relief under the laws of over twenty states. Ultimately Mr. Gibbs helped negotiate a revised nationwide class action settlement with an estimated value of up to \$120 million. The Honorable George H. Wu wrote that Mr. Gibbs had “efficiently managed the requests from well over 20 different law firms and effectively represented the interests of Non-Settling Plaintiffs throughout this litigation. This included actively participating in revisions to the proposed settlement in a manner that addressed many weaknesses in the original proposed settlement.”

In re Providian Credit Card Cases, JCCP No. 4085 (Cal. Super. Ct. San Francisco Cty). Girard Gibbs served as court-appointed co-lead counsel in this nationwide class action suit brought on behalf of Providian credit card holders. The lawsuit alleged that Providian engaged in unlawful, unfair and fraudulent business practices in connection with the marketing and fee assessments for its credit cards. The Honorable Stuart Pollack approved a \$105 million settlement, plus injunctive relief—one of the largest class action recoveries in the United States arising out of consumer credit card litigation.

In re MCI Non-Subscriber Telephone Rates Litigation, MDL No. 1275 (S.D. Ill.). This class action lawsuit was brought on behalf of MCI subscribers charged various rates and surcharges instead of the lower rates MCI had advertised. Ten cases were consolidated for pretrial proceedings before the Honorable David R. Herndon, U.S. District Judge for the Southern District of Illinois. Judge Herndon appointed Girard Gibbs as co-lead counsel for the consolidated actions. On March 29, 2001, Judge Herndon granted final approval of a settlement for over \$90 million in cash.

Skold v. Intel Corp., No. 1-05-cv-039231 (Cal. Super. Ct. Santa Clara Cty.) Girard Gibbs represented Intel consumers through a decade of hard-fought litigation, ultimately certifying a nationwide class under an innovative “price inflation” theory and negotiating a settlement that provided refunds and \$4 million in cy pres donations. In approving the settlement, Judge Peter Kirwan wrote: “It is abundantly clear that Class Counsel invested an incredible amount of time and costs in a case which

lasted approximately 10 years with no guarantee that they would prevail.... Simply put, Class Counsel earned their fees in this case.”

Steff v. United Online, Inc., No. BC265953, (Cal. Super. Ct. Los Angeles Cty.). This nationwide class action suit was brought against NetZero, Inc. and its parent, United Online, Inc., by former NetZero customers. Plaintiffs alleged that defendants falsely advertised their internet service as unlimited and guaranteed for a specific period of time. The Honorable Victoria G. Chaney of the Los Angeles Superior Court granted final approval of a settlement that provided full refunds to customers whose services were cancelled and which placed restrictions on Defendants’ advertising.

Stoddard v. Advanta Corp., No. 97C-08-206-VAB (Del. Superior Ct.). This nationwide class action lawsuit was brought on behalf of cardholders who were promised a fixed APR for life in connection with balance transfers, but whose APR was then raised pursuant to a notice of change in terms. The Honorable Vincent A. Bifferato appointed the firm as co-lead counsel and approved a \$7.25 million settlement.

Khaliki v. Helzberg’s Diamond Shops, Inc., No. 11-cv-00010 (W.D. Mo.). Girard Gibbs and co-counsel represented consumers who alleged deceptive marketing in connection with the sale of princess-cut diamonds. The firms achieved a positive settlement, which the court approved, recognizing “that Class Counsel provided excellent representation” and achieved “a favorable result relatively early in the case, which benefits the Class while preserving judicial resources.” The court went on to recognize that “Class Counsel faced considerable risk in pursuing this litigation on a contingent basis, and obtained a favorable result for the class given the legal and factual complexities and challenges presented.”

In re: Tyson Foods Inc., Chicken Raised Without Antibiotics Consumer Litigation, No. 08-cv-1982 (D. Md.). Girard Gibbs served as Class Counsel on behalf of consumers who purchased chicken products that were alleged to have been misleadingly labeled as “raised without antibiotics.” After discovery, counsel negotiated a \$5 million settlement that required Tyson to pay cash to class members and make a substantial cy pres contribution to food banks.

Defective Products

Velasco v. Chrysler Group LLC, No. 2:13-cv-08080 (C.D. Cal.). In this class action, consumers alleged they were sold and leased vehicles with defective power control modules that caused vehicle stalling. Gibbs Law Group attorneys and their co-counsel defeated the majority of Chrysler’s motion to dismiss and engaged in extensive deposition and document discovery. In 2015, the parties reached a settlement contingent on Chrysler initiating a recall of hundreds of thousands of vehicles, reimbursing owners for past repairs, and extending its warranty for the repairs conducted through the recall. When he granted final settlement approval, the Honorable Dean D. Pregerson acknowledged that the case had been “hard fought” and “well-litigated by both sides.”

In re iPod Cases, JCCP No. 4355 (Cal. Super. Ct. San Mateo Cty). Girard Gibbs, as court appointed co-lead counsel, negotiated a settlement that provided warranty extensions, battery replacements, cash payments, and store credits for class members who experienced battery failure. In approving the settlement, the Hon. Beth L. Freeman said that the class was represented by “extremely well qualified” counsel who negotiated a “significant and substantial benefit” for the class members.

Sugarman v. Ducati North America, Inc., No. 10-cv-05246 (N.D. Cal.). Girard Gibbs served as class counsel on behalf of Ducati motorcycle owners who the fuel tanks on their motorcycles degraded

and deformed due to incompatibility with the motorcycles' fuel. In January 2012, the Court approved a settlement that provided an extended warranty and repairs, writing, "The Court recognizes that class counsel assumed substantial risks and burdens in this litigation. Representation was professional and competent; in the Court's opinion, counsel obtained an excellent result for the class."

Parkinson v. Hyundai Motor America, No. 06-cv-00345 (C.D. Cal.). Girard Gibbs served as class counsel in this class action featuring allegations that the flywheel and clutch system in certain Hyundai vehicles was defective. After achieving nationwide class certification, Girard Gibbs negotiated a settlement that provided for reimbursements to class members for their repairs, depending on their vehicle's mileage at time of repair, from 50% to 100% reimbursement. The settlement also provided full reimbursement for rental vehicle expenses for class members who rented a vehicle while flywheel or clutch repairs were being performed. After the settlement was approved, the court wrote, "Perhaps the best barometer of ... the benefit obtained for the class ... is the perception of class members themselves. Counsel submitted dozens of letters from class members sharing their joy, appreciation, and relief that someone finally did something to help them."

In Re Medtronic, Inc. Implantable Defibrillators Product Liability Litigation, No. 05-md-1726 (D. Minn.). Girard Gibbs served on the discovery and law committees and provided legal, discovery, and investigative support in this lawsuit, following a February 2005 recall of certain models of Medtronic implantable cardioverter defibrillator devices. Approximately 2,000 individual cases were filed around the country and consolidated in an MDL proceeding in District Court in Minnesota. The cases were settled in 2007 for \$75 million.

Browne v. Am. Honda Motor Co., Inc., No. 09-cv-06750 (C.D. Cal.). Girard Gibbs and co-counsel served as class counsel, representing plaintiffs who alleged that about 750,000 Honda Accord and Acura TSX vehicles were sold with brake pads that wore out prematurely. Girard Gibbs negotiated a settlement in which improved brake pads were made available and class members who had them installed could be reimbursed. The settlement received final court approval in July 2010 and provided an estimated value of approximately \$25 million.

In Re General Motors Dex-Cool Cases., No. HG03093843 (Cal. Super Ct. Alameda Cty). In these class action lawsuits filed throughout the country, plaintiffs alleged that General Motors' Dex-Cool engine coolant damaged certain vehicles' engines, and that in other vehicles, Dex-Cool formed a rusty sludge that caused vehicles to overheat. After consumer classes were certified in both Missouri and California, General Motors agreed to cash payments to class members nationwide. On October 27, 2008, the California court granted final approval to the settlement.

Roy v. Hyundai Motor America, No. 05-cv-483 (C.D. Cal.). Girard Gibbs served as court appointed co-lead counsel in this nationwide class action suit brought on behalf of Hyundai Elantra owners and lessees, alleging that an air bag system in vehicles was defective. Girard Gibbs helped negotiate a settlement whereby Hyundai agreed to repair the air bag systems, provide reimbursement for transportation expenses, and administer an alternative dispute resolution program for trade-ins and buy-backs. In approving the settlement, the Honorable Alicemarie H. Stotler presiding, described the settlement as "pragmatic" and a "win-win" for all involved.

Other Consumer Protection Recoveries

Mitchell v. American Fair Credit Association, No. 785811-2 (Cal. Super. Ct. Alameda Cty); ***Mitchell v. Bankfirst, N.A.***, No. 97-cv-1421 (N.D. Cal.). This class action lawsuit was brought on behalf of California members of the American Fair Credit Association (AFCA). Plaintiffs alleged that AFCA operated an illegal credit repair scheme. The Honorable James Richman certified the class and appointed the firm as class counsel. In February 2003, Judge Ronald Sabraw of the Alameda County Superior Court and Judge Maxine Chesney of the U.S. District Court for the Northern District of California granted final approval of settlements valued at over \$40 million.

In Re Mercedes-Benz Tele Aid Contract Litigation, MDL No. 1914, No. 07-cv-2720 (D.N.J.). Girard Gibbs and co-counsel served as co-lead class counsel on behalf of consumers who were not told their vehicles' navigation systems were on the verge of becoming obsolete. Counsel successfully certified a nationwide litigation class, before negotiating a settlement valued between approximately \$25 million and \$50 million. In approving the settlement, the court acknowledged that the case "involved years of difficult and hard-fought litigation by able counsel on both sides" and that "the attorneys who handled the case were particularly skilled by virtue of their ability and experience."

In re America Online Spin-Off Accounts Litigation, No. 04-md-1581 (C.D. Cal.). Girard Gibbs served as court-appointed co-lead counsel in this nationwide class action suit brought on behalf of America Online subscribers who were billed for a second account without their knowledge, authorization or consent. The litigation settled for \$25 million and changes in AOL's billing and account practices.

In re LookSmart Litigation, No. 02-407778 (Cal. Super. Ct. S.F. Cty). This nationwide class action suit was brought against LookSmart, Ltd. on behalf of LookSmart's customers who paid an advertised "one time payment" to have their web sites listed in LookSmart's directory, only to be later charged additional payments to continue service. Plaintiffs' claims included breach of contract and violation of California's consumer protection laws. On October 31, 2003, the Honorable Ronald M. Quidachay granted final approval of a nationwide class action settlement providing cash and benefits valued at approximately \$20 million.

In re America Online, Inc. Version 5.0 Software Litigation, MDL No. 1341 (S.D. Fla.). Girard Gibbs served as co-lead counsel in this MDL proceeding, which centralized 45 class actions. The action involved alleged violations of state consumer protection statutes, the Computer Fraud and Abuse Act, and federal antitrust laws based on AOL's distribution of its Version 5.0 software upgrade. The Honorable Alan S. Gold granted final approval to a \$15.5 million cash settlement on August 1, 2002.

In re PayPal Litigation, No. 02-cv-1227 (N.D.Cal. 2002). Girard Gibbs served as co-lead counsel in this nationwide class action alleging violations of California consumer protection statutes and the Electronic Funds Transfer Act (EFTA). The plaintiffs alleged that PayPal unlawfully restricted access to consumers' PayPal accounts. On September 24, 2004, Judge Fogel granted final approval to a settlement valued at \$14.35 million in cash and returned funds, plus injunctive relief to ensure compliance with the EFTA.

Powers Law Offices, P.C. v. Cable & Wireless USA, Inc., No. 99-cv-12007 (D. Mass 1999). In this class action brought on behalf of cable and wireless subscribers overcharged for recurring and incorrect fees, Girard Gibbs prosecuted the case from 1999 through 2005. On October 27, 2005, Judge Harrington granted final approval of the \$8 million settlement and the bankruptcy court approved the 30% distribution from the unsecured creditors' fund of the bankruptcy liquidation proceeds.

Lehman v. Blue Shield of California, No. CGC-03-419349 (Cal. Super. Ct. S.F. Cty.). In this class action lawsuit alleging that Blue Shield engaged in unlawful, unfair and fraudulent business practices when it modified the risk tier structure of its individual and family health care plans, a \$6.5 million settlement was negotiated on behalf of former and current Blue Shield subscribers residing in California. The Honorable James L. Warren granted final approval of the settlement in March 2006.

Telestar v. MCI, Inc., No. 05-cv-10672 (S.D.N.Y.). This class action was brought on behalf of MCI commercial subscribers who were charged both interstate and intrastate fees for the same frame relay on prorate line service during the same billing period. On April 17, 2008, the Honorable John G. Koeltl granted final approval of a settlement for over \$2.8 million in cash.

Wixon v. Wyndham Resort Development Corp., No. 07-cv-02361 (N.D. Cal.). Girard Gibbs served as class and derivative counsel in this litigation brought against a timeshare developer and the directors of a timeshare corporation for violations of California state law. Plaintiffs alleged that the defendants violated their fiduciary duties as directors by taking actions for the financial benefit of the timeshare developer to the detriment of the owners of timeshare interests. On September 14, 2010, Judge White granted approval of a settlement of the plaintiffs' derivative claims.

Berrien, et al. v. New Raintree Resorts, LLC, et al., No. 10-cv-03125 (N.D. Cal.). Girard Gibbs filed this class action on behalf of timeshare owners, challenging the imposition of unauthorized special assessment fees. On November 15, 2011, the Parties reached a proposed settlement of the claims asserted by the Plaintiffs on behalf of all class members who were charged the special assessment. On March 13, 2012, the Court issued its Final Class Action Settlement Approval Order and Judgment, approving the proposed settlement.

Benedict, et al. v. Diamond Resorts Corporation, et al., No. 12-cv-00183 (D. Hawaii). Girard Gibbs filed this class action on behalf of timeshare owners, challenging the imposition of an unauthorized special assessment fee. On November 6, 2012, the parties reached a proposed settlement of the claims asserted by the plaintiffs on behalf of all class members who were charged the special assessment. On June 6, 2013, the Court approved the settlement.

Allen Lund Co., Inc. v. AT&T Corp., No. 98-cv-1500 (C.D. Cal.). This class action lawsuit was brought on behalf of small businesses whose long-distance service was switched to Business Discount Plan, Inc. Girard Gibbs was appointed class counsel by the Honorable Dean D. Pregerson. The settlement, providing for full cash refunds and free long-distance telephone service, was approved in December 1999.

Mackouse v. The Good Guys - California, Inc., No. 2002-049656 (Cal. Super Ct. Alameda Cty). This nationwide class action lawsuit was brought against The Good Guys and its affiliates alleging violations of the Song-Beverly Warranty Act and other California consumer statutes. The Plaintiff alleged that The Good Guys failed to honor its service contracts, which were offered for sale to customers and designed to protect a customer's purchase after the manufacturer's warranty expired. In May 9, 2003, the Honorable Ronald M. Sabraw granted final approval of a settlement that provides cash refunds or services at the customer's election.

Mager v. First Bank of Marin, No. 00-cv-1524 (D. Nev.). This nationwide class action was brought on behalf of people who were enrolled in First Bank of Marin's credit card program. In May

2002, the Judge Pro of the U.S. District Court for the District of Nevada approved a settlement providing for cash and non-cash benefits to class members.

Data Breach and Privacy Related Recoveries

In re Adobe Systems Inc. Privacy Litig., No. 13-cv-05226 (N.D. Cal.). In this nationwide class action stemming from a 2013 data breach, attorneys from Girard Gibbs served as lead counsel on behalf of the millions of potentially affected consumers. Counsel achieved a landmark ruling on Article III standing (which has since been relied upon by the Seventh Circuit Court of Appeals and other courts) and then went on to negotiate a settlement requiring Adobe to provide enhanced security relief—including the implementation and maintenance of enhanced intrusion detection, network segmentation, and encryption.

Whitaker v. Health Net of Cal., Inc., et al., No. 2:11-cv-00910 (E.D. Cal.) and *Shurtleff v. Health Net of Cal., Inc.*, No. 34-2012-00121600 (Cal. Super Ct. Sacramento Cty). Girard Gibbs served as co-lead counsel in this patient privacy case. On June 24, 2014, the court granted final approval of a settlement that provided class members with credit monitoring, established a \$2 million fund to reimburse consumers for related identity theft incidents, and instituted material upgrades to and monitoring of Health Net’s information security protocols.

Smith v. Regents of the University of California, San Francisco, No. RG-08-410004 (Cal. Super Ct. Alameda Cty). Girard Gibbs represented a patient who alleged that UCSF’s disclosure of its patients’ medical data to outside vendors violated California medical privacy law. The firm succeeded in negotiating improvements to UCSF’s privacy procedures on behalf of a certified class of patients of the UCSF medical center. In approving the stipulated permanent injunction, Judge Stephen Brick found that “plaintiff Smith has achieved a substantial benefit to the entire class and the public at large.”

In re Countrywide Financial Corp. Customer Data Security Breach Litigation, No. 3:08-md-01988 (W.D. Ky.). Girard Gibbs served as a member of the executive committee representing a class of millions of customers and potential customers of Countrywide whose personal information was stolen by a former Countrywide employee and then sold to other mortgage lenders. The class settlement provided for free credit monitoring, reimbursement of out-of-pocket expenses incurred as a result of the theft, and reimbursement of up to \$50,000 per class member for identity theft losses.

In re Sony BMG CD Technologies Litigation, No.1:05-cv-09575 (S.D.N.Y.). Girard Gibbs served as co-lead counsel in this class action for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.* on behalf of millions of consumers who purchased SONY BMG music compact discs encoded with digital rights management software which limited CD functionality and acted as spyware on the users’ computers. Judge Naomi Reice Buchwald granted approval to a settlement that provided for a nationwide recall of certain CDs, the dissemination of software utilities to remove the offending DRM, cash and other compensation for consumers, and injunctive relief governing Sony BMG’s use of DRM.

Securities and Financial Recoveries

In re Digex, Inc. Shareholder Litigation, Consol. Case No. 18336 (Del. Ch. Ct. 2000). Girard Gibbs represented the Kansas Public Employees Retirement System, one of two institutional lead plaintiffs in this lawsuit, in which minority shareholders of Digex, Inc. sued to enjoin MCI WorldCom's planned acquisition of a controlling interest in Digex through a merger with Intermedia Communications, Inc. In a settlement approved by Delaware Chancery Court on April 6, 2000, a fund consisting of \$165 million in MCI WorldCom stock and \$15 million in cash was secured for Digex shareholders, as well as non-cash benefits valued at \$450 million.

Billiteri v. Securities America, Inc., No. 3:09-cv-01568 (N.D. Tex.). Girard Gibbs served as lead counsel for investors in a failed investment scheme and coordinated settlement negotiations with bankruptcy trustees and competing plaintiff groups, resulting in global \$150 million settlement. In approving the settlement, Judge W. Royal Furgeson of the Northern District of Texas wrote: "Class counsel in this case possess great competence and experience, and the result reached in this case perfectly justifies their abilities. The Court has been extremely impressed with the conduct, skill, and accomplishment of class counsel throughout this litigation." 2011 WL 3585983, at *8 (N.D. Tex. Aug. 4, 2011).

In re Lehman Brothers Equity/Debt Securities Litigation, No. 08-cv-5523 (S.D.N.Y.). Girard Gibbs was appointed class counsel for a certified class of retail investors in structured products sold by UBS Financial Services, Inc., following the collapse of Lehman Brothers Holdings, Inc., the largest bankruptcy in United States history. The plaintiffs alleged that UBS misrepresented Lehman's financial condition and failed to disclose that the "principal protection" feature of many of the notes depended upon Lehman's solvency. Girard Gibbs negotiated a settlement that established a \$120 million fund to resolve the claims.

In re Prison Realty Securities Litigation, No. 99-cv-0452 (M.D. Tenn.). Girard Gibbs served as co-lead counsel in this securities class action brought against a real estate investment trust and its officers and directors relating to a merger between Corrections Corporation of America and CCA Prison Realty Trust. On February 13, 2001, the Court granted final approval to a settlement for over \$120 million in cash and stock.

In re American Express Financial Advisors Securities Litigation, No. 04-cv-01773 (S.D.N.Y.). Girard Gibbs served as co-lead counsel in this class action, brought on behalf of individuals who bought financial plans and invested in mutual funds from American Express Financial Advisors. The case alleged that American Express steered its clients into underperforming "shelf space funds" to reap kickbacks and other financial benefits. On July 13, 2007, the Court granted final approval to a cash settlement of \$100 million in addition to other relief.

Scheiner v. i2 Technologies, Inc., et al., No. 3:01-cv-418 (N.D. Tex.). Girard Gibbs represented lead plaintiff, the Kansas Public Employees Retirement System, and served as co-lead counsel on behalf of investors in i2 Technologies. The Honorable Barefoot Sanders approved cash settlements for \$88 million from the company, its officers and its former auditor, Arthur Andersen LLP. As part of the settlement, i2 agreed to institute significant corporate governance reforms.

In re Peregrine Financial Group Customer Litigation, No. 12-cv-5546 (N.D. Ill.). Girard Gibbs served as co-lead counsel for futures and commodities investors who lost millions of dollars in the

collapse of Peregrine Financial Group, Inc. Through several years of litigation, counsel helped deliver settlements worth more than \$75 million from U.S. Bank, N.A., and JPMorgan Chase Bank, N.A.

CalSTRS v. Qwest Communications, et al., No. 415546 (Cal. Super. Ct. S.F. Cty.). Girard Gibbs represented the California State Teachers Retirement System in this opt-out securities fraud case against Qwest Communications, Inc. and certain of its officers and directors, as well as its outside auditor Arthur Andersen. The case resulted in a precedent-setting \$45 million settlement for California school teachers.

In re SLM Corp. Securities Litigation, No. 08-cv-1029 (S.D.N.Y.). Girard Gibbs served as lead counsel representing investors of SLM Corporation in litigation alleging that Sallie Mae, the leading provider of student loans in the U.S., misled the public about its financial performance in order to inflate the company's stock price. After achieving nationwide class certification, Girard Gibbs negotiated a settlement that established a \$35 million fund to resolve investors' claims.

In re Winstar Communications Securities Litigation, No. 01-cv-11522 (S.D.N.Y.). Girard Gibbs represented Allianz of America, Inc., Fireman's Fund and other large private institutional investors against Grant Thornton and other defendants arising out of plaintiffs' investments in Winstar Communications, Inc. The firm achieved a settlement on the eve of trial that provided a recovery rate more than 30 times higher than what class members received in a related class action. The recovery (after attorney fees) returned a remarkable 78.5% of the losses plaintiffs may have recovered at trial.

In re Total Renal Care Securities Litigation, No. 99-cv-01750 (C.D. Cal.). This securities fraud action arose out of restatement of earnings by a healthcare provider, brought under the PSLRA by the Louisiana Teachers' Retirement System and the Louisiana School Employees' Retirement System. The case settled for \$25 million and issuer's commitment to adopt comprehensive corporate governance reforms. Girard Gibbs served as liaison counsel.

In re Oxford Tax Exempt Fund Securities Litigation, No. 95-cv-3643 (D. Md.). Girard Gibbs served as co-lead counsel in this class and derivative litigation brought on behalf of a real estate limited partnership with assets of over \$200 million. Settlement providing for exempt issuance of securities under section 3(a)(10) of Securities Act of 1933, public listing of units, and additional settlement benefits valued at over \$10 million approved January 31, 1997.

Calliott v. HFS, Inc., No. 97-cv-0924 (N.D. Tex.). Girard Gibbs intervened on behalf of an institutional client in this securities class action arising out of bankruptcy of Amre, Inc., a seller of home remodeling and repair services. Girard Gibbs was designated lead plaintiff's counsel under the Private Securities Litigation Reform Act. Settlements for \$7.3 million were approved August 1999 and December 2000.

In re Towers Financial Corporation Noteholders Litigation, MDL No. 994 (S.D.N.Y.). This class action was brought against promoters and professionals associated with a failed investment scheme described by the SEC as the then "largest Ponzi scheme in U.S. history." The case resulted in \$6 million in partial settlements, and a \$250 million judgment entered against four senior Towers executives. Girard Gibbs served as liaison counsel and as a plaintiffs' executive committee member. *See In re Towers Financial Corporation Noteholders Litigation*, 177 F.R.D. 167 (S.D.N.Y. 1997) ("class counsel—particularly Plaintiffs' Liaison counsel, Daniel Girard—has represented the plaintiffs diligently and ably in the several years that this litigation has been before me").

Mass Tort

In re Actos Pioglitazone-Products Liability Litigation, MDL No. 6:11-md-2299 (W.D. La.). Girard Gibbs lawyers were among those court-appointed to the Plaintiffs Steering Committee and also served on the Daubert and Legal Briefing Committees, in litigation that resulted in a \$2.37 billion settlement.

In re Yasmin and Yaz (Drospirenone) Marketing, Sales, Practices and Products Liability Litigation, MDL No. 2385, No. 3:09-md-02100 (S.D. Ill.). Girard Gibbs attorneys were appointed to the Plaintiffs Steering Committee and served as Co-Chair of the Plaintiffs' Law and Briefing Committee, in litigation ultimately resulting in settlements worth approximately \$1.6 billion.

In re Pradaxa (Dabigatran Etexilate) Products Liability Litigation, MDL No. 2385, No. 3:12-md-02385 (S.D. Ill.). Girard Gibbs lawyers were appointed by the court to the Plaintiffs Steering Committee in mass tort litigation that resulted in settlements worth approximately \$650 million.

In re: Sulzer Hip Prosthesis And Knew Prosthesis Liability Litigation, MDL No. 1401 (N.D. Ohio); Cal. JCCP No. 4165 (Cal. Super. Court, Alameda Cty). Mr. Schrag helped recover over \$10 million on behalf of his clients in this multidistrict litigation.

Employment

Mitchell v. Acosta Sales, LLC, No. 11-1796 (C.D. Cal. 2011). Girard Gibbs and co-counsel served as class counsel representing Acosta employees who alleged that they were required to work off-the-clock and were not reimbursed for required employment expenses. Girard Gibbs helped negotiate a \$9.9 million settlement for merchandiser employees who were not paid for all the hours they worked. The Court granted final approval of the settlement in September 2013.

Rubaker v. Spansion, LLC, No. 09-842 (N.D. Cal. 2009). Girard Gibbs and co-counsel filed a class action lawsuit on behalf of former Spansion employees that alleged that the company had failed to provide terminated employees from California and Texas with advance notice of the layoff, as required by the Workers Adjustment and Retraining Notification Act (WARN Act). The bankruptcy court approved the class action settlement negotiated by Girard Gibbs and co-counsel in 2010. The settlement was valued at \$8.6 million and resulted in cash payments to the former employees.

Antitrust

In re TFT-LCD (Flat Panel) Antitrust Litigation, MDL 1827 (N.D. Cal.). Girard Gibbs serves as liaison counsel in this multi-district antitrust litigation against numerous TFT-LCD (Flat Panel) manufacturers alleging a conspiracy to fix prices, which has achieved settlements of more than \$400 million to date.

In re Natural Gas Antitrust Cases I, II, III and IV, JCCP No. 4221 (Cal. Super. Ct. San Diego Cty). Girard Gibbs served in a leadership capacity in this coordinated antitrust litigation against numerous natural gas companies for manipulating the California natural gas market, which has achieved settlements of nearly \$160 million.

Government Reform

Paeste v. Government of Guam, No. 1:11-cv-0008 (D. Guam). Girard Gibbs and co-counsel served as Class Counsel in litigation alleging the Government of Guam had a longstanding practice of delaying tax refunds for years on end. After certifying a litigation class, Plaintiffs prevailed on both of their claims at the summary judgment stage, obtaining a permanent injunction that reformed the government's administration of tax refunds. The judgment and injunction were upheld on appeal in a published decision by the Ninth Circuit. *Paeste v. Gov't of Guam*, 798 F.3d 1228 (9th Cir. 2015).

Ho v. San Francisco Unified School District, No. 94-cv-2418 (N.D. Cal.). This civil rights action was brought on behalf of a certified class of San Francisco public school students of Chinese descent to terminate racial and ethnic quotas imposed under 1983 desegregation consent decree. *See Ho v. San Francisco Unified Sch. Dist.*, 965 F. Supp. 1316 (N.D. Cal. 1997), *aff'd* 147 F.3d 854 (9th Cir. 1998); *see also* 143 Cong. Rec. S6097, 6099 (1997) (statement of United States Senator Hatch referring to testimony of class representative before Senate Judiciary Committee).

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

KEITH YAEGER, MICHAEL SCHULER,
JOSEPH MONTGOMERY, BRYAN BAIR,
THOMAS VANLAARHOVEN, LAURA
HEGLE, KIM MARIE PAPA, ROBERT
TEDESCO, JR., and NATALIA TUZOVSAYA
individually and on behalf of others similarly
situated,

No. 1:14-cv-04490-JBS-KMW

Plaintiffs,

vs.

SUBARU OF AMERICA, INC., a New Jersey
Corporation, and
FUJI HEAVY INDUSTRIES, LTD., a Japanese
Corporation,

Defendants.

**DECLARATION OF ERIC LECHTZIN IN SUPPORT OF CLASS COUNSEL'S
APPLICATION FOR ATTORNEYS' FEES AND EXPENSES**

I, Eric Lechtzin, hereby declare as follows:

1. I am a Shareholder of Berger & Montague, P.C. ("B&M"), and my office is located in Philadelphia, Pennsylvania. I make this Declaration of my own personal knowledge, and if called to do so, I could testify competently to the matters stated herein.

2. I am an attorney admitted to the bars of the following states: California, New Jersey and Pennsylvania. I have also been admitted to the following United States District Courts: Northern District of California, Central District of California, Southern District of California, District of Colorado, Northern District of Illinois, the Eastern District of Michigan, District of New Jersey and Eastern District of Pennsylvania. I have been admitted to the United States Courts of Appeals for the Second, Third, Fourth, Eighth and Ninth Circuits. Additionally, I have been admitted *pro hac vice* in numerous other state and federal courts throughout the country. I have been practicing since 1991, and I am experienced in class action litigation

involving violations of the federal securities laws, state and federal consumer protection laws, and a wide variety of common law claims.

3. This Declaration is provided in support of Class Counsel's Application for Attorneys' Fees and Expenses. I have personal knowledge of the time keeping, expense tracking and systems of my law firm as I am a shareholder of B&M.

4. From the inception of this litigation through May 23, 2016, B&M expended 229.3 hours of work in connection with this litigation. Based upon our customary rates in this type of litigation, the lodestar value of that time is \$159,850.00.

5. My firm's work on this case was performed on a wholly contingent basis pursuant to contingency fee contracts with Plaintiffs despite the risky nature of this litigation and attendant risks, as set forth in the Settlement Agreement. B&M has not received any amounts in connection with this case either as fee income or expense reimbursement. Additionally, all expense amounts were incurred and paid by my firm out of operating funds.

6. Shown below is a table identifying the attorneys and paralegals who have worked on this litigation, the number of hours those individuals worked, their regular hourly billing rates, and their respective lodestar values. Assignments were coordinated amongst Class Counsel and made in such a way so that the time spent on the case was necessary and not duplicative. This time includes, research concerning claims against Defendants, drafting pleadings, consulting with Plaintiffs and other class members, responding to motions, negotiating the Settlement, and drafting Settlement documents. This chart does not reflect the additional time the Class Counsel will continue to spend in connection with the final fairness hearing, and counseling class members about the settlement and claims processing.

7. The hourly rates shown below are the usual and customary rates charged in Philadelphia and the venues across the country in which B&M typically handles cases for each individual doing the type of work performed on this litigation. These rates are not adjusted, notwithstanding the complexity of this litigation, the skill and tenacity of the opposition, the

preclusion of other engagements, the delay in payment or any other factors that could be used to justify a higher hourly compensation.

8. These amounts were derived from contemporaneous daily time records B&M compiled on this matter, which are recorded in the firm's computerized timekeeping database. The firm requires regular and contemporaneous recording of time entry, which occurred in this case.

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Eric Lechtzin	Shareholder	147.9	\$660	\$97,614.00
Sherrie R. Savett	Managing Shareholder	40.3	\$950	\$38,285.00
Michael T. Fantini	Shareholder	3.5	\$655	\$2,292.50
Russell D. Paul	Shareholder	27.5	\$655	\$825.00
Peter R. Kahana	Shareholder	1.3	\$770	\$180.00
Kimberly A. Walker	Paralegal	3.0	\$275	\$825.00
Elizabeth M. York	Paralegal	4.0	\$320	\$1,280.00
David Filbert	Paralegal	1.8	\$300	\$540.00
<i>TOTALS:</i>		<i>229.3</i>		<i>\$159,850.00</i>

9. B&M has advanced a total of \$1,541.25 in expenses reasonably and necessarily incurred in connection with the prosecution of this litigation. They are broken down as follows:

<i>EXPENSE CATEGORY</i>	<i>AMOUNT</i>
Court/Filing Fees/Service Fees	\$600.00
Travel, Meals, Hotels & Transportation	\$0.00
Postage/Overnight Delivery	\$35.97

Internal reproduction & printing	\$116.65
Telephone/Faxes	\$16.65
Expcrts/consultants	\$0.00
Computer research	\$771.98
TOTAL:	\$1,541.25

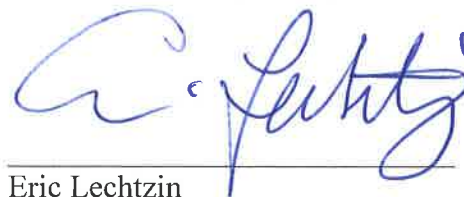
10. These expenses are reflected in the books and records regularly kept and maintained by my firm.

11. The lodestar summary reflects B&M’s experience in the field, the complexity of the matters involved in this litigation, and the prevailing rate for providing such services.

12. Throughout this litigation, B&M has worked jointly with and has been assisted by the law firm of Zimmerman Reed L.L.P (“ZR”), an experienced class action firm. As set forth in the Declaration of J. Gordon Rudd, Jr., a copy of which is attached hereto as Exhibit A, ZR expended 60.75 hours of work in connection with this litigation. Based upon ZR’s customary rates in this type of litigation, the lodestar value of ZR’s time is \$27,860.00. ZR also advanced expenses related to this litigation in the amount of \$1,308.46.

13. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation of the matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and was executed in Philadelphia, Pennsylvania, on May 23, 2016.



Eric Lechtzin
BERGER & MONTAGUE, P.C.

Exhibit A

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

KEITH YAEGER, MICHAEL SCHULER,)	Civil Action No. 14-4490 (JBS/KMW)
JOSEPH MONTGOMERY, BRYAN)	
BAIR, THOMAS VANLAARHOVEN,)	
LAURA HEGLE, KIM MARIE PAPA,)	
ROBERT TEDESCO, JR., and NATALIA)	
TUZOVSKAYA individually and on behalf)	
of others similarly situated,)	
)	
)	
Plaintiffs,)	
)	
vs.)	
)	
SUBARU OF AMERICA, INC., a New)	
Jersey Corporation, and)	
FUJI HEAVY INDUSTRIES, LTD., a)	
Japanese Corporation,)	
)	
)	
Defendants.)	
)	

**DECLARATION OF J. GORDON RUDD, JR. IN SUPPORT OF CLASS COUNSEL'S
APPLICATION FOR ATTORNEYS' FEES AND EXPENSES**

I, J. Gordon Rudd, Jr. hereby declare as follows:

1. I am a partner at Zimmerman Reed L.L.P ("ZR"). I make this Declaration of my own personal knowledge, and if called to do so, I could testify competently to the matters stated herein.
2. I am a member in good standing of the State Bar of Minnesota. I have also been admitted in various federal courts. I have been practicing since 1991, and I am experienced in class action litigation involving state and federal consumer protection laws and a wide variety of common law claims. ZR has been appointed as lead counsel in multiple class action and multi-district litigations in federal courts. By way of example, I am currently serving in the District of Minnesota as class counsel in *Dryer, et al. v. National Football League*, Case No. 0:09-cv-

02182-PAM-FLN. I am also litigating claims on behalf of financial institutions where the Firm serves as lead counsel and Settlement Class Counsel in *IN RE: Target Corporation Customer Data Security Breach Litigation*, MDL 2522, pending before the Honorable Paul A. Magnuson in the District of Minnesota. I am also a member of the six person Plaintiffs' Steering Committee in *In re Fedex Ground Package System, Inc.*, MDL 1700, pending in the Northern District of Indiana.

3. This Declaration is provided in support of Class Counsel's Application for Attorneys' Fees and Expenses. I have personal knowledge of the time keeping, expense tracking and systems of my law firm as I am the managing partner.

4. From the inception of this litigation through May 24, 2016, ZR expended 60.75 hours of work in connection with this litigation. Based upon our customary rates in this type of litigation, the lodestar value of that time is \$27,860.00.

5. My firm's work on this case was performed on a wholly contingent basis based upon the representation agreement between the firm and its client. ZR has not received any amounts in connection with this case either as fee income or expense reimbursement. Additionally, all expense amounts were incurred and paid by my firm out of operating funds.

6. Below is a true and correct summary identifying the attorneys who have worked on this litigation, the number of hours those individuals worked, their regular hourly billing rates and their respective lodestar values. Assignments were coordinated amongst Class Counsel and made in such a way so that the time spent on the case was necessary and not duplicative.

7. The hourly rates shown below are the usual and customary rates charged in venues in which my firm typically handles cases for each individual doing the type of work performed on this litigation. These rates are not adjusted, notwithstanding the complexity of this

litigation, the skill and tenacity of the opposition, the preclusion of other employment, the delay in payment or any other factors that could be used to justify a higher hourly compensation.

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
J. Gordon Rudd, Jr.	Partner	32	\$695.00	\$22,240.00
Behdad C. Sadeghi	Associate	5.8	\$375.00	\$2,175.00
Leslie A. Harms	Paralegal	.25	\$160.00	\$40.00
Heidi S. Cuppy	Paralegal	20.70	\$150.00	\$3,105.00
Samantha E. Garretto	Marketing Assistant	2.00	\$150.00	\$300.00
TOTALS:		60.75		\$27,860.00

8. These amounts were derived from contemporaneous daily time records ZR compiled on this matter, which are recorded in our computerized database. The firm requires regular and contemporaneous recording of time records, which occurred in this case.

9. ZR has advanced a total of \$1,308.46 in expenses reasonably and necessarily incurred in connection with the prosecution of this litigation. They are broken down as follows:

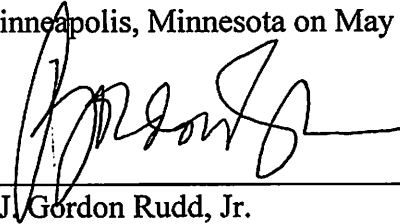
<i>EXPENSE CATEGORY</i>	<i>AMOUNT</i>
Court/Filing Fees	\$201.00
Fact Investigation	\$1,093.96
Photocopying/Printing Charges	\$13.50
TOTAL:	\$1,308.46

10. These expenses are reflected in the books and records regularly kept and maintained by my firm.

11. The lodestar summary reflects ZR's experience in the field, the complexity of the matters involved in this litigation, and the prevailing rate for providing such services.

12. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation of the matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and was executed in Minneapolis, Minnesota on May 25, 2016.

A handwritten signature in black ink, appearing to read "J. Gordon Rudd, Jr.", written over a horizontal line.

J. Gordon Rudd, Jr.
Zimmerman Reed, LLP

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

KEITH YAEGER, MICHAEL SCHULER,
JOSEPH MONTGOMERY, BRYAN BAIR,
THOMAS VANLAARHOVEN, LAURA
HEGLE and KIM MARIE PAPA individually
and on behalf of others similarly situated,

Plaintiffs,

vs.

SUBARU OF AMERICA, INC., a New Jersey
Corporation, and
FUJI HEAVY INDUSTRIES, LTD., a Japanese
Corporation,

Defendants.

No. 1:14-cv-04490-JBS-KMW

CLASS ACTION

**DECLARATION OF
MATTHEW R. MENDELSON
IN SUPPORT OF AWARD OF
ATTORNEYS' FEES
AND REIMBURSEMENT OF
EXPENSES**

MATTHEW R. MENDELSON, of full age, declares as follows:

1. I am an attorney with Mazie Slater Katz & Freeman, LLC, 103 Eisenhower Parkway, Roseland, New Jersey, 07068 ("Mazie Slater"). I am one of the counsel of record in the above-captioned matter and thus am fully familiar with the facts set forth herein.

2. I submit this Declaration in support of Plaintiffs' motion for an award of attorneys' fees and costs.

3. I graduated from Rutgers University in 2002 and then attended Seton Hall University School of Law, from which I graduated in 2005. I am a partner at Mazie Slater, where I have worked since 2006.

4. Mazie Slater is one of the most highly regarded trial law firms in New Jersey, based on the results achieved and the diverse scope of cases that we handle. For instance, Mazie Slater attorneys have secured the two largest personal injury verdicts in New Jersey history, the largest liquor liability verdict in the nation's history, the largest public liability verdict in the

country, the largest settlement in a product liability case in New Jersey history, in addition to countless other record-setting verdicts and settlements. In 2014 Mazie Slater was one of twelve firms in the nation named to the “Plaintiffs’ Hot List” by The National Law Journal, one of fifty firms recognized as “America’s Elite Trial Lawyers” by The National Law Journal, and in 2013 Mazie Slater was named “Litigation Department Of The Year” by the New Jersey Law Journal.

5. In addition to our trial work, Mazie Slater is also heavily involved in class actions and mass torts throughout the country. Mazie Slater has been appointed Class Counsel or Liaison Counsel in various matters, including the following examples:

6. Mazie Slater attorneys have been appointed Class Counsel or Liaison Counsel in various class action and substantial consolidated proceedings, including the following examples:

- Overton v. sanofi-aventis US, LLC, (D.N.J. 3:13-cv-05535-PGS-DEA) (nationwide class action settlement recovering 57% of the alleged damages on behalf of class members);
- Zakskorn v. American Honda Motor Co., (E.D. Cal. 2:11-cv-2610-KJM-KJN) (nationwide class action settlement on behalf of 1.68 million class members involving brake defect in certain Honda vehicles);
- Aarons v. BMW of North America, LLC, (C.D. Cal. 2:11-cv-7667-PSG-CW)(nationwide class action settlement involving transmission failure in certain Mini Cooper vehicles);
- In re Nissan Radiator/Transmission Cooler Litigation, (S.D.N.Y. 10-cv-7493-VLB)(nationwide class action settlement on behalf of more than 800,000 class members relating to radiator defects);
- Keegan v. American Honda Motor Co., (C.D. Cal. 2:10-cv-09508-MMM-AJW)(Nationwide class action settlement involving suspension defect in certain Honda Vehicles);
- Alin v. American Honda Motor Co., Inc., (D.N.J. 2:08-cv-04825)(nationwide class action settlement on behalf of hundreds of thousands of Honda vehicle owners alleging defects in their vehicles’ air-conditioning systems);
- Dewey v. Volkswagen, (D.N.J. 2:07-CV-2249-FSH-PS) (comprehensive automotive class action settlement with regard to water drainage issues, involving 3 million Volkswagen and Audi vehicles owned or leased by approximately 5.5

million Class Members);

- In re Pelvic Mesh Litigation (Superior Court of New Jersey, Case No. 291) (Adam M. Slater has been appointed Co-Liaison Counsel in both ongoing coordinated proceedings involving more than 8,000 pelvic mesh product liability cases involving Ethicon/Johnson & Johnson and Bard);
- In Re: Benicar (Olmesartan) Products Liability Litigation, (D.N.J. 15-2606-RBK-JS) (Adam M. Slater has been appointed Co-Lead Counsel for the Plaintiffs, in ongoing MDL involving gastrointestinal injuries due to hypertension medication).

7. With respect to the standing of counsel in this case, attached hereto as **Exhibit “A”** is a brief biography of my firm and the attorneys working on this matter.

8. As counsel for the Plaintiffs, Mazie Slater was involved in many aspects of this litigation.

9. Mazie Slater was heavily involved in the pre-litigation research of the alleged improper conduct, communications with potential plaintiffs, and eventual selection of lead plaintiffs. Mazie Slater was also significantly involved the research and briefing of several legal issues. While several other law firms were ultimately involved in this litigation, all firms made an effort to divide up the necessary work and avoid duplication of efforts wherever possible.

10. Mazie Slater has incurred a total of 58.0 hours from the inception of the Litigation through May 23, 2016. The hourly rates and lodestar of the attorneys from my firm who participated in the Litigation are as follows:

Name	Status	Current Hourly Rate	Cumulative Hours	Cumulative Lodestar
Matthew R. Mendelsohn	Partner	\$550.00	58.0	\$31,900.00
TOTALS			58.0	\$31,900.00

11. Mazie Slater’s rates have been previously approved by multiple courts. See e.g.

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

12. The total lodestar for work performed by attorneys in my firm equals \$31,900.00. This information was prepared from contemporaneous time records regularly maintained by my firm, recorded in one-tenth of an hour increments.

13. Mazie Slater incurred a total of \$81.38 in unreimbursed expenses. A chart detailing Mazie Slater’s costs is included below.

Disbursement	Cumulative Amount
Legal Research	\$46.38
Photocopying/Printing Fees	\$35.00
TOTAL	\$81.38

14. The expenses incurred pertaining to this case that are discussed above are reflected in the books and records of my firm. These books and records are prepared from expense vouchers

and check records prepared in the normal course of business, and are an accurate record of the expenses incurred.

15. I declare under penalty of perjury that the foregoing is true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 23, 2016

By: 
Matthew R. Mendelsohn
Mazie Slater Katz & Freeman, LLC
103 Eisenhower Parkway
Roseland, New Jersey 07068
Telephone: (973) 228-9898

Attorneys for Plaintiffs

EXHIBIT A

MAZIE SLATER KATZ & FREEMAN, LLC

ATTORNEYS AT LAW

FIRM RESUME 2016

THE FIRM

Mazie Slater is one of the most highly regarded trial law firms in New Jersey, based on the results achieved and the diverse scope of cases that we handle. Unlike most trial firms, our practice is not limited to a particular niche or subset of civil litigation, and this versatility sharply increases our capabilities. Our practice spans the fields of class action litigation, commercial litigation, insurance coverage litigation, professional malpractice, product liability, and personal injury. Perhaps most important, we have earned a reputation as trial lawyers who will take complex, expensive cases to trial and achieve large verdicts. The following are some of the settlements and verdicts we achieved:

Escobar v. DYFS: \$166 million verdict for negligence against New Jersey child protection agency. This is the largest personal injury jury verdict in New Jersey history. The New Jersey Division of Youth and Family Services (DYFS) failed to remove an infant boy from his parents' home despite medical evidence of child abuse by his father, and his father's extensive criminal record. The boy suffered permanent and severe brain damage caused by his father's savage beating.

Verni v. Aramark: \$135 million liquor liability verdict against Aramark, which is the second largest personal injury verdict in New Jersey history. The Appellate Division subsequently reversed the verdict and the case was thereafter settled for \$26 million.

Dewey v. Volkswagen of America, Inc.: \$69 million class action settlement relating to water ingress caused by defects in in over 3 million Volkswagen and Audi vehicles.

Alin v. American Honda Motor Co., Inc.: \$40 million recovery on behalf of Honda and Acura vehicle owners regarding air conditioning system defects.

Sutter v. Horizon Blue Cross Blue Shield of New Jersey: \$36 million to \$55 million class action settlement on behalf of more than 20,000 New Jersey Physicians relating to improper claims handling practices by Horizon.

Confidential: \$33.9 million product liability settlement on behalf of worker injured by a defective product in the workplace. This is the largest product liability settlement in New Jersey history.

Morgan v. Newark Beth Israel Hospital: \$18.5 million verdict for wrongful birth.

Confidential: \$15.75 million audit malpractice settlement. This case involved allegations that malpractice by an accounting firm resulted in erroneous financial statements, which allegedly allowed an insolvent company to continue in business. The case settled for \$15.75 million, which brought the total recovery by our law firm in litigation relating to the insolvent company to \$25 million.

New Jersey Eye Center Coverage Litigation: \$15.3 million verdict against insurance company. This was a case in which an insurance carrier declined to pay multiple settlements against a single eye surgeon. Following a two week trial, the trial judge ruled that the insurance carrier, Princeton Insurance Company, had to pay the settlements.

Cohen v. Benzel-Busch Motor Car Corp.: \$14.7 million settlement in a case where the plaintiff suffered Complex Regional Pain Syndrome (sometimes referred to as RSD).

Hammons v. Ethicon, Inc.: \$12.5 million jury verdict. This case is one of more than 40,000 pending against Johnson & Johnson and Ethicon around the country, for injuries suffered by victims of the Prolift and the other similar pelvic mesh devices sold by Johnson & Johnson and Ethicon. After a three week trial the jury awarded \$12.5 million, consisting of \$5.5 million in compensatory and \$7 million in punitive damages.

Keller v. Flugrad: \$12 million jury verdict for dental malpractice and wrongful death. This case involved medical malpractice committed by an oral surgeon whose negligence resulted in the death of a 21-year old man within 12 hours after having his wisdom teeth removed. It is believed that this is the largest oral surgery malpractice verdict in New Jersey and one of the largest in the U.S. history.

Gross v. Ethicon, Inc.: \$11.1 million jury verdict against Johnson & Johnson in the first pelvic mesh trial in the United States. On February 25, 2013, a New Jersey jury awarded our client, a 47-year old nurse, \$3.35 million in damages against Johnson & Johnson in the first of 1800 mesh lawsuits to go to trial in New Jersey. On February 27, 2013, the jury awarded an additional \$7.75 million in punitive damages, bringing the total verdict to \$11.1 million.

Blake v. City of New York: \$10 million jury verdict for failure to provide police protection. Action brought on behalf of a young child who was severely burned by a Molotov Cocktail explosive device that was thrown into the bedroom of his family's apartment by an unapprehended perpetrator. The jury awarded \$10 million in compensatory and punitive damages, which award was reduced by the trial judge to \$2.4 million and affirmed on appeal.

Furey v. Jennis: \$9.7 million verdict for medical malpractice. This was a case on behalf of a man who suffered a severe pelvic injury while donating bone marrow. The verdict was later reduced by the trial judge to \$1.4 million, based on the judge's finding that the jury award was so high that it shocked the judicial conscience. The case then settled for an undisclosed amount.

Confidential: \$7.8 million settlement of a product liability lawsuit involving a defective ride at an amusement park which resulted in the deaths of two persons. The case involved claims that the ride was improperly designed and manufactured, which resulted in our two clients being ejected from it. The case settled for the sum of \$7.8 million

J.V. v. Newark Beth Israel Med. Ctr.: \$7.4 million settlement. This was a case involving failure of doctors and nurses to identify and report child abuse involving an infant.

Homestate v. Milliman: \$7.25 million settlement for professional malpractice involving claims against actuaries of an insolvent insurance company. The case involved claims brought by the New Jersey Banking & Insurance Department on behalf of an insolvent New Jersey insurance company against the company's outside actuaries.

Wisniewski v. Hazekamp Construction, Inc.: \$7 million settlement on behalf of a construction worker injured when a scaffold plank he was standing on broke causing him to fall and suffer spinal injuries rendering him a paraplegic.

Floyd & Zapata v. City of Newark: \$6.28 million in settlements resulting from the death of two individuals who drowned when their vehicles entered the Passaic River due to a dangerous road condition.

Poplawski v. Phipps: \$6 million settlement for woman struck by school bus. As a result of her injuries she must use a cane to walk any significant distance.

L.A. v. D.Y.F.S.: \$5.3 million settlement after verdict in favor of a minor child who suffered extensive physical and psychological abuse while in DYFS's custody.

In 2014 Mazie Slater Katz & Freeman, LLC was one of twelve firms in the nation named to the "**Plaintiffs' Hot List**" by The National Law Journal, one of fifty firms recognized as "**America's Elite Trial Lawyers**" by The National Law Journal, and in 2013 Mazie Slater was named "**Litigation Department of the Year**" by the New Jersey Law Journal. Our lawyers have also been listed in "Best Lawyers in America," "New Jersey Superlawyers," and "Lawdragon 500."

In addition, Mazie Slater and/or its attorneys has been appointed Class Counsel, Lead Counsel and Liaison Counsel in various matters, including: In re Benicar (Olmesarten) Products Liability Litigation, (D.N.J. 15-cv-2606-RBK-JS)(appointed Co-Lead Counsel for the Plaintiffs, in ongoing MDL involving gastrointestinal injuries due to hypertension medication); In re Nissan

Radiator/Transmission Cooler Litigation, (S.D.N.Y. 10-cv-7493-VLB)(nationwide class action settlement on behalf of more than 800,000 class members relating to radiator defects); Zakskorn v. American Honda Motor Co., Inc., (E.D. Cal. 2:11-cv-2610-KJM-KJN)(appointed co-lead class counsel in nationwide class action settlement on behalf of 1.68 million class members involving alleged brake defects in certain Honda Civic vehicles); Aarons v. BMW of North America, LLC, (C.D. Cal. 2:11-cv-7667-PSG-CW)(nationwide class action settlement involving transmission failure in certain Mini Cooper vehicles); Keegan v. American Honda Motor Co., Inc., (C.D. Cal. 2:10-cv-09508-MMM-AJW)(certification of a multi-state class of Honda owners and lessees regarding alleged suspension defect causing irregular and premature tire wear; Dewey v. Volkswagen, (D.N.J. 07-CV-2249-FSH-PS) (comprehensive automotive class action settlement with regard to water drainage issues, involving 3 million Volkswagen and Audi vehicles owned or leased by approximately 5.5 million Class Members); Alin v. American Honda Motor Co., Inc., (D.N.J. 2:08-cv-04825)(nationwide class action settlement on behalf of hundreds of thousands of Honda vehicle owners alleging defects in their vehicles air-conditioning systems); Sutter, M.D. v. Horizon, (Docket No. ESX-L-3685-02) (30,000 physician class); Kirsch, D.D.S. v. Horizon, (Docket No. ESX-L-4216-05) (16,000 dental provider class); Kirsch, D.D.S. v. Horizon, (Docket No. ESX-L-109-08) (8,000 dental provider class); Jungels v. Delta Dental of New Jersey (District of New Jersey Civil Action No. 07-186) (160,000 dental provider national class); Sutter, M.D. v. Oxford Health Plans (American Arbitration Association Case No. 18 193 20593 02) (20,000 physician class); In re Pelvic Mesh Litigation/Gynecare (Case No. 291) (“mass tort” involving injuries to women that have had pelvic mesh medical devices surgically implanted).

MSKF ATTORNEYS

PARTNERS

David A. Mazie graduated from Rutgers University in 1983, and George Washington University School of Law in 1986. He was admitted to the bars of State of New Jersey and District of New Jersey in 1986. Mr. Mazie focuses his practice on complex civil litigation, including personal injury, medical malpractice, product liability, commercial litigation, and class actions. He has been a certified civil trial attorney since 1996, and has obtained approximately 40 jury verdicts and settlements exceeding \$1 million, including the landmark \$166 million verdict against the New Jersey Division of Youth & Family Services, which is the largest personal injury verdict in New Jersey history. Mr. Mazie also obtained a \$135 million liquor liability verdict against Aramark, the second largest personal injury verdict in New Jersey history. The Appellate Division subsequently reversed the jury's verdict and the case was thereafter settled for \$26 million. Over the last few years, Mr. Mazie has obtained an \$33.9 million product liability settlement, a \$18.5 million wrongful birth jury verdict, a \$15.75 million audit malpractice settlement, a \$12 million wrongful death jury verdict, a \$11.1 million "mass tort" verdict, a \$7.25 million actuarial malpractice settlement, and a multi-million dollar Lasik malpractice settlement which is believed to be the largest Lasik malpractice recovery in New Jersey history. He also tried -- and successfully settled -- the case of Ravin Sarasohn v. Lowenstein Sandler involving unfair competition between competing law firms. In addition to the representation of private clients, over the past twenty-four years he has represented the New Jersey Commissioner of Banking and Insurance as liquidator of several failed insurance companies, handling numerous multi-million dollar commercial litigations on the Commissioner's behalf. He also has numerous reported decisions, many of which have changed

the law: Ravin, Sarasohn v. Lowenstein Sandler, 365 N.J. Super. 241 (App. Div. 2003); Taglieri v. Moss, 367 N.J. Super. 184 (App. Div. 2004); Reynolds v. Guard Dogs Unlimited, Inc. 325 N.J. Super. 298 (App. Div. 1999); Nubenco Enterprises, Inc. v. Inversiones Barberena, S.A., 963 F.Supp. 353 (D.N.J. 1997); Integrity Insurance Co. v. Teitelbaum, 245 N.J. Super. 133 (Law Div. 1990); In re Integrity Insurance Company, 193 N.J. 86 (2007); Resolution Trust Corp. v. Edie, 1994 WL 744672 (D.N.J. Oct. 4, 1994); Resolution Trust Corp. v. Castellett, 1994 WL 411809 (D.N.J. Aug. 2, 1994); Resolution Trust Corp. v. Castellett, 1993 WL 719763 (D.N.J., May 25, 1993); Ladner v. Mercedes-Benz of North America, Inc. 266 N.J. Super. 481 (App. Div. 1993); Home State Insurance Co. v. Continental Insurance Co., 313 N.J. Super. 584 (App. Div. 1998); Home State Insurance Co. v. Continental Insurance Co., 158 N.J. 104 (1999); In re Phenylpropanolamine (PPA), 2003 WL 22417238 (N.J. Super., July. 21, 2003); Fillebrown v. Steelcase, Inc., 63 Fed Appx. 54, 2003 WL 1191162 (3d Cir. 2003); Verni v. Harry M. Stevens, et al, 387 N.J. Super. 160 (App. Div. 2006); Liss v. Federal Insurance Co., 2006 WL 2844468 (App. Div. 2006); Clark v. University Hospital/UMDNJ 390 N.J. Super 108 (App. Div. 2006); New Jersey Eye Center v. Princeton Ins. Co., 394 N.J. Super. 557 (App. Div. 2007); Verni v. Lanzaro, 404 N.J. Super. 16 (App. Div. 2008); Liss v. Federal Ins. Co., 2009 WL 231992 (App. Div. 2009); Beye v. Horizon Blue Cross Blue Shield, 2008 WL 3064757 (D.N.J. 2008); Beye v. Horizon Blue Cross Blue Shield, 558 F. Supp. 2d 556 (D.N.J. 2008); Alin v. American Honda Motor Co., Inc., 2010 WL 1372308 (D.N.J. March 31, 2010). Mr. Mazie has been named to the Best Lawyers in America numerous times, and one of the top 500 lawyers in America by Law Dragon. Mr. Mazie has personally received the most votes of any New Jersey trial attorney in the 2005, 2006 and 2007 Super Lawyers rankings, and has been ranked in the top ten every year since 2009. In 2005, the New Jersey Law Journal named Mr. Mazie “Lawyer of the Year,” and in 2014 he was inducted into the “Personal Injury Hall of Fame.”

Adam M. Slater is a partner and senior trial lawyer at Mazie Slater. Mr. Slater's practice is focused on complex civil litigation, product liability, medical malpractice, personal injury, consumer litigation, and class action law. Mr. Slater is a 1989 graduate of Tulane University and a 1993 graduate of Boston University School of Law. Mr. Slater was admitted to the bars of the State of New Jersey and District of New Jersey in 1994. He is also admitted in the State of New York, the District of Columbia, the State of Colorado, and the Third Circuit Court of Appeals, and has been admitted pro hac vice in federal and state courts of other jurisdictions. Mr. Slater was certified as a civil trial attorney by the New Jersey Supreme Court in 2000, only six years after admission to the bar, and has been recertified. Mr. Slater lectures frequently on trial practice for New Jersey ICLE including seminars titled: Trying Cases: Proven Tactics & New Strategies for Success, Trying the Breast Cancer Case, Winning the Big Verdict, Trying Your Case the Right Way, and Not Just Another Discovery Seminar. He has been named to the Best Lawyers in America and as a Top 100 "Super Lawyer" in the State of New Jersey. He also has numerous published opinions, including but not limited to Liguori v. Elmann, 191 N.J. 527 (2007); New Jersey Eye Center, P.A. v. Princeton Ins. Co., 394 N.J. Super. 557 (App. Div. 2007); Baldassano v. High Point Insurance Company, 396 N.J. Super. 448 (App. Div. 2007); La v. Hayducka, 269 F.Supp. 2d 566 (D.N.J. 2003); In re Glatstian, 215 B.R. 495 (Bankr. D.N.J. 1997); Meth v. Gorfine, 34 A.D. 3d 267 (N.Y.A.D. 1st Dept. 2006), Dewey v. Volkswagen, AG., 558 F.Supp. 2d 505 (D.N.J. 2008); Dewey v. Volkswagen, AG., --- F.Supp. 2d --- (D.N.J. 2010). Over his career, Mr. Slater has obtained numerous verdicts and settlements in excess of one million dollars, with many in the multi-millions, including a \$69 Million class action settlement in Dewey v. Volkswagen. In addition, Mr. Slater has also appointed as Co-Liaison Counsel in In re Pelvic Mesh Litigation/Gynecare and In re: Benicar (Olmesartan) Products Liability Litigation.

Eric D. Katz is a partner at Mazie Slater. Mr. Katz is a 1988 graduate of Polytechnic University of New York (now Polytechnic Institute of NYU) and a 1991 graduate of Pace Law School, where he was an editor on the law review, and was admitted to the bar of the State of New Jersey and the District of New Jersey in 1991. Mr. Katz is a certified civil trial attorney, and concentrates his practice in managed care, class action, product liability, ERISA, and medical provider law. In 2013, Mr. Katz successfully argued on behalf of the Respondent, John Ivan Sutter, M.D. in the Supreme Court of the United States in the matter of Oxford Health Plans v. Sutter, 133 S. Ct. 2064 (2013), in which the Supreme Court in an unanimous decision affirmed the Third Circuit upholding an arbitrator's award that 20,000 New Jersey physicians may arbitrate their claims payment disputes on a class-wide basis against Oxford Health Plans. Mr. Katz has been appointed class counsel in several class actions, and has been selected a New Jersey Super Lawyer annually since 2007 in the area of class action law, as well as selected to The Best Lawyers in America annually since 2012. In addition to his complex litigation and class action experience, Mr. Katz is a recognized published authority in this state on the subjects of product liability and toxic tort law, having co-written with Hon. William A. Dreier, P.J.A.D. (Ret.) and Hon. John E. Keefe, P.J.A.D. (Ret.), the most-widely cited treatise on these areas of the law entitled New Jersey Products Liability and Toxic Tort Law (published annually by Gann Law Books). Since its initial printing, the treatise was adopted by the Administrative Office of the Courts as a bench book on product liability and, for a number of years, was distributed to the entire state judiciary on an annual basis. To date, the treatise has been cited on twenty (20) or more occasions in published opinions. In addition to his Supreme Court decision, Mr. Katz has several other reported decisions, for example Sutter v. Oxford Health Plans, 675 F.3d 215 (3d Cir. 2013, aff'd 133 S. Ct. 2064 (2013)); Kaufman v. Allstate Ins. Co., 561 F.3d 144 (3d Cir. 2009); Sutter v. Horizon Blue Cross Blue Shield, 406 N.J. Super. 86 (App. Div. 2009); and

Kirsch v. Delta Dental of New Jersey, 2008 WL 441860 (D.N.J. 2008). Mr. Katz has multiple seven-figure settlements, including the landmark \$39 million Sutter v. Horizon class action settlement.

David M. Freeman is a partner at Mazie Slater and a 1985 graduate of Lehigh University and a 1988 graduate of University of Pennsylvania Law School. Mr. Freeman was admitted to the bar of the State of New Jersey and the District of New Jersey in 1988. Mr. Freeman concentrates his practice in the area of complex litigation, including commercial litigation, product liability, professional malpractice, insurance insolvency, and personal injury. Mr. Freeman has several reported and unreported decisions, for example Liss v. Federal Ins. Co., 2009 WL 231992 (App. Div. 2009); In re Integrity Insurance Company, 193 N.J. 86 (2007); Liss v. Federal Insurance Co., 2006 WL 2844468 (App. Div. 2006); Klein v. Autek, 147 Fed.Appx. 270 (3d. Cir 2005); Ravin Sarasohn v. Lowenstein Sandler, 365 N.J.Super. 241, (App. Div. 2003); Lascurain v. City of Newark, 349 N.J.Super. 251, 793 A.2d 731, (App. Div. 2002); RFE Industries v. SPM Corp., 103 F.3d 923 (4th Cir. 1997); National Property Investors VIII v. Shell Oil Co., 950 F.Supp 710 (E.D.N.C. 1996); National Property Investors VIII v. Shell Oil Co., 917 F.Supp 324 (D.N.J. 1995); and S&R Associates v. Shell Oil Co., 725 A.2d 431 (Del. Supr. 1998); Matter of Integrity Ins. Co., 1991 WL 213899 (D.N.J. 1991).

Beth G. Baldinger is an experienced trial attorney for over 20 years and has extensive experience in complex civil litigation. Ms. Baldinger numerous settlements and verdicts in excess of \$1 million, including the infamous Adam Katz case against the New Jersey Sports and Exposition Authority for Mr. Katz's wrongful death and a \$10 million verdict for negligent security. Ms. Baldinger has the following reported opinions to her credit: Beye v. Horizon, 568 F.Supp. 566 (D.N.J. 2008); Brennan v. Orban, 145 N.J. 282 (1996); Aldrich v. Schwartz, 258 N.J. Super. 300 (App. Div. 1992); Blake v. City of New York, 157 A.D.2d 482 (1st Dep't 1990).

Matthew R. Mendelsohn is a partner with Mazie Slater and concentrates his practice in complex civil litigation, specializing in class action and personal injury litigation. Mr. Mendelsohn is a 2002 graduate of Rutgers University and a 2005 graduate of Seton Hall School of Law. He has been admitted to practice in the State of New Jersey, U.S. District Court, District of New Jersey, State of New York, Southern District of New York, and the Third and Ninth Circuit Court of Appeals. Mr. Mendelsohn has litigated numerous cases resulting in multi-million dollar verdicts and settlements including, but not limited to, the \$80 Million class action settlement in Dewey v. Volkswagen, a \$40 million class action settlement in Alin v. Honda, a \$20+ million class action settlement in In re Nissan Radiator/Oil Cooler Litigation; a \$7million settlement on behalf of an injured construction worker; a \$6 million settlement in a bus accident case, \$5 million settlement in a truck accident case, \$4.7 million settlement in product liability case, \$2 million verdict in a motor-vehicle accident case. In recognition of his accomplishments, Mr. Mendelsohn was selected as a “New Leader of the Bar” (formerly known as “40 under 40”) by the New Jersey Law Journal in 2012, selected as a member of “The Top 40 under 40” by The National Trial Lawyers in 2012, and selected as a “Top 100 Trial Lawyer” by The National Trial Lawyers in 2014. Mr. Mendelsohn has also personally been appointed Class Counsel in many nationwide consumer class actions. Mr. Mendelsohn has several reported decisions to his credit, including; Gray v. BMW of North America, LLC, 22 F.Supp.3d 373, (D.N.J. 2014); Dewey v. Volkswagen Aktiengesellschaft, 558 Fed.Appx. 191 (3d Cir. 2014); Dewey v. Volkswagen of America, 909 F.Supp.2d 373 (D.N.J. 2012); Keegan v. American Honda, 284 F.R.D. 504 (C.D. Cal 2012); Keegan v. American Honda, 838 F.Supp.2d 929 (C.D. Cal. 2012); Sutter v. Horizon Blue Cross Blue Shield, 406 N.J. Super. 86 (App. Div. 2009); Dewey v. Volkswagen, AG., 558 F.Supp. 2d 505 (D.N.J. 2008).

ASSOCIATES

Cheryll A. Calderon is an associate at Mazie Slater who graduated from Seton Hall University School of Law in 2006. Ms. Calderon concentrates her practice in civil and commercial litigation, specializing in class action, mass tort, personal injury and health care regulation. She is admitted to practice in New Jersey and the U.S. District Court, District of New Jersey.

Karen G. Kelsen is an associate at Mazie Slater. Ms. Kelsen graduated from Queens College in 2005 and Hofstra University School of Law in 2008. Ms. Kelsen concentrates her practice in complex civil litigation, including class action, products liability, personal injury, and medical malpractice. She has been admitted to practice in the State of New Jersey and the U.S. District Court, District of New Jersey since 2008. Ms. Kelsen is also admitted in the State of New York. Ms. Kelsen was heavily involved in the discovery phase in Dewey v. Volkswagen, and currently is a member of the team handling In re Gynecare/Ethicon Pelvic Mesh Litigation.

David M. Estes is an associate at Mazie Slater. Mr. Estes graduated Nyack College in 2000, and Rutgers University School of Law in 2011. While in law school Mr. Estes served as the Lead Editor of the Rutgers Journal of Law and Religion, and was a Finalist of the Willem C. Vis International Commercial Arbitration Moot. Mr. Estes concentrates his practice in class action, product liability, and personal injury litigation. Prior to joining the firm, Mr. Estes served as law clerk to the Honorable Victor Ashrafi of the New Jersey Superior Court, Appellate Division. He also served as summer clerk to the Honorable Jerome Simandle of the U.S. District Court of New Jersey, and judicial intern to the Honorable Theodore McKee of the U.S. Court of Appeals for the Third Circuit. Mr. Estes is admitted to practice law in New Jersey.

Adam M. Epstein is an associate at Mazie Slater. Mr. Epstein graduated from Pennsylvania State University in 2006 and Brooklyn Law School in 2010. Mr. Epstein concentrates his practice on class actions and other complex civil litigation. Prior to joining the firm, Mr. Epstein worked at a prominent defense litigation firm, defending the very type of cases that he now pursues. Mr. Epstein is admitted to law in both New and New York.

Jessica CM Almeida is an associate at Mazie Slater. Ms. Almeida graduated from the University of South Carolina in 2001, and graduated cum laude from Seton Hall University School of Law in 2013. While in law school Mr. Estes served as Vice-President of the Student-Bar Association, served on the Appellate-Advocacy Moot Court Board, and was a semi-finalist in the American Bar Association Client Counseling Competition. Ms. Almeida concentrates her practice in mass torts, class action, and personal injury litigation. Prior to joining the firm, Ms. Almeida served as law clerk to the Honorable Mary Catherine Cuff, P.J.A.D. during her tenure on the New Jersey Supreme Court. She also served as an extern to the Honorable Madeline Cox-Arleo of the United States District Court of New Jersey. Ms. Almeida is admitted to practice law in New Jersey, New York and the United States District Court of New Jersey.