

**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

**DECLARATION OF LEAD CLASS COUNSEL KIMBERLY A. JUSTICE
IN SUPPORT OF UNOPPOSED MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS**

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I, Kimberly A. Justice, declare as follows:

1. I am a partner at the law firm of Freed Kanner London & Millen LLC (“FKLM”). I make this declaration in support of Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Expenses, and Service Awards (the “Motion”). I have personal knowledge of the information stated within this declaration and, if necessary, I could and would competently testify to this information.

2. I was appointed Interim Lead Class Counsel in this Action. The Court also appointed David C. Wright of McCune Law Group APC (“McCune Law”) and Todd A. Walburg of Bailey & Glasser LLP (“Bailey & Glasser”)¹ to the Plaintiffs’ Executive Committee, and Bruce W. Steckler of Steckler Wayne & Love PLLC as Liaison Counsel (collectively with Lead Class Counsel, “Class Counsel”). *See* Doc. No. 35. We, along with attorneys from our firms, and with the assistance of attorneys from eleven other law firms (collectively, “Plaintiffs’ Counsel”), have vigorously and efficiently prosecuted this complex case. Lead Class Counsel and the Plaintiffs’ Executive Committee deployed the talents and resources of Plaintiffs’ Counsel, where necessary, ensuring that sufficient attorney resources were dedicated to prosecuting the Action efficiently. All work in this Action was directed by Lead Class Counsel.

3. Subject to this Court’s approval, Plaintiffs, on behalf of the Settlement Class (the “Class”),² have agreed to resolve and release claims against Toyota in exchange for a robust recall program (the “Recall”) designed to fix the alleged Defect, protect Class Members until the Recall is available, and make Class Members whole for out-of-pocket expenses incurred as a result of the alleged Defect. It is my opinion that the Settlement Agreement represents an exceptional recovery

¹ Mr. Walburg currently is a partner with McCune Law and continues his role on the Plaintiffs’ Executive Committee at his new firm.

² Unless otherwise stated, capitalized defined terms used herein have the meanings ascribed in the Settlement Agreement.

for the Class. The Settlement Agreement is the result of Class Counsel's skillful and dedicated work spanning over three years in this complex Action.

4. Because this Declaration is submitted in support of Class Counsel's Motion, which is related to and contingent on approval of the Agreement, it is inadmissible in any subsequent proceedings, other than in connection with the Agreement. If the Agreement is not approved by the Court, then this declaration and the statements contained herein are without prejudice to Plaintiffs' position in the Action.

5. As compensation for their efforts, Plaintiffs' Counsel seek a fee award of \$13,250,000. Plaintiffs' Counsel also seek reimbursement of reasonable and necessary litigation expenses incurred in the amount of \$306,811.17, and a \$5,000 service award for each Class Representative for their respective contributions to the Action, all to be paid by the Defendants.

6. In support of these requests, I describe the following four aspects of this litigation:

- Plaintiffs' Counsel's efforts in prosecuting and advancing this Action and the Recall and Settlement Agreement achieved as a result;
- Plaintiffs' Counsel's time and expense reporting procedures and the total time and expenses incurred;
- the serious risks of nonpayment Plaintiffs' Counsel faced in this Action; and
- the Class Representatives' contribution to the prosecution of this Action.

**PLAINTIFFS' COUNSEL'S EFFORTS IN PROSECUTING AND ADVANCING THIS
ACTION ON BEHALF OF THE CLASS**

A. Commencement of the Action, Consolidated Complaint

7. 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.

8. I represent Plaintiff Juliet Murphy who 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. Plaintiff Murphy alleged that approximately 1.85 million model year 2013-2018 Toyota

RAV4 vehicles (the “Class Vehicles”) have a defectively designed battery retention system, which 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. Plaintiff Murphy further alleged that the Class Vehicles are defective and create an unreasonable risk of harm.

9. Thereafter, on March 4, 2021, 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. The Court consolidated the two actions on August 2, 2021.

10. Plaintiffs subsequently filed a consolidated class action complaint and two amendments adding additional plaintiffs and claims. Doc. Nos. 33, 46, and 75.

11. The Toyota Defendants answered these complaints on June 14, 2021, as amended on June 25, 2021, November 16, 2021 and April 14, 2023. Doc. Nos. 23-28, 55-58, and 83-86.

12. The operative Amended Consolidated Class Action complaint was filed February 10, 2023 (Doc. No. 75), as amended by the Court’s July 27, 2023, Order, (Doc. No. 102), (the “Complaint”).

13. After Plaintiffs filed the lawsuits, Toyota implemented a “Consumer Advisory” campaign in November 2021 to provide inspections of the batteries in Class Vehicles, but declined to implement a fix to alleviate what Plaintiffs had identified as the safety risk in the design of the battery retention system.

B. Case Management

14. Since the appointment of Interim Lead Class Counsel, Plaintiffs’ Counsel have efficiently litigated this Action by implementing various protocols, such as a time and expense protocol, to avoid duplication of effort and unnecessary time and expenses.

15. To promote the efficient prosecution of this Action, Lead Class Counsel and the Plaintiffs' Executive Committee convened regular calls to ensure all firms were aligned regarding case strategy and work assignments and to avoid duplication. If such calls were unnecessary, they were canceled to avoid unnecessary time.

C. Discovery

16. Plaintiffs served their Initial Disclosures on September 15, 2021, and contemporaneously produced relevant documents in their possession. Plaintiffs amended their Initial Disclosures on September 21, 2021, after additional plaintiffs were added to the Action, and contemporaneously produced additional relevant documents to Defendants.

17. At the outset of discovery, Lead Class Counsel and the Plaintiffs' Executive Committee negotiated protocols governing discovery, including a protective order, a protocol to produce documents and electronically stored information, and a vehicle inspection protocol. *See* Doc. Nos. 60, 66.

Discovery from Defendants and Third Parties

18. Class Counsel served three sets of Requests for Production of Documents on Defendants respectively on October 12, 2021, December 23, 2021, and March 23, 2022, containing a total of twenty-six requests. Class Counsel served two sets of interrogatories on Defendants on January 12, 2023, and February 8, 2023, containing a total of eighteen inrerrogatories.

19. The parties engaged in protracted negotiations over the course of months regarding the scope of documents to be produced, custodians, and search terms. These meet and confers were detailed and addressed most, if not all, requests for production individually. The parties also engaged in negotiations over Plaintiffs' interrogatories.

20. Class Counsel also prepared and served subpoenas on third parties, including Toyota of Plano, Toyota of Dallas, Toyota of Grapevine, Engineering Analysis Associates and Battery Council International.

21. As a result of Class Counsel's vigorous pursuit of discovery, Defendants produced over 130,000 pages of documents, and various third parties produced over 3,000 pages of documents. Fact and expert discovery were ongoing at the time the Action was stayed in September 2023.

22. In connection with fact discovery in this Action, Class Counsel retained a vendor to host the productions of Defendants and the third parties. This database enabled Plaintiffs' Counsel to search, review, analyze, and code the documents and other records produced. The review, analysis, and coding of documents were integral to Plaintiffs' Counsel's efforts relating to fact and expert discovery.

23. On May 17, 2023, Class Counsel served on each Defendant Plaintiffs' First Set of Requests for Admission ("RFAs"), containing a total of fifty-two requests. The parties engaged in extensive negotiations over these RFAs.

24. On March 31, 2023, Class Counsel noticed 30(b)(6) depositions, containing a total of forty-one topics, for each Defendant. On May 19, 2023, Class Counsel noticed depositions of five Toyota employees. The parties engaged in extensive negotiations over the 30(b)(6) notices.

25. Class Counsel's efforts have included preparing for and conducting the depositions set forth below:

Table 1: Depositions		
Deponent	Title	Date
Brad Kilwy	TMS Supervisor	July 17, 2023
Brent Beard	TMS Product Engineer	July 18, 2023
Cory Hoffman	TMNA Manager	July 26, 2023

30(b)(6) Corporate Designee	TMNA, TMS and TEMA	July 27, 2023
Shaun Austin	TMNA Manger	July 28, 2023

26. Each of the depositions included extensive preparation, which required the review of hundreds of documents and consultation with Plaintiffs' automotive engineering expert consultants.

Discovery from Plaintiffs

27. Defendants served their First Set of Requests for Production on Plaintiffs on November 3, 2021. Plaintiffs' Counsel participated in several meet and confer conferences with Defendants' counsel regarding these RFPs. Plaintiffs' Counsel assisted Plaintiffs with the collection and production of responsive documents.

28. Defendants served their First Set of Interrogatories to Plaintiffs on August 11, 2023. Plaintiffs' Counsel worked with Plaintiffs to prepare responses to Defendants' interrogatory requests, but those responses had not yet been served when the Action was stayed in September 2023.

29. On July 26, 2023, Defendants noticed depositions of ten of the thirteen Class Representatives. Class Counsel prepared each Class Representative for his or her respective deposition. The Class Representative depositions were taken off calendar when the matter was stayed in September 2023.

D. Experts and Motion for Class Certification

30. There was a tremendous imbalance of knowledge because Toyota's engineers and personnel possessed all 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.

31. Class Counsel retained the following engineering, economic or actuarial expert consultants in this litigation: Michael Nranian, P.E.; Myles H. Kitchen, Advanced Analysis Associates; Edward M. Stockton; and Lee M. Bowron, ACAS, MAAA.

32. Class Counsel worked with their automotive engineering expert consultants to understand the nature of the alleged Defect and develop proposed remedies to correct it.

33. As the litigation progressed, there continued to be ongoing reports of thermal incidents involving the Class Vehicles' batteries. Some of these Class Vehicle owners contacted me, and I arranged for counsel and expert consultants to conduct joint inspections of the affected Class Vehicles.

34. In total, Plaintiffs' Counsel and their expert consultants inspected eleven Class Vehicles across the country, most of which had experienced fires, as set forth below:

Model Year	VIN	Inspection Location	Inspection Date
2013	2T3DFREV7DW058746	Middletown, CT	March 8, 2022 (Nranian)
2013	2T3BFREV0DW096326	Sayre, PA	March 28, 2022 (Nranian)
2018	JTMWFREV4JJ163974	Gainesville, GA	April 28, 2022 (Nranian)
2015	2T3BFREV9FW241544	Houston, TX	June 15, 2022 (Advanced Analysis Associates)
2017	2T3YFREV4JW416947	La Habra, CA	September 21, 2022 (Kitchen)
2017	JTMRREV9HJ165825	Lake Zurich, IL	September 30, 2022 (Nranian)
2014	2T3YFREV9EW105715	Avenel, NJ	January 26, 2023 (Nranian)
2015	JTMBFREV4FJ031352	Belleville, MI	March 7, 2023 (Nranian)
2014	2T3ZFREV3EW088267	Lemoore, CA	June 27, 2023 (Kitchen)
2015	2T3BFREVXFW328000	Oakland, CA	July 5, 2023

			(Kitchen)
2014	JTMWFREV9EJ013073	Oakland, CA	August 3, 2023 (Kitchen)

35. Class Counsel also retained a consultant in Japan to obtain information and automotive parts that were integral to their analysis of the alleged Defect and proposed remedy.

36. Class Counsel filed a Motion for Class Certification on August 14, 2023. That motion was accompanied by over thirty pages of briefing and my supporting declaration that contained over 500 pages of attachments.

37. In support of their Motion for Class Certification, Plaintiffs produced the reports of multiple experts which, among other things, identified for Toyota the alleged Defect with the battery retention system in the Class Vehicles and proposed design remedies. Plaintiffs' Counsel oversaw the preparation and production of these expert declarations.

38. On August 31, 2023, I sent copies of Plaintiffs' Memorandum in Support of Their Motion for Class Certification and Appointment of Class Representatives and Class Counsel, together with the redacted supporting Expert Declarations of Michael Nranian, P.E. and Myles H. Kitchen to Gregory Magno, Chief, Defects Assessment Division, National Highway Traffic Safety Administration (NHTSA), Office of Defect Investigation (ODI) and Matthew Martens, Federal Investigator, NHTSA ODI.

39. Plaintiffs' Motion for Class Certification was further supported by a declaration from each of the thirteen Class Representatives. Plaintiffs' Counsel oversaw the preparation and production of these declarations.

E. Settlement and Administration

40. While vigorously litigating this matter, the parties also engaged in extensive arm's-length settlement negotiations over the course of two years.

41. On September 17, 2021, the parties filed a Joint Notice of Designated Mediator indicating that the Parties had agreed to retain Patrick A. Juneau as the Mediator in this Action. *See* Doc. No. 47.

42. By Order dated November 10, 2021, the Court appointed Mr. Juneau as Mediator and referred the case to mediation in accordance with the Court's Mediation Plan. *See* Doc. No. 54.

43. Class Counsel and Defendants entered into a Confidentiality Agreement dated January 27, 2022. Pursuant to FRE 408 and this Confidentiality Agreement, Defendants made productions of documents on February 14, 2022, April 22, 2022, and May 10, 2022.

44. Class Counsel reviewed, analyzed and coded the Rule 408 productions. Class Counsel also consulted with their automotive engineering consultants to analyze the alleged Defect.

45. Mr. Juneau conducted a mediation with counsel for the parties on April 27, 2022, and although the parties did not reach a resolution at that time, they agreed to continue their efforts, with Mr. Juneau's assistance, in the future. *See* Doc. No. 67.

46. Following substantial discovery and expert testing and evaluation, in January 2023, Plaintiffs' Counsel provided Toyota a settlement demand along with a comprehensive PowerPoint entitled "Engineering Analysis re: Cause of Toyota RAV4 Battery Initiated Fires" ("January 2023 PowerPoint."). Settlement negotiations were not fruitful.

47. 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.

48. Plaintiffs subsequently deposed four senior employees and a corporate representative of Toyota and prepared and filed their Motion for Class Certification with supporting expert reports.

49. Before Toyota responded to Plaintiffs' Motion for Class Certification and before the Court issued an Order on Plaintiffs' motion, the parties filed a Joint Motion to Stay Case Deadlines on August 31, 2023, to continue their efforts to reach a settlement. The Court granted the Joint Motion to Stay Case Deadlines on September 8, 2023, staying the matter until November 7, 2023.

50. On November 1, 2023, Toyota issued the Recall on approximately 1.85 million model year 2013-2018 RAV4 vehicles. Toyota notified all owners of the Class Vehicles of the Recall by December 31, 2023. 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 will add positive terminal covers at no cost to owners.

51. In line with the recommendation of Plaintiffs' experts, the Recall provides a redesigned battery retention system that will eliminate the identified Defect and make the Class Vehicles much safer.

52. I, along with other Plaintiffs' Class Counsel, and Plaintiffs' engineering expert witness, have reviewed the proposed Recall remedy for the Class Vehicles, and believe that the proposed repairs are consistent with the recommendations put forth by Plaintiffs in the January 2023 PowerPoint and the August 2023 Motion for Class Certification.

53. On November 6, 2023, the parties filed a Joint Motion to Extend Stay of Case Deadlines, which the Court granted on November 7, 2023, continuing the Action until and including February 2, 2024, to further allow the parties to explore settlement.

54. In December 2023 and January 2024, Class Counsel conducted confirmatory discovery regarding the Recall, including overseeing expert analysis of the proposed remedy.

55. After all material terms of the Settlement relief had been agreed to, the parties mediated attorneys' fees, costs and expenses, and individual Class Representative service awards with the assistance of Court-appointed Mediator and Settlement Special Master Patrick A. Juneau.

56. Following a series of extensive negotiations between the parties and Settlement Special Master Juneau, which spanned five days, Settlement Special Master Juneau made a mediator's proposal for Plaintiffs' Counsel attorneys' fees in the amount of \$13,250,000, which the parties accepted.

57. The parties also agreed that Class Counsel may seek reimbursement of costs and expenses up to \$350,000, and Class Representative Service awards of up to \$5,000 for each Class Representative.

58. Attorneys' fees, reimbursement of costs and expenses and Class Representative service awards are to be paid directly by Toyota and will not reduce the monetary relief to the Class. Agreement § VIII.

59. The Settlement Agreement was executed on March 23, 2024.

60. The Settlement Agreement is the product of extensive arm's-length settlement negotiations, which included numerous rounds of give-and-take between Class Counsel and Defendants' counsel. The negotiations were hard-fought and conducted in good faith, resulting in a fair, reasonable, and adequate settlement.

61. Class Counsel thoroughly evaluated the relative strengths and weaknesses of the respective litigation positions and determined that the Settlement Agreement brings substantial

benefits to the Class and avoids the delay and uncertainty of continuing protracted litigation with Defendants.

62. Throughout the Action, Defendants were represented by leading multinational and national law firms, two of which are ranked among the Vault Law 100 for most prestigious law firms. *See* Vault Law 100, available at: <https://vault.com/best-companies-to-work-for/law/top-100-law-firms-rankings#rankings-group> (last accessed September 4, 2024).

63. Following execution of the Settlement Agreement, Class Counsel worked expeditiously with Defendants' Counsel and the Notice Administrator to finalize the Notice Program and seek preliminary approval of the Settlement Agreement and the Notice Program. On March 28, 2024, Class Counsel filed an Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement. *See* Doc. No. 126.

64. On April 9, 2024, this Court granted Preliminary Approval of the Settlement Agreement and Notice Program. *See* Doc. No. 132.

65. Notice commenced on June 25, 2024. *See id.* The Court-approved Long Form, Email, and Direct Mail Notices advised Class Members that Class Counsel would seek attorneys' fees, costs, and expenses up to \$13.6 million. Plaintiffs' Motion will also be posted on the Settlement Website after it is filed. Prior to the Court's fairness hearing on November 19, 2024, Class Counsel will advise the Court of any objections to this Motion.

66. Class Representatives have expressed their satisfaction with Plaintiffs' Counsel's representation and appreciation for the results Plaintiffs' Counsel achieved in this Action.

67. In addition, Class Member feedback to the Settlement has been overwhelmingly positive. I have personally received several calls and emails from Class Members expressing

approval of the Settlement and appreciation for the results that Plaintiffs' Counsel achieved in this Action.

68. Class Counsel invested extensive time, effort, money, and resources into vigorously prosecuting the Action. Class Counsel did so at the risk of no recovery and during the three years that this Action has been pending, have turned away other opportunities because of the complexity and high-level of time and expense demanded by this Action.

PLAINTIFFS' COUNSEL'S TIME AND EXPENSE INVESTED IN THIS ACTION

A. Time and Expense Reporting Procedures

69. As Lead Class Counsel, FKLM is responsible for collecting all Plaintiffs' Counsel's contemporaneously prepared time and expense reports.

70. Shortly after being appointed as Interim Lead Class Counsel, I instituted Protocols and Limitations for Work Performed and Expenses Incurred ("T&E Protocol") for the efficient prosecution of the consolidated Action. I provided the T&E Protocol to each plaintiff firm who participated in the prosecution of this Action and whose time and expenses are included in this Motion.

71. The T&E Protocol requires each attorney and paralegal working on the Action to record his or her time contemporaneously and report it to Lead Class Counsel monthly.

72. The T&E Protocol requires each firm to record and submit paid expenses monthly and retain receipts for inspection.

73. The submitted time and expense entries have been reviewed by FKLM and as appropriate, any adjustments and revisions were requested to ensure compliance with the T&E Protocol.

74. All monthly attorney and paralegal time and expense reports submitted to my firm by Plaintiffs' Counsel are retained and preserved on a computer server and on cloud-based backup media at FKLM.

B. FKLM's Lodestar Time Incurred in Prosecuting this Action

75. Attached as Exhibit A is a billing summary of FKLM's total hours and lodestar at current billing rates, from matter inception through September 15, 2024. The total number of hours worked by FKLM's attorneys during that period was 2,903.20 hours with a corresponding lodestar of \$2,729,601.50. I did not include in FKLM's lodestar any time for billers who worked on the Action less than ten hours.

76. Exhibit A was prepared using accurate, daily time records that are maintained by my Firm. The current hourly rates provided for FKLM's attorneys are the same as our usual and customary hourly rates charged in similar complex class action litigation.

77. The hourly rates provided for FKLM's attorneys have been approved by courts in similar complex class action litigation.

78. The hourly rates provided for FKLM's attorneys have been approved by Fortune 500 corporate clients who have retained FKLM in complex antitrust direct-action litigation.

79. The tasks undertaken by FKLM include as follows: (a) a factual investigation and analysis in connection with drafting the consolidated complaint; (b) overseeing and directing as Lead Class Counsel the prosecution of this Action; (c) participation in conferences with co-counsel to discuss case management and litigation strategy; (d) responding to class member inquiries regarding thermal events in their Class Vehicles; (e) drafting discovery requests, including requests for production, interrogatories, requests for admission and 30(b)(6) notices; (f) reviewing documents produced by Defendants and/or third-parties; (g) responding to Defendants' discovery

requests, including working with Plaintiffs to search for documents, and attending meet and confer conferences with Defendants; (h) reviewing Plaintiffs' documents for production to Defendants; (i) preparing for and taking several depositions of Defendants' employees and corporate representative; (j) preparing Class Representatives for deposition; (k) working with experts for purposes of determining damages and liability for class certification and settlement; (l) drafting and editing pleadings for class certification, including conducting research of applicable law in connection with the motion for class certification; (m) preparing for the settlement preliminary approval hearing; (n) engaging in settlement discussions and attending mediation sessions; (o) negotiating and drafting the Settlement Agreement and approval papers; and (p) responding to class member inquiries regarding the Settlement and Recall.

C. Plaintiffs' Counsel's Lodestar Time Incurred in Prosecuting this Action

80. Upon hearing from owners of Class Vehicles about their experiences, Plaintiffs' Counsel started an investigation to determine the breadth and nature of vehicle owner complaints.

81. 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.

82. 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.

83. 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.

84. Due to Plaintiffs’ Counsel’s persistent and zealous advocacy, involving thousands of hours of time, Toyota ultimately agreed to the proposed Settlement, along with the Recall.

85. In preparing this Motion, each firm provided me with detailed time records for each attorney and paralegal that worked on the Action for the period from matter inception through September 15, 2024. Thereafter, a review and audit of each firm’s time records was conducted.

86. Any submitted time that did not comply with the Time and Expense Protocol was cut.

87. Each firm submitted a declaration attesting that its reported time was compiled from “contemporaneous, daily records regularly prepared and maintained by the Firm” and that the reported time is true, accurate, and in compliance with the T&E Protocol.

88. Attached hereto as Exhibit C is a true and correct copy of the Declaration of David C. Wright on behalf of McCune Law Group, APC.

89. Attached hereto as Exhibit D is a true and correct copy of the Declaration of Eric B. Snyder on behalf of Bailey & Glasser LLP.

90. Attached hereto as Exhibit E is a true and correct copy of the Declaration of Bruce W. Steckler on behalf of Steckler Wayne & Love PLLC.

91. Attached hereto as Exhibit F is a true and correct copy of the Declaration of Peter A. Muhic on behalf of LeVan Muhic Stapleton LLC; The Miller Law Firm, P.C.; and Muhic Law LLC.

92. Attached hereto as Exhibit G is a true and correct copy of the Declaration of Katrina Carroll on behalf of Lynch Carpenter LLP.

93. Attached hereto as Exhibit H is a true and correct copy of the Declaration of Jonathan M. Shapiro on behalf of Aeton Law Partners LLP.

94. Attached hereto as Exhibit I is a true and correct copy of the Declaration of Russell Paul on behalf of Berger Montague PC.

95. Attached hereto as Exhibit J is a true and correct copy of the Declaration of Tarek Zohdy on behalf of Capstone Law APC.

96. Attached hereto as Exhibit K is a true and correct copy of the Declaration of Ryan McMillan on behalf of Milberg Coleman Bryson Phillips Grossman, PLLC.

97. Attached hereto as Exhibit L is a true and correct copy of the Declaration of John G. Emerson on behalf of Emerson Firm, PLLC.

98. Attached hereto as Exhibit M is a true and correct copy of the Declaration of Ben Barnow on behalf of Barnow & Associates, P.C.

99. Attached hereto as Exhibit N is a true and correct copy of the Declaration of Timothy G. Blood on behalf of Blood Hurst & O'Reardon LLP.

100. The time and labor required to successfully prosecute Plaintiffs' claims here was substantial.

101. As of September 15, 2024, Plaintiffs' Counsel's lodestar amount of \$6,847,863.40 results from 8776.7 hours devoted to prosecuting this matter, broken down as follows:

Table 3: Plaintiffs' Counsel Summary of Hours and Lodestar			
Firm	Hours	Lodestar	Reference
Freed Kanner London & Millen LLC	2,903.2	\$2,729,601.50	Justice Decl. ¶ 74
McCune Law Group, APC	1,301.9	\$1,090,325.00	Wright Decl. ¶ 3
Bailey & Glasser LLP	1,216.4	\$852,465.00	Snyder Decl. ¶ 4
Steckler Wayne & Love PLLC	1,169.5	\$715,865.00	Steckler Decl. ¶ 3
LeVan Muhic Stapleton LLC	14.7	\$13,597.50	Muhic Decl. Ex. A
The Miller Law Firm, P.C.	882.4	\$580,844.00	Muhic Decl. Ex. A
Muhic Law LLC	110.9	\$102,582.50	Muhic Decl. Ex. A
Lynch Carpenter LLP	535.9	\$342,480.00	Carroll Decl. ¶ 3
Aeton Law Partners LLP	8.5	\$6,135.00	Shapiro Decl. ¶ 3
Berger Montague PC	176.1	\$151,749.00	Paul Decl. ¶ 3
Milberg Coleman Bryson Phillips Grossman, PLLC	106.3	\$54,987.40	McMillan Decl. ¶ 3
Capstone Law APC	126.1	\$72,585.00	Zohdy Decl. ¶ 3
Emerson Firm, PLLC	15.4	\$14,630.00	Emerson Decl. ¶ 3
Barnow & Associates, P.C.	186.5	\$103,222.50	Barnow Decl. ¶ 3
Blood Hurst & O'Reardon LLP	22.9	\$16,794.00	Blood Decl. ¶ 3
TOTAL	8,776.7	\$6,847,863.40	

102. The requested attorneys' fee represents only 17.1% of the total estimated value of the inspections and monetary reimbursements provided to the Class under the Settlement plus notice and administration costs to date (up to \$77.3 million), and further represents a mere fraction of the overall monetary valuation of the Recall (over \$600 million). *See* Ex. O (Bowron Decl.).

103. 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%.

104. 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.

105. Even if the completion rate is 70%, the monetary value of the safety inspections is still approximately \$47 million. *See* Bowron Decl. ¶¶ 9, 26.

106. Even if the completion rate is 70%, the monetary value of the battery reimbursements is still approximately \$3.5 million. *See* Bowron Decl. ¶¶ 9, 29.

107. Even if the completion rate is 70%, the monetary value of the out-of-pocket reimbursements is still approximately \$770,000. *See* Bowron Decl. ¶¶ 9, 31.

108. Even if the completion rate is 70%, the monetary value of the fire reimbursements is still approximately \$1.6 million. *See* Bowron Decl. ¶¶ 9, 33.

109. Even if the completion rate is 70%, the total monetary value of the Settlement relief plus notice and administration costs to date is \$54.56 million. Plaintiffs' Counsel's fee request represents 24.3% of this reduced estimated value.

110. The requested attorneys' fee amounts to a 1.93 multiplier of their lodestar—a multiplier that is particularly reasonable given the risks inherent to this litigation.

111. These were hours that Plaintiffs' Counsel were not able to devote to other clients and matters.

112. Plaintiffs' Counsel's hours were performed on a contingent fee basis. 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. Any recovery to Plaintiffs' Counsel has always been completely contingent and dependent upon a successful outcome.

113. Plaintiffs' Counsel have extensive experience litigating complex, class action cases, and are highly regarded in the Plaintiffs' class action bar.

114. 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.

115. Plaintiffs' Counsel's hourly rates range from \$615 to \$1,175 for partners, \$375 to \$725 for associates, \$385 to \$1,000 for counsel and \$125 to \$400 for paralegals. *See* Exh. A, C-N.

116. These rates are consistent with rates approved in numerous class action cases throughout the country, including courts within this Circuit. *See, e.g., Zakikhani v. Hyundai Motor Co.*, 2023 WL 4544774, at *9 (C.D. Cal. May 5, 2023) (in a car defect case, court approving rates similar to Plaintiffs' Counsel's rates here); *Doyle v. Reata Pharm., Inc., et al.*, Case No. 4:21-cv-00987-ALM (E.D. Tex. Mar. 29, 2024), Doc. Nos. 79 at pp.11 and 84 (approving plaintiffs' counsel's rates ranging from \$715-\$1,250 for partners, \$700-\$1,200 for counsels, and \$400-\$800 for associates).³

117. It is my opinion that the Plaintiffs' Counsel's attorney and paralegal rates are 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. *See, e.g., "Kirkland & Ellis Sets New Industry Standard with Unprecedented Billing Rates, available at*

³ *See also, e.g., Sabourin v. Colvin*, No. 11 Civ. 2109, 2014 WL 3949506, at *1-2 (N.D. Tex. Aug. 12, 2014) (approving de facto hourly rate of \$1,245.55); *Slipchenko v. Brunel Energy*, No. 11 Civ. 1465, 2015 WL 338358, at *19 (S.D. Tex. Jan. 23, 2015) (finding, in 2015, that billing rates charged by "Texas-based defense counsel . . . range from \$275-\$700 for associates and \$575-\$1,125 for partners"); *Eric B. v. Comm'r of Soc. Sec.*, No. 17 Civ. 0083, 2019 WL 7546622, at *2 (N.D. Tex. Dec. 18, 2019), adopted by 2020 WL 109856 (N.D. Tex. Jan. 8, 2020) (finding effective hourly rate of \$937.50 reasonable); *Aperia Sols., Inc. v. Evance, Inc.*, No. 18 Civ. 3276, 2021 WL 3710563, at *3 n.22 (N.D. Tex. Aug. 19, 2021), *reversed on other grounds*, 2022 WL 2116001 (June 13, 2022) ("Scores of Texas lawyers now charge \$1,000 or more per hour."); *Phyto Tech Corp. v. Givaudan SA*, No. 18 Civ. 6172, 2023 WL 1437714, at *7 (S.D.N.Y. Jan. 31, 2023) (partner rates of \$897.50 to \$1,079.97 per hour reasonable); *Angelo, Gordon & Co., L.P. v. MTE Holdings, LLC*, No. 20 MC 00023, 2021 WL 1353756, at *3 (S.D.N.Y. Apr. 12, 2021) (partner rates of \$1,175 and \$1,350 per hour and associate rates of \$650 per hour reasonable); *Vista Outdoor, Inc. v. Reeves Fam. Tr.*, No. 16 Civ. 5766, 2018 WL 3104631, at *6 (S.D.N.Y. May 24, 2018) (partner rates of \$1,170 to \$1,260 per hour reasonable); *Themis Cap. v. Democratic Republic of Congo*, No. 09 Civ. 1652, 2014 WL 4379100, at *7 (S.D.N.Y. Sept. 4, 2014) (noting that "partner billing rates in excess of \$1,000 an hour[] are by now not uncommon" in complex litigation).

<https://www.lawcrossing.com/article/900055222/Kirkland-Ellis-Sets-New-Industry-Standard-with-Unprecedented-Billing-Rates/> (reflecting some rates over \$2,000 and up to \$2,500 per hour) (last visited Sept. 4, 2024); “Largest Law Firms Charge Nearly \$1,000 an Hour, Report Finds,” available at: <https://www.legaldive.com/news/am-law-100-hourly-rates-largest-law-firms-brightflag-analysis/702164/> (“The top 100 U.S. law firms charged clients an average of \$961 an hour in the first nine months of 2023, a recent report found.”) (citing a Brightflag report analyzing outside counsel billing) (last visited Sept. 4, 2024).

118. In assessing the reasonableness of the requested rates here, there are additional relevant sources of information. Fee applications submitted in bankruptcy proceedings, for example, are especially helpful because they are sworn under oath and are reviewed by judges. Analyzing them, it is clear that many lawyers are compensated at rates comparable to those requested here. For example:⁴

- In the Chesapeake Energy bankruptcy proceeding in the Southern District of Texas, Houston Division, the fee application submitted in 2021 by debtor’s counsel Kirkland & Ellis LLP submitted attorney rates ranging from \$610 to \$1,845 per hour with a Debtor Blended Hourly Attorney rate of \$971.49 and a Non-Bankruptcy Blended Hourly Rate of \$965.19. *See In re Chesapeake Energy Corp.*, Case No. 20-33233 (Bankr. S.D. Tex.) (Doc. No. 2977).
- In the Sears bankruptcy proceeding, the fee application submitted in 2019 by Weil, Gotshal & Manges LLP, the debtors’ attorneys, included dozens of lawyers whose hourly charges exceed \$1,000, with nine lawyers charging \$1,500 per hour or more. *See In re Sears Holding Corp., et al.*, Case No. 18-23538 (Bankr. S.D.N.Y.) (Doc. Nos. 3225, 10738).
- Even higher hourly rates were sought in the Toys “R” Us bankruptcy, where Kirkland & Ellis LLP served as debtors’ counsel. There, the highest hourly rate was \$1,795, the blended rate for all partners, of which there were dozens, was \$1,227, and the blended rate for all timekeepers, including paralegals and support staff, was \$901. *See In re*

⁴ Cited Orders are available at the Court’s request.

Toys “R” Us Property Company I, LLC, et al., Case No. 18-31429 (Bankr. E.D. Va.) (Doc. No. 1426).

- The rates sought by the law firm of Davis Polk & Wardwell LLP in the Purdue Pharma bankruptcy proceeding provide another anecdotal example. In late November of 2019, the firm sought rates that included \$1,645 per hour for seven partners, \$1,445-\$1,585 for four more partners, and \$1,225 for six lawyers described as being “of counsel.” Davis Polk also sought rates exceeding \$1,000 per hour for fifteen associates and rates exceeding \$900 per hour for many more. *See In re Purdue Pharma L.P., et al.*, Case No. 19-23649 (Bankr. S.D.N.Y.) (Doc. No.551).
- Finally, an article covering the bankruptcy proceeding involving Pacific Gas & Electric (PG&E) reported that lawyers from Cravath Swaine & Moore billed at rates of \$415 to \$1,500 per hour and that lawyers at Weil, Gotshal & Manges charged \$560 to \$1,600 per hour. National Association of Legal Fee Analysis, PG&E Legal Bills Already Top \$84M in Chapter 11 Case, Apr. 2, 2019 (available at <https://www.law.com/therecorder/2019/04/02/pge-legal-billsalready-top-84m-for-chapter-11-case/?slreturn=20200903170457>) (last visited Sept. 4, 2024).

119. Class Counsel’s work on this Action does not end with the filing of this Motion. Class Counsel expects to spend a significant amount of time on this case until it is fully resolved. Between now and the Fairness Hearing set for November 19, 2024, Class Counsel will continue to do a significant amount of work, including, among other things, (i) conferring with Defendants’ counsel on Settlement-related issues; (ii) conferring with the Settlement Notice Administrator about notice, potential objectors and opt-out requests; (iii) consulting with the Settlement Special Master Juneau as may be necessary; (iv) fielding calls from Class Members; (v) researching and drafting a motion for final approval of settlement and declarations in support thereof; (vi) preparing for the Fairness Hearing; (vii) traveling to and from Sherman, Texas for the Fairness Hearing; (viii) presenting oral argument at the Fairness Hearing; and (ix) communicating with Class Representatives. Thereafter, Class Counsel will certainly be responding to Class Member calls, and coordinating with Toyota and the Settlement Notice Administrator and Settlement Claims Administrator to resolve any issues that arise with the administration of claims.

120. Based on my prior experience and recent billings in this Action, Class Counsel expects to spend another 300 hours on this litigation until the Action is fully resolved and they fulfill their duties as Settlement Class Counsel, which yields an additional lodestar of nearly \$250,000.

121. Together with the lodestar of \$6,847,863.40 billed through September 15, 2024, the expected billings of about \$250,000, would yield a total lodestar of approximately \$7,097,863.40, and reduce the multiplier to 1.87.

D. FKLM's Unreimbursed Costs and Expenses

122. Attached as Exhibit B is a summary of the expenses FKLM has incurred from case inception to September 15, 2024, by category. FKLM's total expenses are \$72,106.46. These expenses have not been reimbursed.

123. The expenses in this declaration are reflected in FKLM's accounting records. Exhibit B was assembled and prepared by my staff and reviewed by me. The expenses were prepared from receipts, check records, and other source materials. These are accurate records of the expenses. The expenses reflect the costs and charges incurred for work performed throughout this litigation. If requested, I could provide receipts or other supporting records for each expense included on Exhibit B. The amount of FKLM's expenses is reasonable and was necessary for the efficient and effective prosecution of this matter. The expenses submitted are of a type normally charged to and paid by fee-paying clients.

E. Plaintiffs' Counsel's Unreimbursed Costs and Expenses

124. In prosecuting this litigation, Plaintiffs' Counsel litigated this matter purely on a contingent basis, advancing all necessary expenses with no guarantee of payment.

125. As of September 15, 2024, Plaintiffs' Counsel incurred \$306,811.17 for which they respectfully requests reimbursement, as follows:

Table 4: Plaintiffs' Counsel Summary of Expenses		
Firm	Expenses	Reference
Freed Kanner London & Millen LLC	\$72,155.56	Justice Decl. ¶ 114
McCune Law Group APC	\$56,356.56	Wright Decl. ¶ 6
Bailey & Glasser LLP	\$67,704.24	Snyder Decl. ¶ 7
Steckler Wayne & Love PLLC	\$22,661.59	Steckler Decl. ¶ 6
LeVan Muhic Stapleton LLC	Not seeking reimbursement for any expenses	Muhic Decl. Ex. B
The Miller Law Firm, P.C.	\$2,200.81	Muhic Decl. Ex. B
Muhic Law LLC	\$101.07	Muhic Decl. Ex. B
Lynch Carpenter LLP	\$33,100.00	Carroll Decl. ¶ 6
Aeton Law Partners LLP	\$34.40	Shapiro Decl. ¶ 6
Berger Montague PC	\$3,204.14	Paul Decl. ¶ 6
Milberg Coleman Bryson Phillips Grossman, PLLC	\$400.00	McMillan Decl. ¶ 6
Capstone Law APC	\$920.55	Zohdy Decl. ¶ 6
Emerson Firm, PLLC	Not seeking reimbursement for any expenses	Emerson Decl. ¶ 6
Barnow & Associates, P.C.	\$595.87	Barnow Decl. ¶ 6
Blood Hurst & O'Reardon LLP	\$418.12	Blood Decl. ¶ 6
Veritext, LLC (Court Reporting Vendor)	\$46,958.26	Justice Decl. ¶ 121
TOTAL	\$306,811.177	

126. These expenses are supported by the contemporaneous records maintained by each of Plaintiffs' Counsel's firms.

127. These expenditures include significant costs and expenses for the engineering, economic or actuarial experts, numerous vehicle inspections, depositions, and other discovery-related expenditures.

128. Class Counsel and certain Plaintiffs' Counsel contributed a total of \$206,100.00 to a litigation fund to pay for common expenses. *See* Exs. B, C, D, E, and G. These amounts are already included in the expense figures in Table 4. Below is a table categorizing the largest incurred expenses paid for out of the litigation fund:

Table 5: Largest Expenses Paid from the Litigation Fund	
Expense Category	Total Amount
Expert Fees	\$145,593.79
Document Hosting	\$51,990.37
Consultants	\$6,454.91

129. After a bidding process, Plaintiffs retained Veritext, LLC to provide court reporting services for depositions in this matter. Expenses for depositions in this case totaled \$46,958.26. These expenses are separate and apart from expenses enumerated in Exhibits B through O and are included in Plaintiffs' combined expense amount charted in Table 4.

130. The \$306,811.17 in expenses incurred and paid by Plaintiffs' Counsel were reasonable and necessary to the successful prosecution of this Action, including the creation of the Settlement relief and Recall.

131. Due to the risk that they might never be recovered, Plaintiffs' Counsel endeavored to keep expenses to a minimum.

**CLASS REPRESENTATIVES' CONTRIBUTIONS
TO THE PROSECUTION OF THIS ACTION**

132. The Class Representatives are Juliet Murphy, Ranay Flowers, Penni Lavoot, Paola Guevara, Lee Krukowski, Pamela Woodman, Kris Huchteman, Melissa Willis, Angela Charles, James Charles, Maria Mora, Nicole Sylva and Jennifer Cardelli.

133. The Class Representatives have been active participants in this Action.

134. The Class Representatives advised Plaintiffs' Counsel upon request and approved pleadings, reviewed and responded to written discovery, searched for, gathered, preserved, and produced documents, and kept up to date on the progress of the case.

135. The Class Representatives prepared and executed declarations in support of Plaintiffs' Motion for Class Certification.

136. The Class Representatives also presented their Class Vehicles for inspection, as requested, and prepared for their noticed depositions. This Action was stayed for settlement discussion purposes days before those depositions were to commence.

137. The Class Representatives carefully considered the terms of the Settlement and conferred with Plaintiffs' Counsel regarding the same.

138. The Class Representatives were never promised that they would receive any additional compensation for leading this case, and instead devoted their time and efforts solely to recover some portion of their own damages and to enable other Class Members to recover theirs. The time and effort devoted by the Class Representatives were instrumental in obtaining this result for the Class.

MISCELLANEOUS

139. Attached as Exhibit O is a true and correct copy of the Declaration of Lee M. Bowron dated September 23, 2024.

140. Attached as Exhibit P is a true and correct copy of the Declaration of Cameron R. Azari dated September 16, 2024.

141. Attached as Exhibit Q is a true and correct copy of the Affidavit of Court-Appointed Settlement Special Master Patrick A. Juneau dated March 25, 2024.

142. Attached as Exhibit R is a true and correct copy of 573 Safety Recall Report (23V-734) for the Class Vehicles dated November 1, 2023 (*available at <https://www.nhtsa.gov/vehicle/2016/TOYOTA/RAV4/SUV/FWD#recalls>*) (last visited Sept. 22, 2024).

CONCLUSION

143. Since beginning their investigation in 2021 and through September 15, 2024, Plaintiffs' Counsel have devoted 8776.70 hours and advanced more than \$306,000 to this Action without any guarantee of payment.

144. Through this litigation, Plaintiffs identified for Toyota a safety Defect in the Class Vehicles and developed and proposed to Toyota an appropriate remedy. 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.

145. Plaintiffs' Counsel bore the risk of litigating this Action entirely on a contingent basis for over three years. There are numerous examples where the plaintiffs' counsel in contingency fee cases have worked thousands of hours and advanced substantial sums of money, only to receive no compensation. Plaintiffs' Counsel were fully aware that despite the most vigorous and competent efforts, a law firm's success in contingent litigation on behalf of a class is never guaranteed.

146. Despite this, Plaintiffs' Counsel ensured that sufficient attorney resources were dedicated to prosecuting the claims here. They also ensured that funds sufficient to pursue and complete such complex litigation were available. Plaintiffs' Counsel's investment of this amount of hard costs demonstrates the commitment, as well as the risk, they were willing to take in prosecuting the Action and protecting Class Members' claims.

147. Based on the significant recovery for the Class and the substantial risks faced by Plaintiffs' Counsel, Lead Class Counsel respectfully submits that the Court should award

attorneys' fees in the amount of \$13,250,000, approve reimbursement of litigation expenses in the amount of \$306,811.17, and award a \$5,000 service award for each Class Representative.

I, Kimberly A. Justice, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct.

Executed this 23th day of September 2024 in Conshohocken, Pennsylvania.

A handwritten signature in black ink that reads "Kimberly A. Justice". The signature is written in a cursive, flowing style.

Kimberly A. Justice