IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JULIET MURPHY, et al., Plaintiffs, v. TOYOTA MOTOR CORPORATION, et al., Defendants.	Consolidated Case No. 4:21-cv-00178-ALM Hon. Amos L. Mazzant, III

CLASS COUNSEL'S UNOPPOSED MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS AND MEMORANDUM IN SUPPORT THEREOF

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES (cont.)

Page(s)

TABLE OF AUTHORITIES (cont.)

Page(s)

TABLE OF AUTHORITIES (cont.)

Page(s)

TABLE OF AUTHORITIES (cont.)

Page(s)

Pursuant to Federal Rules of Civil Procedure 23(e) and 23(h), Class Counsel,[1] on behalf of all Plaintiffs' Counsel,[2] respectfully move for an order: (1) awarding Plaintiffs' Counsel attorneys' fees in the amount of $13,250,000; (2) reimbursing Plaintiffs' Counsel $306,811.17 for reasonable and necessary litigation expenses incurred, and (3) awarding each Class Representative a service award of $5,000 for their respective contributions to the case, all to be paid by the Defendants (the "Motion"). *See* Agreement § VIII.

Defendants Toyota Motor North America, Inc.; Toyota Motor Sales, U.S.A., Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc. (collectively, "Toyota") do not oppose this motion.

I. INTRODUCTION

Plaintiffs' Counsel have vigorously litigated this case on an entirely contingent basis against well-resourced and experienced defense counsel for over three years. Plaintiffs brought this Action in March 2021 on behalf of present and former owners of approximately 1.85 million model year 2013-2018 Toyota RAV4 vehicles, (the "Class Vehicles"), alleging that the vehicles have a defectively designed battery retention system. The design promotes short circuits, fires, and other thermal events in the engine compartment by allowing the metal hold-down bracket on top of the battery to contact the B+ terminal of the battery (the "Defect") under ordinary driving conditions. Through this litigation, Plaintiffs identified for Toyota a safety Defect in the Class

[1] In its order preliminarily approving the proposed Settlement, the Court appointed Kimberly A. Justice (Freed Kanner London & Millen LLC), David C. Wright (McCune Law Group, APC), Todd A. Walburg (Bailey & Glasser LLP), and Bruce W. Steckler (Steckler Wayne & Love PLLC) as "Class Counsel." For purposes of this memorandum only, "Plaintiffs' Counsel" shall refer to Class Counsel and all other associated attorneys representing the Plaintiffs in this matter who worked at the direction of Class Counsel.

[2] All capitalized terms not defined in this memorandum shall have the meaning ascribed to them in the proposed Settlement Agreement. Citations to the Settlement Agreement shall be in the form of "Agreement ¶ __."

Vehicles and developed and proposed to Toyota an appropriate remedy. *See* Declaration of Kimberly A. Justice in Support of Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards ("Justice Decl.") ¶ 144, filed contemporaneously herewith. Indeed, Class Counsel made clear to Defendants as early as January 2023—seven months prior to filing a motion for class certification and almost one year prior to Toyota announcing a safety recall—that they would not settle this Action under any terms that did not include a safety recall to fix the Defect. *Id*. On November 1, 2023, Toyota announced a recall that will replace all affected battery clamp sub-assemblies and battery trays with newly designed, improved parts and add positive terminal guards at no cost to owners (the "Recall"), that mirrored the remedies proposed by Plaintiffs' experts in their declarations filed in support of Plaintiffs' August 14, 2023 Motion for Class Certification. *See* Doc. Nos. 104, 106-107, 112-114; Justice Decl. ¶ 52. Plaintiffs' efforts here occasioned the Recall, which Plaintiffs' expert values at over $600 million. *See* Declaration of Lee M. Bowron dated September 23, 2024 ("Bowron Decl."), attached as Exhibit O to the Justice Decl., ¶ 9; Justice Decl. ¶ 102.

On top of those efforts and outstanding result, Class Counsel negotiated additional comprehensive monetary and non-monetary Settlement relief for the Class: a safety inspection program to further protect Class Members until the Recall can be executed Class-wide and reimbursement programs to make Class Members whole for out-of-pocket losses attributable to the alleged Defect. *Id*. at ¶ 145. This relief addresses what Plaintiffs allege is a longstanding problem in the Class Vehicles, reimburses Class Members for incurred out-of-pocket costs, and proposes methods of distribution aimed at efficient and expedient resolution of Class Members' claims. In the absence of settlement, the Action could have continued for years, through class certification, the completion of fact and expert discovery—including discovery of foreign

Defendant Toyota Motor Corporation, summary judgment, trial, and likely appeals. As discussed below, Toyota advanced compelling defenses and there was considerable uncertainty as to whether Plaintiffs would be able to achieve a meaningful recovery, let alone a better result than the Settlement and Recall, if litigation continued. Beyond the Recall, if finally approved and implemented, the Settlement will bring additional benefits valued at up to $77.3 million to a nationwide Class of current and former owners of Class Vehicles.[3] *See* Bowron Decl. ¶ 8; Justice Decl. ¶102.

After three and a half years of litigation, thousands of hours of work, and hundreds of thousands of dollars of expenses paid out of pocket, Class Counsel respectfully move for an award of fees and costs, to be paid separately by Toyota, in connection with the proposed Settlement submitted to the Court for approval. If it is finally approved and implemented, the Settlement will resolve all outstanding claims in this litigation while providing robust relief and substantial benefits to the Class by way of both monetary recoveries and re-designed vehicle components. This is a tremendous result for the Class.

II. BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Murphy filed the initial class action complaint in this Court, *Murphy v. Toyota Motor Corporation, et al.,* No. 4:21-cv-00178-ALM, on March 4, 2021, alleging a defective battery retention system in the Class Vehicles that creates an unreasonable risk of harm. Doc. No. 1. Plaintiffs Flowers and Lavoot filed a similar class action, *Flowers, et al. v. Toyota Motor Corporation, et al.*, No. 4:21-cv-00460-ALM, on June 17, 2021. This Court consolidated the two

[3] Plaintiffs' actuarial expert has valued the total Settlement relief at $75.8 million. Bowron Decl. ¶ 8. As discussed *infra* (p.13), because courts in this Circuit permit the cost of notice and administration to be included in a settlement valuation, we add the Settlement notice and administration costs to date of approximately $1.5 million to this figure for a total Settlement value of $77.3 million.

actions on August 2, 2021. Doc. No. 31. Plaintiffs subsequently filed a consolidated class action complaint and two amendments adding additional plaintiffs and claims. Doc Nos. 33, 46 and 75.

After the filing of the lawsuits, Toyota implemented a "Consumer Advisory" campaign in November 2021 to provide inspections of the batteries in Class Vehicles, but steadfastly declined to implement a fix to alleviate what Plaintiffs had identified as the safety risk in the design of the battery retention system. Justice Decl. ¶ 13. Meanwhile, as the litigation progressed, there continued to be ongoing reports of thermal incidents involving the Class Vehicles' batteries. *Id*. at ¶ 33. In an Amended Consolidated Class Action Complaint filed February 10, 2023, Doc. No. 75, as amended by the Court's July 27, 2023, Order, Doc. No. 102, Plaintiffs asserted claims on behalf of a nationwide class and statewide classes for violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, breach of express warranty, breach of implied warranty of merchantability, and violations of numerous state consumer protection statutes.

As detailed below, and in the accompanying Justice Declaration, Plaintiffs and their counsel have vigorously pursued this litigation since its outset, and absent this Settlement, were fully prepared to continue down the path towards trial. Among the significant efforts of Plaintiffs' Counsel in this Action, they: (i) conducted a thorough legal and factual investigation into the claims prior to filing suit; (ii) communicated extensively with Plaintiffs and other owners of Class Vehicles around the country about their experiences with the vehicles; (iii) researched and drafted detailed complaints, including the Amended Consolidated Class Action Complaint; (iv) served multiple sets of Requests for Production on each defendant and negotiated a protective order, an ESI protocol, search terms, and custodians; (v) reviewed, coded, and analyzed more than 130,000 pages of documents produced by Defendants; (vi) propounded and negotiated interrogatories and requests for admission on each Defendant; (vii) responded to requests for production served upon

Plaintiffs and prepared Plaintiffs' responses to interrogatories; (viii) prepared Plaintiffs for depositions; (ix) deposed several fact witnesses in great depth, as well as a corporate designee of Defendants; (x) engaged in third party discovery, including serving subpoenas upon dealerships, and received and reviewed substantial documents in response; (xi) engaged in extensive expert discovery, including retaining and working closely with independent automotive engineering consultants to conduct field investigations around the country of eleven Class Vehicles, most of which had experienced fires, and then monitored subsequent laboratory testing and analysis; (xii) worked with the engineering consultants as they developed proposed remedies to correct the Defect, and oversaw the production of expert reports that were submitted in connection with Plaintiffs' class certification motion on August 14, 2023; (xiii) drafted motion papers in support of class certification; (xiv) engaged in lengthy and hard-fought settlement negotiations with Defendants under the supervision of the Court-appointed Settlement Special Master, Patrick A. Juneau; and (xv) negotiated and drafted the Settlement Agreement and approval papers. Justice Decl. ¶¶ 16-68, 79.

The settlement discussions in the Action were at arm's-length and occurred over the course of two years. *Id*. at ¶ 40. By Order dated November 10, 2021, the Court appointed Patrick A. Juneau as a Mediator and referred the case to mediation in accordance with the Court's Mediation Plan. Doc. No. 54; *id*. at ¶ 42. On April 27, 2022, Mr. Juneau conducted a mediation session with counsel for the Parties; the Parties did not reach a resolution at that time but remained in periodic contact with Mr. Juneau. Justice Decl. ¶ 45; *see also generally* Affidavit of Court-Appointed Settlement Special Master Patrick A. Juneau dated March 25, 2024 ("Juneau Aff."), attached as Ex. Q to the Justice Decl.

In January 2023, Plaintiffs provided Defendants with a detailed engineering analysis and settlement demand, but further settlement discussions were not fruitful. Justice Decl. ¶ 46. After providing Toyota with this detailed engineering analysis, Class Counsel made it clear that Plaintiffs would not agree to any settlement structure that did not include a safety recall addressing the alleged Defect. *Id*. at ¶ 47. After many additional months of document discovery, depositions, and expert analysis, in August 2023, Plaintiffs moved for class certification and produced their expert reports. *Id*. at ¶ 36. Plaintiffs' experts specifically identified for Toyota the alleged Defect[4] and proposed design remedies. *Id*. at ¶ 37. The experts' reports were provided to the National Highway Transportation Safety Administration ("NHTSA"), Office of Defect Investigation. *Id*. at ¶ 38. Shortly thereafter, the Parties re-engaged in settlement discussions. *Id*. at ¶ 49. Thereafter, on November 1, 2023, Toyota announced a safety recall affecting approximately 1.85 million 2013-2018 RAV4 vehicles. *Id*. at ¶ 50. Toyota notified all owners of the Recall by December 31, 2023. *Id*. Pursuant to the Recall, as Plaintiffs had demanded, Toyota agreed to replace all affected battery clamp sub-assemblies and battery trays with newly designed, improved parts and add positive terminal guards at no cost to owners. *Id*. In line with the recommendation of Plaintiffs' experts, the

[4] As determined by one of Plaintiffs' engineering experts, the battery retention system in the Class Vehicles allows metal components to contact the positive terminal of the battery, resulting in short circuits and fires. *See* Declaration of Michael Nranian, P.E., in Support of Plaintiffs' Motion for Class Certification ("Nranian Decl.") ¶ 92, Doc. No. 114. More specifically, the battery retention system was designed in such a manner that the metal (i.e. conductive) flange of the battery hold-down bracket was placed in close proximity to the battery's exposed B+ post, terminal clamp, and wiring, creating the potential for a short circuit to occur. *Id*. at ¶ 90. In addition, the battery hold-down bracket lacks any protective non-conductive coating or guarding that would prevent a short circuit in the event the flange contacts the B+ terminal. *See* Declaration of Myles H. Kitchen in Support of Plaintiffs' Motion for Class Certification ("Kitchen Decl.") ¶ 23, Doc. No. 115. As a result, if the battery in the Class Vehicles moves, even slightly, from its original intended location outboard (toward the driver's side), a short circuit of the battery B+ power to vehicle ground can result. Nranian Decl. ¶ 90, Doc. No. 114. This can result in electrical shorting and a vehicle fire. *Id*.

Recall provides a redesigned battery retention system that will eliminate the identified Defect and make the Class Vehicles much safer. *Id*. at ¶¶ 50-52; *compare* Nranian Decl., Doc. No. 114 and Kitchen Decl., Doc. No. 115 *with* 573 Safety Recall Report (23V-734) for the Class Vehicles dated November 1, 2023 (Justice Decl. Ex. R).

In December 2023 and January 2024, Plaintiffs conducted confirmatory discovery regarding the Recall, including expert analysis of the proposed remedy. *Id*. at ¶ 54.

In addition to the new components to be provided as part of the Recall, in connection with the Settlement, Plaintiffs also negotiated for significant additional relief as requested in the Complaint. As set forth in detail below, not only did Defendants agree to conduct immediate additional inspections of Class Vehicles even before the new components are prepared and distributed with the Recall, but Defendants also have agreed to reimburse out-of-pocket expenses for replacement batteries, missing or broken battery-retention components, and all out-of-pocket losses incurred in connection with a fire or other thermal event causing damage or loss of use of a Class Vehicle. Agreement ¶¶ III.A - E.

Attesting to the extensive efforts undertaken on behalf of the Class, Plaintiffs' Counsel have devoted over 8,700 hours to the investigation, prosecution, and resolution of the Action, with a resulting lodestar of $6,847,863.40. Justice Decl. ¶ 101. Class Counsel's fee request thus amounts to just a 1.93 multiplier of their lodestar—a multiplier that is well-within judicially-accepted ranges and is particularly reasonable given the risks inherent to this litigation, Plaintiffs' Counsel's efforts, and the tremendous relief achieved for the Class. *Id*. at ¶ 110. Further, the requested fee represents only 17.1% of the total estimated value of the Settlement (before even factoring in the value of the Recall), which is well-within the bounds of reasonableness, and further represents a mere fraction of the overall monetary valuation of the Recall. *Id*. at ¶ 102. Further,

Class Counsel reasonably estimate that they will dedicate an additional $250,000 in time for tasks related to administering the Settlement, which includes responding to Class member inquiries, addressing questions and issues raised by the Settlement Administrator, and monitoring the processing of claims. *Id*. at ¶¶ 119-120. Including this time in the lodestar calculation reduces the multiplier to 1.87. *Id*. at ¶ 120.

In addition to the tremendous time commitment, Plaintiffs' Counsel also expended $306,811.17 in costs and expenses in litigating this matter, which includes the significant costs and expenses for the engineering, economic or actuarial experts, numerous vehicle inspections, depositions, and other discovery-related expenditures. *Id*. at ¶¶ 124-129. These costs and expenses were all incurred by Plaintiffs' counsel and were reasonable and necessary for the successful resolution of the Action. *Id*. at ¶ 130.

For all the reasons discussed herein, the requested award of fees, costs, and expenses is fair and reasonable. The Class will substantially benefit from the efforts of Plaintiffs' Counsel. Finally, the requests for service awards in the amount of $5,000 to Class Representatives for the time and effort that they dedicated to this Action on behalf of the Class are likewise reasonable and appropriate.

III. PLAINTIFFS' COUNSEL'S REQUEST FOR ATTORNEYS' FEES IS FAIR AND REASONABLE AND SHOULD BE APPROVED

Federal Rules of Civil Procedure, Rule 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." The requirements of Rule 23(h)(1) and (2) have been met because the Class was provided notice of the attorneys' fees request and given an opportunity to object. What remains for the Court to determine is whether the requested fee is reasonable and fair under the circumstances of this case.

A. PLAINTIFFS' COUNSEL'S FEE REQUEST IS FAIR AND REASONABLE UNDER BOTH THE PERCENTAGE AND LODESTAR METHODS

District courts in the Fifth Circuit have "the flexibility to choose between the percentage and lodestar methods" in approving a fee request. *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012)*; see also Strong v. Bellsouth Telecomms., Inc.*, 137 F.3d 844, 852 (5th Cir. 1998); *Longden v. Sunderman*, 979 F.2d 1095, 1099-1100 (5th Cir. 1992); *Shaw v. Toshiba Am. Info. Sys.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000). In applying the percentage of the recovery method, courts in this circuit regularly award fees exceeding 20% and more often 30% or more of the total value of the recovery. *See, e.g.*, *Cruson v. Jackson National Life Ins. Co.*, No. 4:16-CV-912-ALM, 2021 WL 3702483, at *1 (E.D. Tex. June 4, 2021) (awarding fee representing 28.5% of common fund and noting that "numerous courts in this Circuit have awarded fees in the 30% to 36% range."), *quoting Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-cv-1152-M, 2018 WL 1942227, at *9 (N.D. Tex. Apr. 25, 2018); *Marcus v. J.C. Penney Co., Inc.*, No. 6:13-cCV-736, 2017 WL 6590976, at *6 (E.D. Tex. Dec. 18, 2017) (not unusual for attorneys' fees awards to range between 25% to 30% of fund); *Schwartz v. TXU Corp.*, No. 3:02-CV2243-K, et al., 2005 WL 3148350, at *27, *34 (N.D. Tex. Nov. 8, 2005) (approving fees amounting to 22.2% of the settlement and noting, "a 22% fee is consistent with, in fact, 10% less than the percentage that has been repeatedly awarded by courts in this Circuit and District as well as numerous other similar courts throughout the country."); *In re Prudential-Bache Energy Income P'ship Securities Litig.*, No. MDL 888, 1994 WL 150742, at *4 (E.D. La. Apr. 13, 1994) (listing numerous unreported decisions in Texas district courts approving fee awards between 25% and 33% of benefit achieved).[5] Here, the requested attorneys' fees are approximately 17.1% of the total

[5] *See Kleinman v. Harris*, Civil Action No. 3:89-CV-1869-X (N.D. Tex. June 21, 1993) (awarding approximately one-third of benefit achieved); *In re Granada Partnerships Sec. Litig.*, MDL No.

estimated value of the Settlement, and just a fraction of the total cost of the recall. Justice Decl. ¶ 102. And importantly, given the structure of the Settlement, the "fee award will not result in reducing the recovery of any Class Member." *Martin v. Toyota Motor Credit. Corp.*, No. 2:20-cv-10518 JVS (MRW), 2022 WL 17038908, at *14 (C.D. Cal. Nov. 15, 2022) (approving $19 million fee award equaling 17.5% of the value of the settlement relief).

When using the lodestar approach, courts multiply "the number of hours an attorney reasonably spent on the case by an appropriate hourly rate" to calculate the lodestar," *Harrison v. Tyler Technologies, Inc.*, No. 4:21-CV-607, 2024 WL 2338254, at *2 (E.D. Tex. May 22, 2024), *citing Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 490 (5th Cir. 2012), and then determine whether any modification to the lodestar is warranted based on the criteria enumerated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds* by *Blanchard v. Bergeron*, 489 U.S. 87 (1989). *Id.* (*citing Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998)).

As demonstrated below, Plaintiffs' Counsel's fee request is fair and reasonable under both the percentage of recovery and lodestar methods.

1. Plaintiffs' Counsel's Fee Request Is a Reasonable Percentage of the Total Monetary Value of the Recall and Settlement Relief

As set forth below, there are multiple components of the relief negotiated for the Class. Plaintiffs engaged an actuarial expert to value the Recall and Settlement relief being provided to

837 (S.D. Tex. Oct. 16, 1992) (30% awarded); *In re Tenneco Inc. Sec. Litig.*, Civil Action No. H-91-2010 (S.D. Tex. June 19, 1992 (25% awarded); *In re Lomas Fin. Corp. Sec. Litig.*, Civil Action No. CA-3-89-1962-G (N.D. Tex. Jan. 28, 1992) (awarding nearly one-third of benefit achieved); *In re First Republicbank Sec. Litig.*, CA-3-88-0641-H (N.D. Tex. Feb. 28, 1992) (27.5% awarded); *Rywell v. Healthvest*, CA3-89-2394-H (N.D. Tex. Dec. 3, 1991) (30% of benefit achieved); *Teichler v. DSC Communications Corp.*, CA 3-85-2005-T (N.D. Tex. Oct. 22, 1990 (33% awarded); *Finkel v. Docutel/Olivetta Corp.*, CA3-84-0566-T (N.D. Tex. Feb. 23, 1990) (33% awarded). Cited Orders are available at the Court's request.

the Class. Not including the monetary value of the Recall itself, and using a 100% completion rate—meaning each Class Member will take advantage of the relief created here—the total monetary value of the Settlement relief being provided to the Class is estimated to be $75.5 million. Bowron Decl. ¶ 8; Justice Decl. ¶ 102. The value of the Recall relief demanded by Plaintiffs is calculated as exceeding $600 million. Bowron Decl. ¶¶ 7, 9; Justice Decl. ¶ 102.[6]

Inspection and Recall Programs. After Class Counsel's determined pursuit of this litigation, and the production of Plaintiffs' experts' engineering reports to Toyota, Toyota implemented a Recall of the 1.85 million Class Vehicles to remedy the alleged Defect. Justice Decl. ¶¶ 48-51. Toyota will install re-designed battery clamp sub-assemblies and battery trays, and will add positive terminal covers for the batteries, of all Class Vehicles at no cost to owners. *Id*. This remedy eliminates what Plaintiffs identified as the Defect. *Id*. Based on the cost of the replacement parts and the labor necessary to install those new parts, Plaintiffs' actuarial expert has calculated the monetary value of the Recall to the Class to exceed $600 million. Bowron Decl. ¶ 7.[7] This is an exceptional result brought about by the tireless efforts of Plaintiffs' Counsel.

Further, because it takes some time to manufacture and distribute the replacement parts, Toyota also agreed to implement, without delay, an inspection program of the Class Vehicles to check for loose connections, missing components, or batteries that were miss-sized or had shifted, so as to reduce the likelihood of a failure or thermal event prior to the replacement components

[6] Based upon the participation rates in the Consumer Advisory, the historical completion rates of similar safety related recalls, and Class Counsel's prior experience, it is likely that the Recall and Settlement completion rates will be lower than 100%. Justice Decl. ¶ 103. Regardless whether one considers total potential value conferred or value based on projected completion rates, the benefit conferred is tremendous.

[7] Even if the completion rate is in the range of 60% to 80%, the monetary value of the Recall actually conferred on the Class would be between $389.9 million and $519.9 million. *See* Bowron Decl. ¶¶ 7,9; Justice Decl. ¶ 104.

being installed. Agreement ¶ III.B. The total estimated value of the Class Vehicle safety inspections negotiated by Class Counsel exceeds $67 million. *See* Bowron Decl. ¶¶ 9, 26.[8]

Battery Replacement Reimbursement. Under the Settlement, Toyota has agreed to reimburse Class Members $75 if they replace the battery in their vehicle. Agreement ¶ III.C. If they previously replaced their battery in connection with the Fall 2021 inspection program and already received a partial reimbursement, they are eligible to recover the difference to bring their total reimbursement to $75. *Id*. The value of the battery reimbursements is estimated to be approximately $5 million. Bowron Decl. ¶ 29.[9]

Reimbursement of Out-Of-Pocket Costs. Toyota has agreed to reimburse Class Members for out-of-pocket costs incurred if they previously paid to replace components of the battery retention system before the replacement parts were provided under the Recall. Agreement ¶ III.D. The value of this relief is estimated to be $1.1 million. Bowron Decl. ¶ 31.[10]

Payment for Claims Relating to Fires and Damages. Under the Settlement, Toyota has agreed to pay Class Members for out-of-pocket losses, unreimbursed by insurance, relating to fires or other thermal events caused by the Defect. Agreement ¶ III.E. The monetary value of this relief is estimated to be $2.3 million. *See* Bowron Decl. ¶ 33.[11]

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[8] Even if the completion rate is 70%, the monetary value of the safety inspections is still approximately $47 million. Justice Decl. ¶ 105.

[9] Even if the completion rate is 70%, the monetary value of the battery reimbursements is still approximately $3.5 million. Justice Decl. ¶ 106.

[10] Even if the completion rate is 70%, the monetary value of the out-of-pocket reimbursements is still approximately $770,000. Justice Decl. ¶ 107.

[11] Even if the completion rate is 70%, the monetary value of the fire reimbursements is still approximately $1.6 million. Justice Decl. ¶ 108.

Settlement Notice and Administration Costs. Courts in this circuit permit the cost of notice and administration to be included in settlement valuation for purposes of evaluating an attorney fee request. *See, e.g., In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1078 (S.D. Tex. Mar. 20, 2012) (appropriate to include cost of notice and settlement administration in valuing settlement for purpose of determining attorneys' fees) (citations omitted). To date, the costs to implement the Notice Plan and handle the settlement administration already exceed $1.5 million. *See* Declaration of Cameron R. Azari dated September 16, 2024, ¶ 36 (Justice Decl. Ex. P). It is too early in the process to estimate remaining Settlement notice and administration costs. Settlement notice and administration costs are paid by Toyota. *See* Settlement ¶¶ III. and IV.A.1.

After all of the material terms of the Settlement relief had been agreed to, the Court-appointed Mediator and Settlement Special Master, Patrick Juneau, made a mediator's proposal for Plaintiffs' Counsel's fees in the amount of $13,250,000. Justice Decl. ¶¶ 55-56; Juneau Decl. ¶¶ 8-9; Agreement ¶ VIII.A. These fees will be paid directly by Toyota and will not reduce the monetary relief being made available to the Class. Justice Decl. ¶ 58; Agreement ¶ IV.E.1.4. This represents 17.1% of the estimated value of the inspections, monetary reimbursements and notice program being provided to the Class, and just a fraction of the total cost of the Recall. Justice Decl. ¶ 102.[12] This percentage is well within the range regularly approved within the Fifth Circuit. *See Cruson*, 2021 WL 3702483, at *1 (awarding fee of 28.5% of common fund), *quoting Erica P. John Fund, Inc.*, 2018 WL 1942227, at *9; *Marcus*, 2017 WL 6590976, at *6 (fee awards between 25%

[12] Even if the completion rate is 70%, the total value of the Settlement relief and notice and administration costs to date amounts to $54.56 million. Plaintiffs' Counsel's fee request represents 24.3 % of this estimated value, and still a fraction of the total cost of the Recall. Justice Decl. ¶ 109.

to 30% of fund are common); s*ee also Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 609 (D.N.J. 2010) *rev'd and remanded sub nom. Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170 (3d Cir. 2012) (awarding attorneys' fees of $9,207,248.19 based on 13.3% of the benefit conferred, which consisted of repair reimbursements and service work in connection with water leakage problems affecting 3 million vehicles); *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 171, 191 (D. Mass. 2015) (valuing reimbursements, oil-change discounts, extended warranties, and education campaign at $101,148,498 and awarding $15,468,000 in fees, which is equivalent to 15.3% of the benefits conferred and two times the lodestar multiplier in suit involving claims of engine damage due to oil deposits in 480,000 vehicles).

2. Plaintiffs' Counsel's Fee Request Is a Reasonable Multiple of the Total Lodestar

Use of the lodestar method may also be used where, as here, the Settlement provides substantial monetary relief but does not create a traditional "common fund." *Berni v. Barilla G. e. R. Fratelli, S.p.A.,* 332 F.R.D. 14, 34 (E.D.N.Y. 2019) ("Given that the settlement establishes no common fund, the Court will utilize the lodestar method."), *rev'd on other grounds* 954 F.3d 141 (2d. Cir. 2020). As this Court held in *Harrison*, lodestar is calculated "by multiplying the number of hours an attorney reasonably spent on the case by an appropriate hourly rate, which is the market rate in the community for this work." 2024 WL 2338254, at *2 (*citing Rutherford v. Harris Cnty.*, 197 F.3d 173, 192 (5th Cir. 1999)). The appropriate hourly rates to be used are the current "prevailing market rates for lawyers with comparable experience and expertise in complex class-action litigation." *In re Heartland Payment Sys.*, 851 F. Supp. 2d at 1087-88.[13] *See Blum v. Stenson*,

[13] The Supreme Court and Fifth Circuit have approved the use of current hourly rates, rather than historical rates, to calculate base lodestar figures to compensate counsel for the delay in receiving

465 U.S. 886, 895-96 n. 11 (1984) ("A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation"). The attorneys seeking an award of fees must present sufficient records showing the number of hours spent. *Id.* (*citing Riley v. City of Jackson*, 99 F.3d 757, 760 (5th Cir. 1996)); *La. Power & Light Co. v. KellStrom*, 50 F.3d 319, 324 (5th Cir. 1995); *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993). "There is a strong presumption of the reasonableness of the lodestar amount," *Id.* (*citing Perdue v. Kenny A.*, 559 U.S. 542, 552 (2010)), but courts should exclude unnecessary time. *Id*. (citations omitted). Once the lodestar is calculated, a court "considers whether the circumstances of the particular case warrant an upward or downward lodestar adjustment." *Id.* (*citing Migis*, 135 F.3d at 1047). Any modification to the lodestar will be based on the *Johnson* factors. *Id. See also Fessler v. Porcelana Corona De Mexico, S.A. de C.V.*, No. 4:19-CV-248, 2023 WL 2746825, at *20 (E.D. Tex. Mar. 31, 2023) ("Court may enhance or decrease [lodestar] after evaluating the twelve *Johnson* factors."), *citing Combs v. City of Huntington*, 829 F.3d 388, 392 (5th Cir. 2016); *Natour v. Bank of America, N.A.*, No. 4:21-CV-00331, 2022 WL 3581396, at *1 (E.D. Tex. Aug. 19, 2022). As demonstrated below, applying the *Johnson* factors to Plaintiffs' Counsel's lodestar supports the requested fee.

As reflected in the declarations submitted by Plaintiffs' Counsel, which are based on contemporaneous records, since beginning their investigation in 2021, Plaintiffs' Counsel have devoted 8776.70 hours and advanced more than $306,000 to this case without any guarantee of payment. Justice Decl. ¶¶ 101, 124-125. Plaintiffs' Counsel's hourly rates range from $615-$1,175

payment. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 284 (1989); *Leroy v. City of Hous.*, 831 F.2d 576, 584 (5th Cir. 1987); *see also In re Enron Corp. Sec. Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 763 (S.D. Tex. 2008) ("One accepted method of compensating for a long delay in paying for attorneys' services is to use their current billing rates in calculating the lodestar").

for partners, $375-$725 for associates, $385-$1,000 for counsel, and $125-$400 for paralegals. Justice Decl. ¶ 115 and Exs. A, C-N. These rates are consistent with rates approved in numerous class action cases throughout the country,[14] including by courts within this Circuit.[15] Justice Decl. ¶ 116 & n.3. They are also consistent with, or lower than, the rates charged by many of the highly qualified defense firms that typically are involved with complex class action litigation. Justice Decl. ¶¶ 117-118.

Using these reasonable hourly rates, Plaintiffs' Counsel's lodestar is $6,847,863.40. Justice Decl. ¶ 101. The requested fee equates to a multiplier of approximately 1.93, which falls well within the range of multipliers approved by other courts in this Circuit in similarly complex cases. Justice Dec. ¶ 110; s*ee also*, *e.g.*, *Forbush v. J.C. Penney Co.*, 98 F.3d 817, 823 (5th Cir. 1987) (holding that district court properly applied a multiplier of 2 to counsel's lodestar); *Enron*, 586 F. Supp. 2d at 751-752 (awarding 5.2 multiplier); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 333 (W.D. Tex. 2007) ("multipliers on large and complicated class actions have ranged from at least 2.26 to 4.5"); *see also*, *Martin*, 2022 WL 17038908, at *12 (*quoting Van Vranken v. Atl. Richfield Co*., 901 F. Supp. 294, 298 (N.D. Cal. 1995) ("Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation.")).

In short, whether calculated as a percentage of the recovery or under the lodestar method, the requested fee is within the range of fees approved by courts in the Fifth Circuit.

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[14] *See, e.g., Zakikhani v. Hyundai Motor Co.*, No. 8:20-cv-01584-SB-JDE, 2023 WL 4544774, at *9 (C.D. Cal. May 5, 2023) (in a car defect case, approving rates similar to Plaintiffs' Counsel's rates here).

[15] *See, e.g., Doyle, et al. v. Reata Pharm., Inc., et al*., Case No. 4:21-cv-00987-ALM (Doc Nos. 79 at p.11, and 84) (in a securities class action, approving rates similar to Plaintiffs' Counsel's rates here).

3. The *Johnson* Factors Confirm the Reasonableness of the Requested Fee

Consideration of the *Johnson* factors confirms the reasonableness of the requested fee. The *Johnson* factors are: (1) time and labor required; (2) novelty and difficulty; (3) skill requisite to perform legal service properly; (4) preclusion of other employment; (5) customary fee; (6) whether fee is fixed or contingent; (7) time limitations imposed by client or circumstances; (8) amount involved and results obtained; (9) experience, reputation, and ability of the attorneys; (10) undesirability of the case; (11) nature and length of professional relationship with client; and (12) awards in similar cases. *Johnson*, 488 F.2d at 717-19. While district courts are required to use the *Johnson* framework to determine the appropriateness of a fee award, they are not required to analyze every *Johnson* factor. *La. Power & Light Co.*, 50 F.3d at 331 (*citing Cobb v. Miller*, 818 F.2d 1227, 1232 (5th Cir. 1987)) (upholding fee award even though district court did not analyze every Johnson factor because court used "*Johnson* framework as the basis of its analysis"). This is because not every *Johnson* factor is relevant in all circumstances. *Maverick Industries, Inc. v. American Teleconferencing Services, Ltd.*, 524 Fed. Appx. 99, 101 (5th Cir. 2013) ("It will not always be necessary for a court to articulate reasoning under each factor, as at times not all will be relevant.") (*citing Davis v. Fletcher*, 598 F.2d 469, 470-71 (5th Cir. 1979)); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 676 (N.D. Tex. 2010) ("Even though it is apparent that the *Johnson* factors must be addressed to ensure that the resulting fee is reasonable, not every factor need be necessarily considered.") (*quoting In re Combustion, Inc.*, 968 F. Supp. 1116, 1135 (W.D. La. 1997)). But the Fifth Circuit has counseled that district courts "should give special heed to the time and labor involved, the customary fee, the amount involved and the result obtained, and the experience, reputation and ability of counsel." *Saizan v. Delta Concrete Products Co., Inc.*, 448 F.3d 795, 800

(5th Cir. 2006); *see also Migis*, 135 F.3d at 1047 (*citing Von Clark v. Butler*, 916 F.2d 255, 258 (5th Cir. 1990)).

a. Time and Labor Required

"Although hours claimed or spent on a case should not be the sole basis for determining a fee, they are a necessary ingredient to be considered." *Johnson*, 488 F.2d at 717 (citation omitted). The time and labor required to successfully prosecute Plaintiffs' claims here was substantial. Justice Decl. ¶ 100. Upon hearing from owners of Class Vehicles about their experiences, Class Counsel started an investigation to determine the breadth and nature of vehicle owner complaints. *Id*. ¶ 80. As the technical aspects of the complaints came into focus, Class Counsel retained automotive engineering experts to assist with the investigation and explore whether there was evidence of a common defect affecting the Class Vehicles. *Id*. at ¶ 81-82. With the assistance of their automotive engineering experts, Plaintiffs' Counsel conducted inspections of eleven Class Vehicles, most of which had suffered thermal events. *Id*. at ¶ 34.

Plaintiffs' Counsel needed to conduct significant factual discovery to educate themselves on the design and manufacture of the Class Vehicles, the factors integral to the alleged Defect, Toyota's knowledge and investigations of pertinent issues, and Toyota's defenses and assertions that there was no Defect. *Id*. at ¶¶ 16-26. After the first stage of litigation, Toyota implemented an inspection program of the batteries in Class Vehicles but remained steadfast that there was no Defect or need for a recall. *Id*. at ¶ 13. Only after substantial written discovery, numerous depositions, and extensive expert analysis, culminating with Plaintiffs' motion for class certification in which Plaintiffs identified a common defect supported by their experts' declarations—and forwarded the expert reports to NHTSA—did the Parties re-engage in

settlement discussions and agree upon terms for the Settlement, which would not have occurred had Toyota not also agreed to implement the Recall. *Id*. at ¶¶ 16-26, 30-39, 46-52, 83.

After Plaintiffs' Counsel's persistent and zealous advocacy, involving thousands of hours of time, Toyota ultimately agreed to the proposed Settlement, to go along with the Recall Remedy. *Id*. at ¶ 84. The first *Johnson* factor strongly supports the requested fee.

b. Novelty and Difficulty of Issues

The second *Johnson* factor— the novelty and difficulty of the issues raised by the litigation—also firmly supports the requested fee. As the *Johnson* court recognized, "[c]ases of first impression generally require more time and effort on the attorney's part." *Id*. at 718. Here, the question of whether the Class Vehicles suffered from a common defect in the battery retention system was a question of first impression. Moreover, this was a very difficult case. Among other things, there was a tremendous imbalance of knowledge as Toyota's engineers and personnel possessed all of the technical and historical knowledge of the design and function of the Class Vehicles, and Toyota took the position that any thermal events or vehicle failures were caused by third party actions rather than any defect within the Class Vehicles. *See* Justice Decl. ¶ 30 and Settlement Agreement Ex. 10 (Consumer Advisory: "many non-Toyota retailers and others who sell or install replacement batteries"). Plaintiffs' Counsel needed to work extensively with automotive consultants and immerse themselves in discovery in order to gain equal footing with Defendants and identify the Defect. *Id*. at ¶¶ 30-32. Plaintiffs' Counsel went so far as to retain a consultant in Japan to obtain information and automotive parts that were integral to their analysis. *Id*. at ¶ 35. Accordingly, this factor strongly supports the requested fee.

c. Skill Required to Perform Legal Service Properly

The third *Johnson* factor considers the "skill requisite to perform the legal service properly." *Id*. at 718. *See Cruson*, 2021 WL 3702483, at *4; *ODonnell v. Harris Cty*., No. H-16-1414, 2019 WL 6219933, at *26 (S.D. Tex. Nov. 21, 2019). Toyota is a well-financed, leading global manufacturer of automobiles, and they were represented by highly skilled and sophisticated defense counsel. *See, e.g., In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, No. 03 MDL 1529 LMM, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."). Litigating against such a formidable foe presented great challenges, but Plaintiffs' Counsel were able to successfully navigate through many obstacles, identify to Toyota a common defect, help effectuate a Recall, and reach agreement with Toyota on the terms of a Settlement that will bring tremendous monetary relief and safer vehicles to the Class. Accordingly, the third *Johnson* factor strongly supports the requested fee, because absent a high level of skill, Plaintiffs' Counsel never would have obtained the results they did.

d. Preclusion of other Employment by Plaintiffs' Counsel Due to Acceptance of Case

The fourth factor "involves the dual consideration of otherwise available business which is foreclosed because of conflicts of interest which occur from the representation, and the fact that once the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes." *Johnson*, 488 F.2d at 718; *Cruson*, 2021 WL 3702483, at *4 ("The fourth factor asks whether litigating this case precluded class counsel from other employment.") (*quoting ODonnell*, 2019 WL 6219933, at *26). Plaintiffs' Counsel devoted more than 8776.70 hours on this litigation that they were not able to devote to other clients and matters. Justice Decl.

¶¶ 101, 111. Thus, Plaintiffs' Counsel's engagement in this Action "'imposed a substantial opportunity cost on them, occupying large amounts of time that they could otherwise have spent on other matters . . . whether hourly, contingent, or hybrid." *Id*. (*quoting ODonnell*, 2019 WL 6219933, at *26). This factor supports the requested fee.

e. Customary Fee

The fifth factor considers the customary fee for similar work in the community. *Johnson*, 488 F.2d at 718. "It is open knowledge that various types of legal work command differing scales of compensation." *Cruson*, 2021 WL 3702483, at *4 (*quoting Johnson*, 488 F.2d at 718). Plaintiffs' Counsel have litigated complex, class action cases for many years in jurisdictions across the United States, including within the Fifth Circuit, and are familiar with the customary fees for this type of complex work. Justice Decl. ¶¶ 113-118. Thus, Ms. Justice's declaration constitutes "'uncontroverted evidence that class counsel's claimed rates are reasonable and that the proposed award reflects a conservative market-based fee.'" *Id.* (*quoting ODonnell*, 2019 WL 6219933, at *26). The fifth *Johnson* factor supports the fee request.

f. Whether the Fee Is Fixed or Contingent

The sixth factor considers whether the fee is fixed or contingent. *Johnson*, 488 F.2d at 718, and "evaluates class counsel's fee arrangement." *Cruson*, 2021 WL 3702483, at *4 (*quoting ODonnell*, 2019 WL 6219933, at *26). If class counsel's fee is contingent, that favors an upward adjustment of the lodestar. *Id*. (*citing Klein*, 705 F. Supp. 2d at 678). Here, any recovery to Plaintiffs' Counsel has always been completely contingent and dependent upon a successful outcome. Justice Decl. ¶ 112. Unlike defense counsel—who typically receive payment for their time and expenses on a timely basis whether they win or lose—Plaintiffs' Counsel sustained the entire risk that they could expend thousands of hours of labor and hundreds of thousands of dollars

in litigation expenses without any reimbursement or compensation whatsoever. *Id*. As in *Cruson*, 2021 WL 3702483, at *4, this sixth factor heavily favors an upward adjustment of the lodestar.

g. Time Limitations Imposed by Client or Circumstances

"'The seventh factor looks to the time limitations the circumstances imposed.'" *Id.* (*quoting ODonnell*, 2019 WL 6219933, at *27). "'Priority work that delays the lawyer's other legal work is entitled to some premium.'" *Id*. (*quoting Oxford v. Beaumont Indep. Sch. Dist.*, No. CIV A 196-CV-706, 2002 WL 34188379, at *5 (E.D. Tex. Dec. 19, 2022)). There certainly were significant deadlines, such as moving for class certification and the production of expert reports, which required the full attention of Class Counsel and members of Plaintiffs' Counsel to the exclusion of other matters on which they otherwise would have been working. Justice Decl. ¶ 111. This factor supports the requested fee.

h. Amount Involved and Results Obtained

The eighth factor, which considers the amount involved and the results obtained, *Johnson*, 488 F.2d at 718, is considered "the most critical factor in determining the reasonableness of a fee award." *Id.* (*quoting ODonnell*, 2019 WL 6219933, at *27). *See Shaw*, 91 F.Supp.2d at 971 ("As the United States Supreme Court has consistently maintained, as the Fifth Circuit has repeatedly held, and as this Court has previously written, 'the most critical factor in determining the reasonableness of a fee award is the degree of success obtained.'") (*citing Dugas v. Jefferson County, Texas*, No. 1:95 CV 437, 1996 WL 926153, at *3 (E.D. Tex. 1996) (*quoting Farrar v. Hobby*, 506 U.S. 103, 114 (1992)), *aff'd* 127 F.3d 33 (5th Cir. 1997)).

First and foremost, the Recall that Plaintiffs advocated for, provides the precise changes to the Class Vehicles relief that Plaintiffs sought—*i.e.*, a redesigned battery retention system that will eliminate the identified Defect and make the Class Vehicles much safer. Justice Decl. ¶¶ 50-52.

This is a tremendous result impacting approximately 1.85 million vehicles. Second, the Settlement requires Toyota to establish a Customer Support Program, which has four components: (1) an immediate Inspection Program until the Recall remedy is available; (2) cash reimbursements to Class members as part of the Battery Replacement Reimbursement Program; (3) cash reimbursements to Class members as part of the Unreimbursed Out-of-Pocket Repair/Replacement Expense Reimbursement Program for Class Vehicle owners who previously paid to repair or replace faulty components of their battery retention system; and (4) cash reimbursements to Class members as part of the Unreimbursed Out-of-Pocket Unique Thermal Expense Reimbursement Program for persons who incurred uninsured losses from thermal events related to the Defect. Agreement ¶ III. As noted above, Plaintiffs' actuarial expert calculates the total monetary value of the reimbursements and inspections to be up to $75.8 million, and the value of the Recall remedy to the Class to exceed $600 million. Bowron Decl. ¶ 9. And based upon Class Counsel's anticipated completion rates, those numbers are approximately $54.56 million and between $389.9 million and $519.9 million respectively. Justice Decl. ¶¶ 104-109. Either way, this is an excellent result for the Class. The eighth *Johnson* factor strongly supports the requested fee.

i. Experience, Reputation, and Ability of Attorneys

The ninth factor, which considers the "experience, reputation, and ability of the attorneys," *Johnson*, 488 F.2d at 718-19, "strongly supports approving the requested award." *Cruson*, 2021 WL 3702483, at *6 (*citing ODonnell*, 2019 WL 6219933, at *27). Plaintiffs' Counsel have extensive experience litigating complex, class action cases, and are highly regarded in the Plaintiffs' class action bar. Justice Decl. ¶ 113. The ninth factor supports the requested fee.

j. Undesirability of Case

The tenth factor considers the undesirability of the case. *Johnson*, 488 F.2d at 719. This factor relates closely to the sixth factor – counsel's fee arrangement. *Cruson*, 2021 WL 3702483, at *6 (*citing ODonnell*, 2019 WL 6219933, at *27). "[T]he 'risk of non-recovery' and 'undertaking expensive litigation against well-financed corporate defendants on a contingent fee' has been held to make a case undesirable, warranting a higher fee." *Id*. (*quoting Halliburton*, 2018 WL 1942227, at *12). Here, Plaintiffs' Counsel litigated this case for several years on a fully contingent basis. Justice Decl. ¶¶ 112, 145. As individuals, the current and former owners of the 1.85 million Class Vehicles lacked the resources to take on a sophisticated litigant like Toyota and the size of their individual claims made it wholly uneconomical to do so. Plaintiffs' Counsel took on the challenge and invested significant time and hundreds of thousands of dollars of capital representing the interests of all these individuals with no guarantee of payments. *Id*. Thus, the tenth *Johnson* factor supports the requested fee.

k. Nature and Length of Professional Relationship with Client

The eleventh factor considers the nature and length of counsel's relationship with the clients. *Johnson*, 488 F.2d at 719. The clients' satisfaction with, and approval of, the quality of the counsel's representation may be considered. *Cruson*, 2021 WL 3702483, at *6 (concluding that the eleventh factor supported requested fee because client believed counsel represented them well). Here, the Class Representatives have expressed their satisfaction with Plaintiffs' Counsel's representation. Justice Decl. ¶ 66. In addition, Class Member feedback to the Settlement has been overwhelmingly positive. *Id.* at ¶ 67. This factor supports the requested fee.

l. Awards in Similar Cases

The twelfth and final factor considers awards made in similar cases within the Fifth Circuit and also in other jurisdictions. *Johnson*, 488 F.2d at 719. There have been few automotive defect class action settlements in this Circuit, and none involving Toyota. In *Vaughn v. American Honda Motor Co.,* 672 F. Supp. 2d 738 (E.D. Tex. 2007), the plaintiffs alleged faulty odometers and settled for relief including warranty extensions and out-of-pocket reimbursements having an estimated value of $244 million. The court awarded $9.5 million in attorneys' fees resulting in a 2.26 multiplier on counsel's lodestar.

The multiplier Class Counsel seeks here, 1.93, is well below what other courts have found reasonable in other cases involving these Defendants. *See, e.g*., *In Re: ZF-TRW Airbag Control Units Product Liability Litigation*, 19-2905 (C.D. Cal. Nov. 28, 2023) (awarding $25.95 million in fees and expenses resulting in a 2.26 multiplier on counsel's lodestar that included estimated future claims administration work); *McCarthy, et al. v. Toyota Motor Corp.*, *et al*. 18-cv-00201 (C.D. Cal. Feb 3, 2023, Doc. No. 264) (awarding $19 million in fees and $600,000 in expenses resulting in a 2.3 multiplier on counsel's lodestar); *Cheng v. Toyota Motor Corp.*, 20-cv-00629 (E.D.N.Y. Dec. 20, 2022) (awarding $28.5 million in fees and $384,000 in expenses resulting in a 3.4 multiplier on counsel's lodestar that included anticipated future work); *Warner, et al. v. Toyota Motor Sales, U.S.A., Inc*., 2:15-cv-02171 (C.D. Cal. May 21, 2017) (awarding $9.75 million in fees resulting in a 2.92 multiplier). Moreover, as in those cases, the Parties here first agreed upon all of the substantive and material terms of the Settlement before they reached agreement on a reasonable fee request, (*see* Justice Decl. ¶ 55; Juneau Aff. ¶ 8), which is precisely what the Fifth Circuit encouraged litigants to do in *Johnson*. 488 F.2d at 720. *See also Odonnell*, 2019 WL 6219933, at *23 (*citing DeHoyos*, 240 F.R.D. at 322 (citations omitted)). For all the reasons

discussed above, application of the *Johnson* factors to Plaintiffs' Counsel lodestar supports the requested fee.

B. PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED IN LITIGATING THE CASE

"Rule 23(h) authorizes a district court to 'award reasonable attorney[s]' fees and cost and non-taxable costs that are authorized by law or by the parties' agreement." *ODonnell*, 2019 WL 6219933, at *23 (*quoting* Fed. R. Civ. P. 23(h)). Pursuant to the Settlement, Defendants agreed to pay Plaintiffs' Counsel up to $350,000 for unreimbursed litigation costs and expenses. Settlement ¶¶ VIII.A and VIII.B. Significantly, the reimbursement will not diminish any of the funds made available to the Class but instead will be paid separately by Toyota. Justice Decl. ¶ 5; Settlement ¶ IV.E.1.4.

Plaintiffs' Counsel incurred reasonable litigation costs of $306,811.17, which were necessary for the successful prosecution of this Action. Justice Decl. ¶¶ 125-131. As set forth in the Justice Declaration, most of these expenses were for the expert consultants' fees and the costs related to conducting vehicle inspections around the country, along with document hosting and the fact depositions that were conducted. *Id*. ¶¶ 127-129. These expenses are supported by the contemporaneous records maintained by each of Plaintiffs' Counsel firms. *Id*. ¶ 126. Plaintiffs' Counsel advanced these costs over the course of several years of litigation and should be reimbursed for their outlays.

C. CLASS REPRESENTATIVES' EFFORTS JUSTIFY SERVICE AWARDS

Plaintiffs request approval of a $5,000 service award for each of the Class Representatives. Courts in the Fifth Circuit routinely grant service awards when class representatives confer significant benefits on the class they represent, as the Class Representatives did here. *C.C. & L.C. v. Baylor Scott & White Health*, No. 4:18-CV-828-SDJ, 2022 WL 4477316, at *8-9 (E.D. Tex.

Sept. 26, 2022) (approving $5,000 service awards for class representatives who devoted substantial time and effort on behalf of the class) (*citing Slipchenko v. Brunel Energy, Inc.*, No. H-11-1465, 2015 WL 338358, at *13-14 (S.D. Tex. Jan. 23, 2015)); s*ee also Cunningham v. Kitchen Collection, LLC*, No. 4:17-CV-770, 2019 WL 2865080, at *6 (E.D. Tex. July 3, 2019) (approving service awards); *Halleen v. Belk, Inc.*, No. 4:16-CV-00055-ALM, 2018 WL 6701278, at *4 (E.D. Tex. Dec. 20, 2018) (same); *Matson v. NIBCO Inc.*, No. 5-19-CV-00717-RBF, 2021 WL 4895915, at *13 (W.D. Tex. Oct. 20, 2021) (same). Service awards compensate named plaintiffs for the services they provide on behalf of the Class and absent Class Members. *Humphrey v. United Way of Texas Gulf Coast*, 802 F. Supp. 2d 847, 868-69 (S.D. Tex. 2011); *DeHoyos*, 240 F.R.D. at 339; *Lee v. Metrocare Services*, No. 3:13-cv-349-O, 2015 WL 13729679, at *8 (N.D. Tex. July 1, 2015) (citations omitted); *Jenkins v. Trustmark Nat. Bank*, 300 F.R.D. 291, 305 (S.D. Miss. 2014); *see also Arp v. Hohla & Wyss Enters., LLC*, No. 3:18-cv-119, 2020 WL 6498956, at *8 (S.D. Ohio Nov. 5, 2020) (approving $10,000 service award because "[i]t is important to compensate the work and additional risk that a class representative takes on").

The Class Representatives stepped up to pursue claims on behalf of the putative Class of more than 1.85 million RAV4 owners. They have remained in regular contact with Plaintiffs' Counsel and were actively engaged in providing information about their experiences and their vehicles, searching for and producing requested documents, responding to interrogatories, meeting with Plaintiffs' Counsel, executing declarations in support of class certification, preparing for their depositions, and remaining informed and approving of the terms of the Settlement. Justice Decl. ¶¶ 132-138. They have done everything requested of them in connection with the litigation and the proposed Settlement.

Simply put, the Settlement would not have been achieved without the Class

Representatives. By coming forward and diligently performing their duties as Class Representatives, they have performed a valuable public service that will benefit the entire Class, and the public at large by assisting in making the Class Vehicles safer. Justice Decl. ¶ 138. The Class Representatives are deserving of the requested service awards, which are well within the range of such awards approved by courts in the Fifth Circuit. *See, e.g.*, *Shaw*, 91 F. Supp. 2d at 973 (approving $25,000 service awards to both named plaintiffs); *In re Catfish Antitrust Litig*., 939 F. Supp. 493, 504 (N.D. Miss. 1996) (approving $10,000 incentive awards to each of the four named plaintiffs).

CONCLUSION

For all the foregoing reasons, Plaintiffs' respectfully request that the Court enter an order (1) awarding Class Counsel attorneys' fees in the amount of $13,250,000 (2) reimbursing Class Counsel $306,811.17 for reasonable and necessary litigation expenses incurred, and (3) awarding each Class Representative a service award of $5,000 for their respective contributions to the case, all to be paid by the Defendants.

September 23, 2024

Respectfully Submitted,

/s/ Bruce W. Steckler

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Class Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 23, 2024, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

By: */s/ Bruce W. Steckler*
Bruce W. Steckler

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that pursuant to Local Rule CV-7(a)(h), the parties by email, telephone and a video call met and conferred on multiple occasions regarding Class Counsel's Unopposed Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards. Defendants do not oppose the relief sought in this Motion.

By: */s/ Kimberly A. Justice*
Kimberly A. Justice