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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
FOR THE COUNTY OF SAN FRANCISCO
10 **UNLIMITED JURISDICTION**

11 COORDINATION PROCEEDING SPECIAL)
TITLE (Cal. R. Ct. 1550(b)))
12)
13 AUTOMOBILE ANTITRUST CASES I, II)

Judicial Council Coordination
Proceeding Nos. No. 4298 and 4303
CJC-03-004298 and CJC-03-004303

CLASS ACTION

14 _____)
15 This document relates to:)
All Actions)

**DECLARATION OF TODD A. SEAVER
IN SUPPORT OF PLAINTIFFS':
(I) MOTION FOR FINAL APPROVAL
OF SETTLEMENT WITH FORD
CANADA; AND (II) MOTION FOR
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND PAYMENT OF SERVICE
AWARDS**

Date: October 5, 2022
Time: 10:00 a.m.
Dept: 306
Judge: Honorable Anne-Christine Massullo

Date Complaint Filed: October 6, 2003
(Consolidated Amended Class Action
Complaint)

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1 I, Todd A. Seaver, declare and state as follows:

2 1. I am an attorney licensed to practice law in the State of California and am a partner in the
3 San Francisco office of Berman Tabacco. I make this declaration based on my personal knowledge,
4 except where stated on information and belief, and could competently testify as to these matters if called
5 upon to do so.

6 2. I present this declaration in support of Plaintiffs' motion for final approval of the
7 settlement reached with defendant Ford Motor Company of Canada, Ltd. ("Ford Canada"), and in
8 support of Plaintiffs' motion for an award of attorneys' fees, reimbursement of expenses, and payment
9 of service awards. A true and correct copy of the Settlement Agreement reached with Ford Canada is
10 attached hereto as **Exhibit A**.

11 3. My firm, Berman Tabacco (formerly Berman DeValerio), represents plaintiff Jason
12 Gabelsberg. A brief description of my firm is attached as **Exhibit B** and incorporated herein by
13 reference. I have been involved in every aspect of this California action ("Action"), and/or the related
14 federal multidistrict litigation captioned *In re New Motor Vehicles Canadian Export Antitrust Litigation*,
15 MDL No. 1532 (D. Me.) ("MDL Action"), since inception. My firm was Chair of the Executive
16 Committee in the MDL Action. Since 2010, I and my firm have had leadership responsibilities in this
17 California action. Joseph J. Tabacco, Jr., senior partner in the firm Berman Tabacco, has been the Chair
18 of the Coordinating Committee since 2004.

19 **I. PLAINTIFFS' COUNSEL'S EFFORTS ON BEHALF OF THE CLASS DURING THE**
20 **FIRST STAGE OF THE CASE (2002 – 2012)**

21 4. The following details the efforts of Plaintiffs' counsel over the first ten years of this
22 Action. Plaintiffs' counsel began investigating the case in 2002.

23 **A. Pleadings**

24 **1. Initial Complaints**

25 5. The first complaint initiating this action was filed in March 2003. Additional complaints
26 were filed in state courts throughout California. These cases were all consolidated into this coordination
27 proceeding. Plaintiffs filed the operative Consolidated Amended Complaint in October 2003.

1 6. Numerous other complaints were filed in federal court and consolidated in the MDL
2 Action in the U.S. District Court for the District of Maine before District Judge D. Brock Hornby
3 (“MDL Court”). Likewise, additional complaints were filed in state courts across the country, including
4 in states such as Arizona, Florida, Wisconsin, and others (“State Actions”).

5 **2. Demurrers**

6 7. Early on in this Action, defendants filed demurrers and motions to strike the Consolidated
7 Amended Complaint. Plaintiffs successfully opposed these motions. The Court overruled the demurrers
8 and motions to strike on April 28, 2004.

9 **B. Coordination Among Counsel for this Action, the MDL Action and Other State**
10 **Actions**

11 8. At an early stage in the litigation, plaintiffs’ counsel in this Action, the MDL Action, and
12 the other State Actions created a management and organization agreement to further ensure the most
13 efficient and effective way to prosecute the parallel federal, California and other State Actions. The
14 agreement created a Coordinating Committee, and continued to govern all plaintiff counsel’s efforts,
15 contributions to litigation expenses and organization, and it also forms the basis for the efficient and
16 equitable allocation of any fee award that the Court here ultimately may grant. Joseph J. Tabacco, Jr.,
17 Senior Partner of Berman Tabacco, is the Chair of the Coordinating Committee.

18 9. In addition to governing the allocation of fee awards generated in any of the coordinated
19 actions, the agreement also provides that any dispute arising regarding fee allocations amongst counsel
20 will be first mediated by the parties, and if unsuccessful, the parties agree to refer any dispute to binding
21 arbitration.

22 **C. Discovery**

23 10. Discovery commenced from the earliest stages of the case. Pursuant to the Joint
24 Coordination Order entered by this Court and the MDL Court (discussed below), plaintiffs’ counsel in
25 this California action, the MDL Action, and coordinated actions in other states worked diligently to
26 coordinate all discovery efforts. Coordinated discovery proceeded on several fronts, including extensive
27 document review of millions of pages of material, depositions of over 130 witnesses, multiple sets of
28

1 interrogatories (including plaintiffs’ expansive responses to defendants’ contention interrogatories),
2 hundreds of requests for admission, and cross-border discovery efforts through letters rogatory. Given
3 the breadth and importance of expert discovery in this case, that discovery is discussed in a separate
4 section below.

5 11. On April 28, 2004, the Court entered a Joint Coordination Order that coordinated
6 discovery efforts of this action, the federal MDL Action and the actions in the state courts that adopted
7 the Order. A true and correct copy of the Joint Coordination Order is attached hereto as **Exhibit C**.
8 Later, in August 2004, the Court entered a Master Protective Order, which governed the handling of
9 confidential material obtained in discovery. These orders set the framework for the parties’ coordinated
10 discovery efforts going forward.

11 12. In accordance with the Joint Coordination Order, plaintiffs’ counsel in this Action, the
12 federal MDL Action and the State Actions coordinated their pre-trial discovery efforts to the maximum
13 extent possible in order to avoid duplication and to gain efficiencies. Plaintiffs endeavored to avoid
14 overlap and divided up necessary tasks among the participating firms based on efficiency, skill and
15 experience, with the goal of unearthing an evidentiary record that could be used in any of the
16 coordinated actions. *See Exhibit D* (Jan. 13, 2012 Mem. of Opinion & Order on Pltfs.’ Application for
17 Attorneys’ Fees, Expenses & Incentive Awards (“Kramer 2012 Fee Order”), attached hereto, at 3:19-20
18 (“[I]t is not possible now to divide the attorneys’ fees or expenditures amongst the various actions as
19 attributable to one or the other. Far more important, the coordinated pre-trial efforts by plaintiffs’
20 counsel produced efficient, streamlined work and allocation of resources.”); *see also In re Automobile*
21 *Cases I & II*, A152295, 2019 WL 4670698 at *2, 9-10 (Oct. 23, 2019) (describing Coordination Order in
22 context of Ford Canada’s claim preclusion arguments and observing “[D]ue to the coordination of
23 discovery, the same body of evidence ... was available to both sets [California and MDL Action] of
24 plaintiffs.”).

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1. Document Production and Review

13. Plaintiffs served their first set of coordinated document requests on defendants in June 2004. Defendants followed with their own document requests in July 2004. In February 2005, plaintiffs served their second set of document requests.

14. The document requests spurred nearly ten months of ongoing meet and confers between plaintiffs and defendants, requiring court intervention on several occasions. In particular, given the number of documents at issue, the parties engaged in intense negotiations in 2004 to resolve a number of technology issues. The parties also disputed the proper scope of discovery, with plaintiffs seeking discovery dating back to 1995 and defendants refusing to produce any documents dated prior to 1999.

15. Ultimately, as a result of plaintiffs' document requests, defendants produced more than a million pages of documents, with production beginning in October 2004. Reviewing such a vast number of documents required a monumental team effort on the part of plaintiffs' counsel. Dozens of attorneys were involved in document review. Plaintiffs' counsel completed several rounds of review, culling relevant documents and narrowing the list of relevant documents over time. The entire process took over one-and-a-half years.

16. Plaintiffs began by selecting and training attorneys to prepare for the document review. The plaintiffs also used paralegals at the outset to review the documents and input objective information (names, dates, bates ranges, etc.) into a database. To efficiently conduct the attorney-level review of the documents, plaintiffs converted the documents into Optical Character Recognition ("OCR") format at substantial expense, making the database of documents keyword searchable. To do so, plaintiffs employed the services of vendor LextraNet, which also maintained the document database. Plaintiffs also used LextraNet's litigation software to keep the documents organized and annotated.

17. Given the millions of pages produced, using state-of-the-art computer litigation tools was necessary and indispensable. Use of LextraNet also permitted remote document review, which saved the class the cost of attorney travel and lodging incurred during on-location paper document reviews. Attorneys from around the country reviewed documents from their own offices, while Executive Committee firms coordinated their efforts. The software also facilitated coordination of deposition

1 preparation, as deposition transcripts and exhibits could be uploaded to the central database and
2 attorneys in all locations could review the transcripts in real-time and share annotations.

3 **2. Depositions**

4 18. Both plaintiffs and defendants engaged in extensive deposition practice, resulting in over
5 130 depositions.

6 19. In April 2005, defendants began noticing the depositions of the named plaintiffs.
7 Ultimately, defendants noticed and took the depositions of 46 named plaintiffs over the course of the
8 litigation, most during 2005 to 2007 (plus two additional named plaintiff depositions in the fall of 2021,
9 just prior to trial). The effort to defend these depositions in multiple places around the country, from
10 Reno, Nevada, to Lexington, Mississippi, involved much attorney and client preparation time and
11 coordination among counsel. During this same time, the parties took a handful of additional depositions,
12 both party and non-party, concerning how data and other records were kept and other issues.

13 20. The bulk of the depositions of defendants' witnesses occurred during an eight-month
14 period in 2006 and 2007. At that time, after much effort by the parties and federal Magistrate Judge
15 Kravchuk, the MDL Court implemented a protocol governing the number and manner of depositions
16 plaintiffs could take. During September 2006 to April 2007, plaintiffs noticed and took 86 depositions of
17 party and non-party witnesses. These depositions took place in a number of locations, including
18 Toronto, Detroit, Washington, D.C., Los Angeles, Halifax (Nova Scotia), Calgary and elsewhere.

19 21. With multiple depositions happening often simultaneously in different parts of Canada
20 and the United States, the coordination efforts of plaintiffs' counsel were extensive. Preparing for
21 depositions involved consulting with document reviewers to help select relevant documents out of the
22 millions of pages available, reviewing the documents, reviewing deposition transcripts from related
23 witnesses as they came in, coordinating with other counsel taking related depositions, and often
24 extensive travel. At the same time, plaintiffs endeavored to schedule multiple depositions in the same
25 location (e.g., Toronto) to streamline the process and cut down on attorney travel time. But plaintiffs
26 were often beholden to the schedules of defendants' witnesses, many of which were executive-level
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1 employees. In all cases, however, plaintiffs conferred with defendants in good faith in scheduling
2 depositions.

3 22. Throughout discovery, plaintiffs kept a running log of all critical documents and
4 indicated whether or not an evidentiary foundation had been successfully made through deposition
5 testimony, requests for admission or other means.

6 3. Interrogatories

7 23. In July 2004, defendants propounded their first set of joint interrogatories on plaintiffs.
8 Plaintiffs responded in September 2004, and also supplemented their responses in June 2005, April 2007
9 and the fall of 2008.

10 24. Nissan separately served additional interrogatories, along with hundreds of requests for
11 admission, in June 2006, December 2006 and March 2007, to which plaintiffs responded.

12 25. In January 2007, plaintiffs received separate sets of contention interrogatories from
13 American Honda, Honda Canada, Chrysler, Ford and General Motors. Responding to these
14 interrogatories required extensive time and effort from plaintiffs' counsel because the interrogatories, in
15 effect, asked plaintiffs to set forth all of the evidence relevant to their claims. Plaintiffs' counsel were
16 cognizant that if any evidence was not disclosed in the interrogatory answers concerning the sprawling,
17 over-arching conspiracy, plaintiffs could be precluded from offering that evidence at summary judgment
18 and trial. Plaintiffs' monumental effort to provide "fulsome" responses to defendants' interrogatories, as
19 ordered by federal Magistrate Judge Kravchuk, took several months to complete. On May 1, 2007,
20 plaintiffs separately responded to each set of interrogatories, providing comprehensive responses that
21 cumulatively totaled over 1,800 pages. The responses identified all relevant evidence in the case to date,
22 providing a detailed timeline with citations to thousands of documents and reams of deposition
23 testimony. The effort to provide these responses in this level of detail was made even more difficult by
24 the demanding deposition schedule plaintiffs' counsel were undertaking while simultaneously preparing
25 interrogatory responses.

4. Requests for Admission

1 26. Both plaintiffs and defendant Nissan served requests for admission (“RFAs”) during the
2 discovery period. In December 2006, Nissan served 119 RFAs, and followed in March 2007 with
3 another 93 RFAs. Plaintiffs responded to each set of RFAs in February and April 2007, respectively.

4 27. In August 2006, plaintiffs served RFAs on Ford. Plaintiffs later, in January 2007, served
5 RFAs on Chrysler. These RFAs, each set numbering over 200, sought to authenticate relevant
6 documents identified through plaintiffs’ extensive document review efforts and lay the foundation for
7 the business records exception to the hearsay rule. Although fashioning such a large number of RFAs
8 took much time and effort, plaintiffs believe the alternative of seeking depositions of many additional
9 witnesses to establish the admissibility of documents would have been an inefficient use of the class’s
10 resources.

5. Letters Rogatory

11 28. Discovery from non-party Canadian entities required additional costs above and beyond
12 those normally incurred in purely domestic litigation. In particular, plaintiffs were required to proceed
13 by letters rogatory in Canadian courts to obtain evidence from a number of percipient witnesses.
14 Navigating the Canadian court system proved challenging and required the retention of skilled Canadian
15 attorneys.

16 29. Plaintiffs began the formal letter rogatory process in January 2006 after informally and
17 unsuccessfully seeking discovery of the Canadian non-parties. The plaintiffs sought crucial discovery
18 from entities including Nissan Canada Inc., Mercedes-Benz Canada Inc. and BMW Canada Inc., which
19 the Court had dismissed on personal jurisdiction grounds, as well as the Association of International
20 Automobile Manufacturers Canada (“AIAMC”), the Canadian Vehicle Manufacturers’ Association
21 (“CVMA”) and the Ontario Automobile Dealers Association (“OADA”). (Plaintiffs also initially sought
22 discovery from Toyota Canada Inc. via letter rogatory, but ultimately the settlement agreement with
23 Toyota obviated the need due to the discovery cooperation provisions of the agreement.)
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1 30. On February 6, 2006, the MDL Court issued a letter rogatory to the judicial authorities of
2 Canada asking the Canadian authorities to compel discovery from the Canadian entities and their
3 employees.

4 31. Plaintiffs retained Canadian counsel to seek enforcement of the letter rogatory in the
5 Ontario courts. Working with their Canadian counsel, plaintiffs litigated the matter in the Ontario courts
6 for several months. This effort required hundreds of hours of work by plaintiffs' Canadian counsel.
7 Further, as part of the process, I sat for deposition in Toronto for over two full days for examination by
8 four sets of Canadian lawyers.

9 32. Eventually, in late 2006 and early 2007, the Canadian entities agreed to produce certain
10 documents and make certain witnesses available for deposition, and the Ontario court entered orders
11 enforcing the agreements.

12 33. Additional letters rogatory practice occurred throughout 2007. During that time, plaintiffs
13 and defendants sought the testimony of CADA former employee, Melissa Clarke, who was a percipient
14 witness to several important meetings among the defendant automakers. This Court issued the letter
15 rogatory concerning Ms. Clarke in February 2007. Months later, in late September 2007, the parties
16 were successful in convincing the Ontario Superior Court of Justice to compel Ms. Clarke's testimony.
17 The parties eventually deposed Ms. Clarke on November 5, 2007.

18 34. Defendants also sought testimony from non-party Canadian automobile exporters. After
19 this Court's issuance of letters rogatory and proceedings in Ontario court, both defendants and plaintiffs
20 deposed three exporter witnesses in Toronto in December 2007.

21 **6. Discovery from Toyota Canada**

22 35. Through the settlement with Toyota, plaintiffs were able to obtain crucial discovery from
23 Toyota Canada without resort to the letter rogatory process. The MDL Court previously dismissed
24 Toyota Canada from this case on personal jurisdiction grounds. In particular, plaintiffs were able to
25 secure the deposition of Toyota Canada general counsel Pierre Millette, who was a percipient witness to
26 many of the important meetings among automakers related to exports.

7. Discovery from NADA

1 36. In 2008, plaintiffs sought the voluntary dismissal of the National Automobile Dealers
2 Association (“NADA”), which the MDL Court approved. Prior to this, however, plaintiffs diligently
3 negotiated with NADA to obtain important discovery. Plaintiffs’ advocacy was successful in obtaining
4 attorney-client privileged material via a limited attorney-client privilege waiver from NADA. The
5 privileged material provided an important perspective concerning defendants’ alleged anticompetitive
6 conduct.

D. Expert Discovery

7
8 37. This was an expert-intensive litigation. Opining on the profitability of enforcing
9 unilateral export restraints and estimating the price effects of cross-border supply restrictions required
10 the retention of imminently qualified expert witnesses. Plaintiffs retained the services of Professor
11 Robert E. Hall, Ph.D., Robert and Carole McNeil Hoover Senior Fellow and Professor of Economics at
12 Stanford University, and Professor Martin Cave, Professor of Economics and Director of the Centre for
13 Management under Regulation at the Warwick Business School at the University of Warwick, United
14 Kingdom. To assist plaintiffs and Professor Hall in analyzing the large volume of pricing and other data
15 produced by defendants and their experts, plaintiffs also retained the services of Cornerstone Research
16 (“Cornerstone”) as non-testifying consulting experts. Cornerstone’s professionals were instrumental in
17 analyzing and processing defendants’ data, applying Professor Hall’s econometric modeling to the data,
18 and preparing plaintiffs’ counsel for deposing defendants’ army of expert witnesses. Plaintiffs also
19 retained the services of additional consulting experts as needed in the litigation.

20 38. Not to be outdone, defendants brought a total of eleven expert witnesses into the fray,
21 including seven economists.

1. Plaintiffs’ Expert Reports

22
23 39. Professor Hall filed a total of six reports, with three of these reports serving as rebuttals
24 to defendants’ numerous expert reports. Professor Hall also offered an additional declaration in support
25 of settlement class certification in October 2009. Professor Cave submitted one expert report. Plaintiffs’
26 counsel worked closely with Professors Hall and Cave as they prepared their respective reports.
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a. Professor Hall’s July 2005 Report and Dec. 2005 Rebuttal Report

40. Professor Hall’s first report, served in July 2005, concerned primarily class certification issues. The 26-page report included an additional 13 pages of exhibits and appendices. In response to Dr. Kalt’s extensive class certification report, discussed in paragraph 64 below, Professor Hall filed a 32-page rebuttal report with 42 pages of exhibits.

b. Professor Hall’s October 2006 Arbitrage Opportunity Report and December 2006 Rebuttal Report

41. As discussed in detail herein, Professor Hall undertook an extensive analysis of data from defendants and independent third-party sources on dealer invoice prices, manufacturer suggested retail prices (“MSRPs”), rebates, transaction prices and volumes of supply. The substantial data offered plaintiffs and the Court a reasoned, empirical basis for determining the proper end-date for the class period. This analysis is contained in Professor Hall’s Arbitrage Report, filed in October 2006. (Docket Items 418, 425.) Professor Hall also filed a rebuttal report in December 2006 in response to Dr. Kalt’s critique of the Arbitrage Report. The data also served as the foundation of Professor Hall’s damages model.

c. Professor Hall’s May 2007 Report and February 2008 Rebuttal Report

42. Professor Hall filed his Expert Report on Impact and Damages on May 10, 2007, on the heels of plaintiffs serving detailed answers to defendants’ voluminous contention interrogatories. *See* ¶23, *supra*. This report was the result of an intense effort by Professor Hall, assisted by Cornerstone, and came shortly after the end of merits discovery in April 2007. The report spanned 75 pages and included over 100 pages of exhibits containing highly technical empirical and econometric analysis.

43. The report offered two main analyses: a profitability analysis and a damages analysis. First, Professor Hall studied whether a unilateral strengthening of export restraints would have been profitable. Concluding that it would not have been profitable, Professor Hall opined that the employment of restraints during the class period was consistent with joint action by the manufacturers. To undertake this analysis, Professor Hall and Cornerstone conducted an extensive review of documents produced by defendants in the litigation, including a great volume of pricing data. Professor Hall and Cornerstone

1 studied a number of issues necessary to the analysis, including, among others: (a) how manufacturers
2 price automobiles, (b) the dynamics of the U.S. grey market for Canadian vehicles, (c) the
3 harmonization of safety and environmental standards between Canada and the United States, (d) the
4 nature of the restraints imposed by the defendants, (e) the effectiveness of the restraints in restricting
5 exports, and (f) the substitution of grey-market and authorized sales in the United States. Professor Hall
6 also employed sophisticated, yet standard, econometric modeling to determine substitution ratios and to
7 calculate each manufacturer's profitability of unilaterally tightening export restraints. In particular,
8 Professor Hall employed a Nested Logit Model, a type of discrete choice model applied widely in the
9 economic studies of consumer demand in the automobile industry.

10 44. Second, Professor Hall conducted a benchmark study to estimate the amount class
11 members were damaged by defendants' anticompetitive conduct. To accomplish this, Professor Hall and
12 Cornerstone undertook a detailed study of export restraints in the United Kingdom where a loosening of
13 cross-border export restraints resulted in a decrease in prices. There, the U.K. government passed a law,
14 the "Supply of New Cars Order," that prohibited certain export restrictions. After passage of the law,
15 domestic U.K. automobile prices decreased. Professor Hall rescaled the effects observed in the U.K. –
16 Ireland market to the U.S. – Canada market and estimated the amount that class members were
17 overcharged by defendants' conspiracy. Professor Hall was able to estimate overcharges by make,
18 model and month of purchase during the class period. This analysis involve unique issues of the U.K.
19 market and regulatory scheme that required uncommon effort, including the retention of Professor Cave,
20 discussed below. This work forms the basis of plaintiffs' plan of allocation for the Toyota and CADA
21 settlement proceeds.

22 45. Plaintiffs also served a rebuttal report from Professor Hall in February 2008. This report
23 responded to the thirteen expert reports defendants served on plaintiffs in October 2007, discussed
24 below. Responding to such a vast amount of dense analytical material required an intense, months-long
25 effort on the part of Professor Hall, Cornerstone and plaintiffs' counsel. The February 2008 rebuttal
26 report totaled 180 pages plus exhibits and represented a comprehensive response to defendants' experts'
27 various critiques.

d. Professor Cave's Expert Report

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2 46. Plaintiffs submitted Professor Cave's report in January 2008. This report supported
3 Professor Hall's U.K. benchmark analysis, as Professor Cave had first-hand knowledge of the events
4 that led to the loosening of export restraints and resulting lower prices in the U.K. experience. From
5 1996 to 2002, Professor Cave was a member of the U.K. Competition Commission. The Commission
6 crafted and released a comprehensive New Cars Report that led to passage of the Supply of New Cars
7 Order in 2000. Professor Cave's expert report described the auto manufacturer and dealer efforts to
8 restrict exports prior to the Supply of New Cars Order, the effect of these restrictions on the price of new
9 cars in the United Kingdom, the Commission's recommendations, and the Commission's expectation
10 that prices would decrease after passage of the Supply of New Cars Order. Defendants deposed
11 Professor Cave in New York City in March 2008.

2. Defendants' Reports

12
13 47. Defendants served fourteen reports from a total of eleven expert witnesses, not including
14 rebuttal or reply reports. Thirteen of these reports were served on plaintiffs at one time in October 2007
15 in response to Professor Hall's May 2007 report alone. These thirteen reports amounted to over 600
16 pages of expert opinion and over 600 pages of exhibits, which plaintiffs' counsel and their experts had to
17 quickly digest, analyze and respond to.

18 48. Defendants' expert reports covered a vast array of issues, many highly technical and
19 sophisticated, which required immense time and effort by Professor Hall, Cornerstone and plaintiffs'
20 counsel in plaintiffs' effort to depose the experts and respond to the reports. For example:

21 **Reports of Kevin Murphy:** Defendants served three reports from Kevin Murphy, Professor of
22 Economics at the University of Chicago, including a 172-page joint report on impact and
23 damages, a 47-page report concerning whether Chrysler's actions were consistent with unilateral
24 business interests, and a 42-page report concerning Professor Hall's analysis as it relates to
25 Mercedes-Benz USA. Dr. Murphy's joint report attempts to critique Professor Hall's profitability
26 and damages analyses, including specific criticism of Professor Hall's Nested Logit Model.

27 **Report of James Levinsohn:** Defendants served a 34-page report from James Levinsohn,
28 Professor of Public Policy and Economics at the University of Michigan. Dr. Levinsohn's entire
report attempts to critique Professor Hall's profitability analysis, with specific focus on the
Nested Logit Model.

1 **Report of William Wecker:** Defendants offered a 16-page report with a number of detailed
2 statistical exhibits from William Wecker, Ph.D., an applied mathematician. Dr. Wecker's report
3 seeks to criticize Professor Hall's Nested Logit Model, his Nash equilibrium analysis, and his
4 damages methodology.

5 **Reports of Joseph Kalt, Howard Marvel, Janusz Ordover and Carl Shapiro:** Defendants
6 offered a 52-page report of Dr. Kalt (a professor of international political economy at Harvard),
7 an 81-page report of Howard Marvel (a professor of economics and law at The Ohio State
8 University), a 61-page report of Dr. Janusz Ordover (a professor of economics at New York
9 University), and a 56-page report of Dr. Carl Shapiro (a professor of business strategy at the
10 University of California at Berkeley). These reports were submitted on behalf of Nissan, Ford,
11 Honda and General Motors, respectively. Each report attempt to critique Professor Hall's
12 profitability analysis as it relates to the particular defendant, with in-depth discussion of
13 defendant-specific materials. The reports also sought to explain away joint, horizontal conduct as
14 "independent," non-collusive conduct.

15 **Report of Philip Marsden:** Defendants offered the report of an Oxford-educated competition
16 lawyer. Dr. Marsden offered his opinion, couched in U.K. law, on the Supply of New Cars Order
17 discussed in Professor Hall's U.K. damages benchmark.

18 **Reports of Kenneth Hardy and Larry Light:** Nissan offered the reports of Kenneth Hardy,
19 Professor of Marketing at the University of Western Ontario, and Larry Light, Chief Executive
20 Officer of a management consulting company. Dr. Hardy's 21-page report discussed export sales
21 in relation to Nissan Canada's distribution network. Dr. Light's 26-page report discussed export
22 sales in relation to Nissan's brand strategy. Both reports attempted to assert that Nissan's actions
23 were consistent with its distribution and brand strategies.

24 49. Thus, to counter Professor Hall's first opinion, the profitability analysis, defendants
25 offered the reports of nine experts, including three who offered extensive critiques of the Professor
26 Hall's Nested Logit Model. To counter Professor Hall's second opinion, the damages analysis,
27 defendants offered the testimony of two experts.

28 50. Deposing defendants' numerous experts on such highly technical and expansive subject
matter took great time and effort by plaintiffs' counsel and their consulting experts, Cornerstone.
Plaintiffs deposed defendants' experts over twelve days in December 2007 and January 2008, just weeks
after receiving their reports. Plaintiffs' counsel worked tirelessly with Cornerstone to become versed in
advanced econometric modeling, including the Nested Logit Model and Nash equilibrium game theory.
Moreover, these depositions also required attorneys travel to a number of locations across the country,
such as Detroit, New York, Chicago, Washington, D.C. and San Francisco, resulting in further expense
to the class.

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E. Class Certification

51. Plaintiffs in this Action originally filed their motion for class certification in in April 2005. This Court deferred decision on the class certification motion pending a decision by the MDL Court as to the federal plaintiffs' class certification motion. *See* Order re Moving Defendant's Motion to Defer Consideration of Plaintiffs' Class Certification Motion, filed June 15, 2005 (Kramer, J.).

52. Plaintiffs renewed their class certification motion in this Court in September 2008. In January 2009, defendants filed their opposition to Plaintiffs' class certification motion as well as a joint motion to exclude the testimony of Plaintiffs' expert, Professor Hall. After full briefing, the Court held hearings on these motions over two days, April 21-22, 2009.

53. The Court denied defendants motion to exclude the testimony of Professor Hall, and on May 19, 2009, granted Plaintiffs' motion for class certification. A true and correct copy of the May 19, 2009 Order Granting Plaintiffs' Motion for Class Certification is attached hereto as **Exhibit E**.

54. Plaintiffs provided notice of the Court's class certification order to the Class in November 2010.

F. Bankruptcies of Key Defendants

55. In May 2009, defendants Chrysler LLC and Chrysler Motors LLC filed a Notice of Bankruptcy. In June 2009, defendant General Motors Company (and affiliates Saab Cars USA, Inc. and Saturn Corporation) also filed a Notice of Bankruptcy. The bankruptcy proceedings for Chrysler and General Motors had the effect of discharging all claims in this action against two of the largest automaker defendants. This significantly increased the risks for Plaintiffs' counsel to continue prosecuting the case.

G. Summary Judgement in this Action

56. In January 2010, defendants Ford U.S., Ford Canada, GM Canada, Nissan North America, American Honda, and Honda Canada filed summary judgment motions in this Court. The Defendants each filed separate summary judgment motions on the element of conspiracy as well as a joint motion on the element of impact/causation. Each motion was supported by voluminous declarations and supporting evidence. For example:

- 1 • Ford U.S. and Ford Canada’s motion for summary judgment was supported by 286
2 separate statements of fact and 210 exhibits.
- 3 • GM Canada’s motion was supported by 200 separate statements of fact, 162 exhibits, and
4 six declarations.
- 5 • Nissan’s motion was supported by 68 separate statements of fact, two declarations, and
6 thirteen exhibits.
- 7 • American Honda and Honda Canada’s motion was supported by 318 statements of fact
8 and eleven declarations with 110 exhibits.
- 9 • Defendants’ joint summary judgment motion on the element of impact/causation was
10 separately supported by 197 statements of fact and 64 exhibits.

11 57. Defendants simultaneously filed an extensive motion to exclude the testimony of
12 Plaintiffs’ expert, Professor Robert Hall. This motion was supported by hundreds of pages of exhibits.

13 58. Combined, Defendants’ filings on January 29, 2010 totaled 147 pages of memoranda of
14 law, 993 statements of fact, at least 19 fact declarations, and 559 exhibits.

15 59. In March 2010, Plaintiffs filed opposition briefs to each summary judgment motion and
16 the motion to exclude Professor Hall, a separate statement of 1036 facts, responses to each of the 993
17 statements of fact filed by Defendants, and 785 exhibits. Plaintiffs also submitted hundreds of objections
18 to the evidence relied on by Defendants.

19 60. In April 2010, Defendants filed their reply briefs in support of their summary judgment
20 motions and motion to exclude Professor Hall. Accompanying these replies, Defendants filed over 1000
21 objections to Plaintiffs’ evidence.

22 61. From January 18, 2011 to May 10, 2011, the Court held a total of four hearings on
23 Defendants’ summary judgment motions. These hearings lasted for several hours each—over 20 hours
24 on the record total—and included detailed presentations from the parties.

25 62. On March 8, 2011, the Court granted the summary judgment motions of Nissan North
26 America, American Honda, and Honda Canada. Following these orders, the case proceeded against only
27 Ford U.S., Ford Canada, and GM Canada.

1 63. As the summary judgment hearings progressed, the parties made additional substantial
2 filings. For example, in March 2011, at the request of the Court, Plaintiffs prepared and filed a
3 condensed summary, or “matrix,” of their evidence on the element of conspiracy.

4 64. Plaintiffs’ counsel further spent a substantial amount of time litigating their evidentiary
5 objections and responding to the objections asserted by Defendants. In particular, from April 2011
6 through August 2011, the parties made a series of filings concerning evidentiary objections. After the
7 summary judgment hearing in May 2011, the Court permitted the parties, at Ford Canada’s request, to
8 restate their evidentiary objections, even objections not previously raised. Plaintiffs’ responses to these
9 restated objections were voluminous: Plaintiffs’ responses to Ford U.S.’s and Ford Canada’s restated
10 objections totaled over 300 pages.

11 65. In November 2011, the Court granted the motions of Ford U.S. and Ford Canada for
12 summary judgment on the element of conspiracy. The Court also ruled on the parties’ voluminous
13 evidentiary objections, excluding a large percentage of Plaintiffs’ evidence. The Court did not rule upon
14 GM Canada summary judgment motion because, as described below, plaintiffs and GM Canada reached
15 a settlement, while its summary judgment motion was pending.

16 **H. Ford’s Bill of Costs**

17 66. After prevailing on their summary judgment motions, Ford U.S. sought recover its
18 litigation costs pursuant to Code Civ. Proc. §§ 1032 and 1033.5., and plaintiffs litigated that issue as
19 well. Ultimately Judge Kramer ordered the plaintiffs to pay Ford’s Bill of Costs which when paid,
20 totaled \$199,956.81, with interest. The Court of Appeal later upheld that order. Attached hereto as
21 **Exhibit W** is a true and correct copy of the Order on Costs entered herein on July 10, 2012, which
22 ordered that Ford U.S. would recover its litigation costs from the individual named Plaintiffs.

23 **II. PLAINTIFFS’ EFFORTS ON BEHALF OF THE CLASS DURING SECOND 10-YEAR**
24 **STAGE OF CASE: 2012 - 2022**

25 67. By 2012, the MDL Action had ended following final approval of the Toyota/CADA
26 settlements (discussed below), General Motors and Chrysler had declared bankruptcy, this Court had
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1 granted final approval of the GM Canada settlement (discussed below), and the Court had granted
2 summary judgment in favor of Ford U.S., Ford Canada, Honda, and Nissan.

3 68. Plaintiffs appealed the Court's orders granting summary judgment in favor of Ford U.S.
4 and Ford Canada. Success of this Action thus hinged on whether Plaintiffs' counsel's efforts on appeal
5 would be successful.

6 **A. Appeal of Summary Judgment Decision on the Element of Conspiracy**

7 69. As noted, Plaintiffs appealed the summary judgments in favor of Ford U.S. and Ford
8 Canada. In June 2012, Plaintiffs filed their opening brief, totaling 65 pages, along with an exhaustive
9 joint appendix of evidence totaling over 26,000 pages of exhibits. Ford U.S. and Ford Canada filed their
10 reply brief, totaling 67 pages, in September 2012. Plaintiffs followed with their reply brief on October
11 30, 2012.

12 70. Given the large record, and the importance of the appeal, Plaintiffs' counsel spent a
13 significant amount of time preparing for the oral argument before the Court of Appeal.

14 71. Plaintiffs' counsel's efforts on appeal were successful. On July 5, 2016, the Court of
15 Appeal issued its long-awaited decision, affirming the summary judgment in favor of Ford U.S., but
16 reversing the summary judgment in favor of Ford Canada. The case was remanded to this Court for
17 further proceedings.

18 72. From this point forward, the case proceeded against only a single defendant, Ford
19 Canada.

20 **B. Pretrial Proceedings on Remand—Further Motion Practice and Trial Preparation**

21 73. This case returned to the Court in early 2017 against the last remaining defendant, Ford
22 Canada. In March 2017, the Court set a trial date of March 19, 2018. The parties engaged in intensive
23 motion practice and trial preparation during the first half of 2017.

24 **1. Summary Judgment Motion on the Element of Impact/Causation**

25 74. Ford Canada immediately moved for summary judgment on the element of
26 causation/impact.

1 75. The Court reserved a hearing date on Ford Canada’s motion for summary judgment on
2 the element of impact/causation (“Impact MSJ”). The Impact MSJ has been previously filed in early
3 2010 but not ruled up on by the Court.

4 76. Before the hearing, Ford Canada filed a supplemental memorandum of law in support of
5 the Impact MSJ, to which Plaintiffs responded in April 2017. Ford Canada filed its reply that same
6 month.

7 77. On May 4, 2017, the Court heard oral argument on the Impact MSJ. The Impact MSJ
8 involved highly technical arguments that were expert-intensive, which required extensive preparation by
9 Plaintiffs’ counsel. Further, during the hearing, the ordered Ford Canada to extract its key objections to
10 Plaintiffs’ evidence of impact/causation, and for Plaintiffs to extract their responses. Because Ford
11 Canada had asserted its objections in its reply briefing on its Impact MSJ, to which Plaintiffs were
12 afforded no opportunity to respond, Plaintiffs’ counsel prepared and submitted responses to Ford
13 Canada’s extracted objections at this time. The parties submitted these extractions and responses on May
14 15, 2017.

15 78. On May 16, 2017, the Court issued its order denying Ford Canada’s Impact MSJ. A true
16 and correct copy of this order is attached hereto as **Exhibit G**.

17 **2. Res Judicata Motion**

18 79. Separately, in April 2017, Ford Canada filed a motion for entry of judgment on the basis
19 of res judicata and issue preclusion. Ford Canada asserted that the summary judgment orders entered in
20 favor of Ford Canada in the federal MDL Action precluded Plaintiffs’ claims here. Plaintiffs filed their
21 opposition to this motion on May 24, 2017. Ford replied on June 5, 2017.

22 80. On June 15, 2017, the Court heard oral argument on the res judicata motion. Thereafter,
23 on June 16, 2017, the Court granted Ford Canada’s motion, and shortly thereafter, entered judgment in
24 favor of Ford Canada.

1 **3. Litigation re Ford’s Bill of Costs and Service of Writ of Execution Directly**
2 **on Named Plaintiffs**

3 81. During this same time period, Ford U.S. sought to enforce payment of an earlier award of
4 approximately \$200,000 in costs made by this Court in 2012.

5 82. In May 2017, Ford U.S. filed Writs of Execution (Money Judgment), directing the sheriff
6 or marshal in the counties where the named Plaintiffs lived to enforce judgments totaling nearly
7 \$300,000 (including interest) against each named Plaintiff personally. Named Plaintiff Jason
8 Gabelsberg, who was later disclosed as a trial witness for Plaintiffs, was named as a judgment debtor in
9 a Writ of Execution filed by Ford Canada. A true and correct copy of the Writ of Execution naming
10 Mr. Gabelsberg as a judgment debtor is attached hereto as **Exhibit H**. In short, Ford Canada was
11 attempting to make each named Plaintiff personally liable to pay the cost award.

12 83. Plaintiffs quickly moved to enjoin enforcement of the Writs of Execution. The Court
13 ordered the parties to provide further briefing on this issue, which the parties filed in June 2017. The
14 Court thereafter ordered Plaintiffs to pay Ford U.S.’s costs in the amount of \$199,464.98. *See Order*
15 *Denying in Part and Granting in Part Pls.’ Mot. to Tax Costs of Ford US, Aug. 22, 2017, at 4* (a true and
16 correct copy of which is attached hereto as **Exhibit I**).

17 84. On August 28, 2017, Plaintiffs’ counsel attempted to tender payment of the cost award to
18 Ford U.S.’s counsel’s office. Ford U.S.’s counsel refused to accept the payment unless payment came
19 directly from the named Plaintiffs personally. Counsel for Ford U.S. threatened that it intended to
20 execute the costs award against the named Plaintiffs.

21 85. On August 31, 2017, Plaintiffs’ counsel deposited checks with the Court, made out to
22 Ford Motor Company, to pay the cost award in the amount of \$199,464.98, plus interest in the amount
23 of \$491.83. True and correct copies of these checks are attached hereto as **Exhibit F**. The funds used to
24 pay the costs award and accrued interest were sourced from the attorneys’ fees awarded by this Court in
25 connection with the earlier settlement with defendant GM Canada.

26 86. Plaintiffs thereafter moved for entry of an order entering satisfaction of judgment. The
27 Court heard argument on September 29, 2017 and advised counsel for Ford U.S. to go to the Court
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1 Clerk's office and pick up the checks deposited by Plaintiffs' counsel. Only then did Ford U.S. abandon
2 its efforts to enforce collection of the cost award directly from the named Plaintiffs personally.

3 **4. Trial Preparation**

4 87. Prior to the Court's entry of judgment in favor of Ford Canada on the basis of res
5 *judicata*, Plaintiffs' counsel had plowed straight ahead into preparation for the trial then set for March
6 2018. The parties negotiated a pretrial schedule setting forth the deadlines for each of the key tasks—
7 such as designation of experts, exchange of trial witness and exhibit lists, designation of deposition
8 extracts, and filing motions *in limine*, among others—that needed to be completed before trial could
9 begin. On May 19, 2017, the Court entered a pretrial schedule that included these tasks. During this time
10 period, Plaintiffs' counsel organized teams of attorneys and paralegals and began working toward
11 completion of these pretrial tasks.

12 **C. Appeal of Res Judicata Decision and Bill of Costs Order**

13 88. Plaintiffs appealed the Court's order granting judgment in favor of Ford Canada on the
14 basis of *res judicata*. On January 29, 2018, Plaintiffs filed their opening appellate brief totaling 68 pages,
15 along with an appendix comprised of 1424 pages of exhibits. Ford Canada responding on April 30, 2018
16 with a 73-page brief, its own appendix of evidence, and over 400 pages of materials of which Ford
17 Canada sought judicial notice. Plaintiffs followed with a 72-page reply brief.

18 89. Plaintiffs simultaneously appealed this Court's order finding that Ford U.S. was entitled
19 to \$199,464.98 in costs. The parties fully briefed this appeal.

20 90. The Court of Appeal heard argument on the appeal of the *res judicata* order and the cost
21 award order on the same day. Plaintiffs' counsel spent substantial time preparing for oral argument.

22 91. Plaintiffs' counsel's efforts on appeal were successful with regard to the *res judicata*
23 order. On September 25, 2019, the Court of Appeal vacated the entry of judgment in favor of Ford
24 Canada and remanded the case to this Court for further proceedings. The Court of Appeal, however,
25 affirmed Judge Karnow's order awarding costs to Ford U.S.

1 **D. Preparation for Trial**

2 92. On December 10, 2020, this Court set a firm trial date of February 7, 2022. Thus began
3 an intense period of trial preparation and additional motion practice before the Court.

4 **1. Motion Practice**

5 93. Ford Canada almost immediately moved for an order modifying the Class definition, to
6 carve off Class Members' purchases of Fords, Hondas, and Nissans on the grounds that Ford U.S.,
7 Honda, and Nissan had each obtained summary judgment on the element of conspiracy, and so no injury
8 could result from Class Members' purchases of those vehicles. The parties fully briefed the motion, and
9 the Court heard oral argument. On March 30, 2021, the Court denied the motion. However, the Court
10 left open the possibility that Ford Canada could seek to exclude purchasers of Fords, Hondas, and
11 Nissans through a different type of motion, such as a summary judgment motion, at a later time. This
12 meant that Plaintiffs' counsel continued to face the risk that the claims of a significant portion of the
13 Class could still be dismissed prior to the start of trial.

14 94. On October 5, 2021, Ford Canada filed a motion for summary judgment on the element
15 of impact/causation, essentially based on the same arguments raised in its motion to modify the class—
16 i.e., that claims of Class Members who purchased Ford, Honda, and Nissan vehicles should be
17 extinguished because such Class Members, Ford Canada asserted, were not harmed by the alleged
18 conspiracy. The briefing and statements of fact were substantial. After oral argument, the Court denied
19 the motion by order dated January 4, 2022.

20 95. On October 29, 2021, Plaintiffs filed a motion for judgment on the pleadings on the issue
21 of whether Ford Canada's alleged conduct amounted to a *per se* violation of the Cartwright Act such that
22 the jury should not be allowed to hear evidence of Ford Canada's business justifications for its conduct,
23 or whether the "rule of reason" analysis would apply. The motion had critical implications as to what
24 evidence offered by Ford Canada would, or would not, be admissible when offered to justify a
25 horizontal agreement that Plaintiffs might prove. On December 17, 2021, the Court denied the motion
26 with leave for Plaintiffs to renew it at trial.
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1 96. On October 29, 2021, the parties filed their motions in limine. Plaintiffs filed seven
2 motions in limine, while Ford Canada filed three motions. The motions in limine raised evidentiary
3 issues ranging from the straightforward to the highly complex. The filing of these motions followed
4 extensive meet and confer sessions between the parties, who had earlier exchanged larger lists of
5 proposed motions in limine. The parties negotiated and memorialized agreements on a number of
6 proposed motions in limine. The parties filed those motions in limine that remained in dispute. After full
7 briefing, the Court heard oral argument on the motions in limine and issued rulings on all of them.

8 **2. Expert Testimony Preparation and *Sargon* Motions**

9 97. Plaintiffs' counsel engaged in extensive efforts to prepare to present expert testimony at
10 trial, and to counter the anticipated expert testimony to be offered by Ford Canada. After this Court set a
11 trial date for February 7, 2022, Plaintiffs' counsel learned that the testifying expert it had engaged from
12 the beginning of this complex case, Professor Robert Hall of Stanford University, could not continue in
13 a testifying role due to the passage of time and advanced age. *See* Decl. of Joseph J. Tabacco, Jr. in
14 Supp. of Opp. to Mot. to Exclude Dr. Netz (Oct. 27, 2021), at ¶¶ 6-7 (a true and correct copy of which is
15 attached hereto as **Exhibit J**). Plaintiffs' counsel were thus forced at the eleventh hour to replace Prof.
16 Hall and the team of consulting economists at Cornerstone Research. Plaintiffs' counsel retained Dr.
17 Janet Netz of the University of California at Berkeley to testify at trial and a team of consulting
18 economists and analysts at the firm applEcon.

19 98. Plaintiffs' counsel spent considerable time working with Dr. Netz and the applEcon team
20 to prepare for trial. A first task for Dr. Netz and her team was to review the voluminous records
21 pertinent to Dr. Netz forming an opinion in the case. This review included the review of the eight
22 different, detailed, and technical reports prepared by Prof. Hall beginning with his first report in July
23 2005 and ending with his last report in 2009. Dr. Netz also collected all of the supporting market data
24 and other information in order to replicate the statistical and econometric models that Prof. Hall had
25 utilized to form his opinions. In addition, Prof. Hall was deposed four times over seven days, and Dr.
26 Netz analyzed that testimony. For their part, the defendants in this action had retained eleven experts,
27 including eight economists, all of which produce one or more reports. Dr. Netz and her team at
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1 applEcon had to understand rebuttal points for the various points and propositions contained in the
2 defense expert reports. Before she could offer opinions in this case, Dr. Netz and her team performed
3 their own independent analysis and verification of the methodologies employed and conclusions reached
4 by Prof. Hall. While reaching substantially the same conclusions and opinions as Prof. Hall, there were
5 differences.

6 99. Plaintiffs disclosed their new testifying expert and prepared Dr. Netz for a pre-trial
7 deposition. Dr. Netz prepared for and gave a full day of pretrial deposition testimony under examination
8 by Ford Canada. Finally, Dr. Netz and her team assisted counsel in preparing for the depositions of the
9 two economic expert witnesses that Ford Canada disclosed a few months prior to trial.

10 100. Ford Canada disclosed as trial expert witnesses two testifying economists (Dr. Kevin
11 Murphy and Dr. Howard Marvel) and one foreign (U.K.) law expert, Dr. Philip Marsden. Plaintiffs
12 deposed Drs. Murphy and Marvel.

13 101. Ford Canada moved under *Sargon Enter., Inc. v. Univ. of Southern Calif.*, 55 Cal. 4th 747
14 (2012) to exclude plaintiffs' expert economist, Dr. Netz, from testifying at trial. The parties' briefing
15 and arguments were highly technical, involving complex econometric methods, including a model of
16 consumer demand known as "Nested Logit Model." In addition, Ford Canada attacked the damages
17 methodology utilized by Dr. Netz, which was a benchmark of an event involving European Union
18 regulation of the automobile market and an analogous loosening of new vehicle export restraints as
19 between Ireland and the United Kingdom. The Court held oral argument denied Ford Canada's Sargon
20 motion on December 17, 2021.

21 102. Plaintiffs filed a *Sargon* motion to exclude the testimony of Dr. Marsden, which the
22 Court denied on December 7, 2021.

23 3. Depositions

24 103. In addition the expert depositions of Drs. Netz, Murphy, and Marvel, Plaintiffs' counsel
25 also prepared for and defendant the depositions of two named Plaintiffs, Jason Gabelsberg and Scott
26 Young. Plaintiffs counsel further took the depositions of two new Ford Canada witnesses disclosed on
27 Ford Canada's trial witness list.

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4. Trial Exhibits, Witnesses, and Deposition Excerpt Designations

104. Plaintiffs' counsel spent a considerable amount of time reviewing the vast documentary evidence in the case in order to designate exhibits for trial. Plaintiffs identified 291 trial exhibits, and Ford Canada identified 373 trial exhibits. Plaintiffs' counsel necessarily spent time reviewing all of Ford Canada's 373 trial exhibits, examining admissibility of each.

105. Plaintiffs' counsel conducted extensive review of the deposition testimony taken in the case and identified 76 trial witnesses. Ford Canada identified 63 trial witnesses.

106. Plaintiffs' counsel undertook extensive efforts in making deposition excerpt designations, counter-designations, and objections to Ford Canada's designations. Plaintiffs' counsel expended hundreds of hours to review pre-trial deposition transcripts and video of scores of witnesses to carefully select testimony to publish or show the jury at trial that provided foundation for key documentary evidence or explained actions by Ford Canada and other witnesses. Plaintiffs' counsel were forced to resurface and otherwise rehabilitate old and damaged DVD-ROMs on which the video deposition testimony had been stored for upwards of 15 years, salvaging most but not all of the video testimony. Ultimately, deposition testimony designated by plaintiffs included the pretrial deposition testimony of non-party Canadian vehicle exporters, and executives from Ford Canada, Toyota Canada, Chrysler Canada, Chrysler U.S., General Motors, Honda Canada and Nissan Canada, as well as CADA and other Canadian trade associations. The parties duly filed their exhibit lists, witness lists and exchanged designated deposition testimony and objections.

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5. Jury Instructions, Jury Questionnaire, and Trial Brief

107. The parties spent considerable time drafting and conferring on jury instructions (over multiple meet and confer sessions). The jury instructions were submitted to the Court with several key instructions subject to dispute.

108. The parties also drafted, met and conferred, and submitted a jury questionnaire. The parties prepared and filed trial briefs.

1 **E. Mediation and Settlement with Ford Canada**

2 109. The settlement reached by Plaintiffs with Ford Canada was unquestionably the result of
3 extensive and intensive arm’s-length negotiations. After more than 18 years of litigation, following a
4 final all-day mediation session, an agreement in principle was reached just three weeks prior to the start
5 of trial. The final settlement negotiations took place largely as a result of the efforts of a very
6 experienced, nationally recognized, and highly respected mediator, the Honorable Edward A. Infante
7 (Ret.), a former federal magistrate judge with decades of experience mediating high stakes complex
8 litigation. I direct the Court’s attention to the declaration submitted by Judge Infante in support of
9 preliminary approval of the settlement for a summary of his credentials and experience. For the Court’s
10 convenience, a true and correct copy of Judge Infante’s declaration is attached hereto as **Exhibit K**.

11 110. Plaintiffs and Ford Canada first attempted mediation in 2012 with the assistance of
12 mediator Martin Quinn, Esq. of JAMS. That mediation occurred while the Court’s order granting
13 summary judgment in favor of Ford Canada was on appeal. The parties were unable to reach a resolution
14 at that time. Plaintiffs’ appeal was ultimately successful, and the case continued forward in this Court.

15 111. More recently, Plaintiffs and Ford Canada conducted a total of three mediation sessions
16 during the period June 2021 to February 2022. I was involved in settlement negotiations for Plaintiffs
17 and the Class, along with partners Joseph J. Tabacco, Jr. and Matthew D. Pearson from my firm and a
18 number of highly skilled and experienced antitrust litigators who make up Plaintiffs’ Coordinating
19 Committee, including William Bernstein and Eric Fastiff of Lieff Cabraser Heimann & Bernstein, LLP,
20 R. Alexander Saveri of Saveri & Saveri, Inc., and Tracy Kirkham of Cooper & Kirkham, P.C. These
21 attorneys, like me, have decades of experience litigating complex antitrust class actions and negotiating
22 landmark settlements on behalf of aggrieved consumers and businesses. All of these attorneys have been
23 involved in this Action and/or the related federal multidistrict action from day one and are intimately
24 familiar with the facts, the claims asserted, and the legal and factual issues present in this case.

25 112. Similarly, Ford Canada was represented in the settlement negotiations by highly
26 experienced and exceptionally qualified counsel at O’Melveny & Myers LLP, including
27 Michael Tubach, Anna Pletcher, and Randall Edwards. I am informed and believe that these attorneys

1 enjoy a national reputation for excellence and have decades of experience litigating antitrust class
2 actions and other complex litigation, including representing Ford in the past.

3 113. The first mediation session took place on June 22, 2021. The attorneys mentioned above
4 met in person in San Francisco with Judge Infante. Also present was Craig Halseth, a highly ranked in-
5 house counsel at Ford. Prior to this first session, the parties each prepared, exchanged, and presented to
6 Judge Infante detailed and comprehensive mediation briefs setting forth the factual background, the key
7 issues, the parties' respective views of the evidence and the law, and other relevant matters. The first
8 mediation session, however, proved to be unsuccessful and no resolution was reached at that time.

9 114. The parties agreed to hold a further mediation session before Judge Infante on
10 January 14, 2022. The parties prepared and presented to Judge Infante confidential letters updating him
11 on the proceedings and their current respective views of the case. The same attorneys and Ford
12 representative from the prior session attended this session as well. Intense negotiations lasted nearly the
13 full day, with the parties narrowing their positions as far as they could. At that point, the parties agreed
14 to permit Judge Infante to make a mediator's proposal. Judge Infante made his proposal, which the
15 parties ultimately accepted. The parties drafted and signed a term sheet that day reflecting the
16 agreement-in-principle, which provided for payment by Ford Canada of \$82 million for the benefit of
17 the Class. I was informed, however, that the agreement in principle was subject to approval by the Board
18 of Directors of Ford Canada as well as the Board of Directors of Ford Motor Company.

19 115. On February 1, 2022, I was informed by Ford Canada's counsel that the respective
20 Boards of Ford Canada and Ford Motor Company had approved the agreement-in-principle and had
21 authorized Ford Canada's counsel to negotiate a mutually acceptable written settlement agreement.

22 116. The parties spent the next few weeks spending substantial time and effort negotiating the
23 written settlement agreement. The parties reached an impasse on the language of several provisions in
24 the agreement. These disagreements required a further mediation session before Judge Infante, which
25 took place on February 28, 2022. With Judge Infante's assistance, the parties were able to resolve the
26 remaining issues and reach agreement on language for the settlement agreement that is now before the
27 Court for final approval.

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F. Prior Settlements

117. Judge Hornby in the federal MDL Action approved two settlements, with defendants Toyota Motor Sales, U.S.A. (“Toyota”) and the Canadian Automobile Dealers Association (“CADA”), for \$35 million and \$700,000 respectively, for a combined \$35.7 million (the “Toyota/CADA” settlements) and prospective injunctive relief and cooperation. The Toyota/CADA settlements were nationwide settlements, resolving all the coordinated actions: the federal MDL, this California Action, and the other State Actions.

118. Plaintiffs’ counsel requested only a 13.2% attorneys’ fee from the Toyota/CADA settlement fund (which, with interest, had grown from \$35.7 million to \$37.3 million). Judge Hornby awarded the requested fee, a total of \$4.92 million. *See **Exhibit L*** (Decision and Order on Motions for an Award of Attorney Fees and Reimbursement of Expenses, No. 03-MD-01532 (D. Me. Feb. 1, 2012), ECF No. 1219 (“Hornby 2012 Fee Order”), at 1, 4, 8. Plaintiffs’ counsel intentionally requested a lower fee amount so that they would be in a position to distribute meaningful cash to settlement class members who submitted claims.

119. In connection with the Toyota/CADA settlements, plaintiffs’ counsel requested 55% of their unreimbursed litigation expenses, an amount equal to \$6,270,000, which Judge Hornby approved. *See **Exhibit L*** (“Hornby 2012 Fee Order”), at 8.

120. The third settlement was entered between defendant General Motors of Canada, Ltd. (“GMCL”) and the plaintiffs in this California Action and the three remaining other State Actions (Florida, New Mexico, and Wisconsin). *See **Exhibit D*** (Kramer 2012 Fee Order), at 1:6-9. GMCL agreed to pay \$20,150,000 for a release of claims from the class members in the four states. *Id.*

121. In connection with the GMCL settlement, Judge Kramer awarded attorneys’ fees representing 33.3% of the settlement fund, an amount totaling \$6,709,950. **Exhibit D** (Kramer 2012 Fee Order), at 5:1-5. In addition, Judge Kramer awarded the requested amount for unreimbursed expenses of \$5.2 million. *Id.* at 6:5-18. Combined with the expenses ordered to be reimbursed by Judge Hornby in connection with the Toyota/CADA settlements, the combined \$11.47 million in expense reimbursement would nearly, but not completely, reimburse plaintiffs’ counsel’s recognized expenses. The less-than

1 complete reimbursement was not a function of finding any submitted expenses un-reimbursable, but
2 rather of the incurring of further expert consulting invoices after the date expenses were submitted. *Id.* at
3 6:11-13 (finding “If Plaintiffs’ counsel’s requests for costs are granted here and in the federal action,
4 counsel will not be fully reimbursed for the approximately \$12 million expended in litigating these
5 actions.”).

6 **G. Notice to the Class of the Ford Canada Settlement**

7 122. The Court’s preliminary approval order dated June 23, 2022 appointed A.B. Data, Ltd. as
8 the notice and claims administrator for the Ford Canada settlement (“Settlement Administrator”). The
9 Court also approved the Notice Plan proposed by Plaintiffs, which called for direct mailed notice to be
10 provided Class Members using data collected from IHS Markit and publication notice using both print
11 and digital media. The accompanying declaration of Eric Schachter from the Settlement Administrator
12 describes the notice efforts to date.

13 123. One issue that arose concerns direct mailed notice using address data from the California
14 Department of Motor Vehicles (“California DMV”). I am informed and believe that IHS Markit, through
15 its subsidiary R.L. Polk & Co. (“Polk”), collects vehicle owner and/or lessee contact information from
16 state motor vehicle departments, including from the California DMV. I am informed and believe that the
17 California DMV places restrictions on the information collected by Polk such that Polk is not authorized
18 to release vehicle owner/lessee contact information unless a specific request is made to the California
19 DMV and the California DMV approves the request.

20 124. I am informed and believe that Polk made a specific request to the California DMV for
21 authorization to release Class Member contact information to the Court-appointed Settlement
22 Administrator. As part of this request, I am informed and believe that my partner at Berman Tabacco,
23 Matthew D. Pearson, prepared and submitted a declaration to the California DMV, which explained the
24 nature of this case and that a settlement had been reached with Ford Canada, that the Court had
25 preliminarily approved the settlement, and that the Court had directed notice to be provided to Class
26 Members, including by direct mailed notice. The declaration attached the Court-approved Notice Plan,
27 and my declaration described how direct mailed notice would be effectuated using contact information
28

1 obtained from IHS Markit/Polk. The declaration further submitted that disclosure of the California DMV
2 records to the Settlement Administrator was appropriate under Vehicle Code section 1808.21.

3 125. On July 28, 2022, Polk informed Plaintiffs' counsel that the California DMV was not
4 inclined to approve Polk's request to release the vehicle owner/lessee contact information to the
5 Settlement Administrator. Thereafter, Plaintiffs' counsel prepared a draft motion for an order from the
6 Court directing the California DMV to approve release of the Class Member address data to the
7 Settlement Administrator. Plaintiffs' counsel further prepared and served a letter on the California
8 DMV's Legal Affairs Division, which attached the draft motion and proposed order, seeking the
9 California DMV's non-opposition to the proposed motion. Plaintiffs' counsel further attempted to
10 communicate with the Chief Counsel for the California DMV via email and forwarded a copy of the
11 letter, draft motion and proposed order, and further supporting materials.

12 126. On August 10, 2022, Polk informed Plaintiffs' counsel that the California DMV had
13 approved the request to release the Class Member address data to the Settlement Administrator. I am
14 informed and believe that Polk provided the Class Member address data to the Settlement Administrator
15 on August 10, 2022. I am informed and believe that the Settlement Administrator will need
16 approximately two weeks to process the address data, print postcard notices, and mail the postcard
17 notices.

18 **III. CLASS MEMBER SERVICE AWARDS**

19 127. Counsel request that service awards of \$5,000 each be paid to the two named Plaintiffs
20 (Jason Gablesberg and W. Scott Young) and one Class member (Lindsay Humphrey) who were
21 disclosed on Plaintiffs' trial witness list and who were set to testify at trial in February 2022.

22 128. Mr. Gablesberg, Mr. Young, and Ms. Humphrey were all deposed before trial.
23 Mr. Gablesberg and Mr. Young have been named plaintiffs in this action since 2003, while Ms.
24 Humphrey was a named plaintiff in the federal MDL Action, but voluntarily dismissed her Cartwright
25 Act claim from the federal MDL Action without prejudice in 2009 in order to have her claim litigated in
26 this California Action as part of the certified California Class.

1 129. All three took action to protect Class Members by participating in pretrial discovery,
2 sitting for deposition, producing documents, and keeping abreast of litigation events for an
3 extraordinarily long time.

4 130. The named Plaintiffs took a financial risk in the case. As discussed above, when Ford
5 U.S. succeeded in taxing Plaintiffs for its taxable costs in the amount of nearly \$200,000, Ford U.S.
6 sought to collect that money from the named Plaintiffs *personally*. The issue was litigated before Judge
7 Karnow in 2017, as Ford at first refused a tender of payment by counsel on behalf of plaintiffs and
8 personally served plaintiffs with writs of execution to collect the costs. Ultimately, as noted above,
9 Judge Karnow advised Ford U.S.'s counsel to pick up the checks for the cost award and interest that
10 Plaintiffs' counsel had deposited with the Court Clerk's office. Only then did Ford U.S. abandon its
11 efforts to enforce collection of the costs award directly from the named Plaintiffs.

12 **IV. PLAINTIFFS' COUNSEL'S FEES AND EXPENSES**

13 131. This Action sprung originally from Plaintiffs' counsel's investigation in 2002,
14 which resulted in initial complaints filed in early 2003. Since 2012, this Action has been spearheaded
15 by six San Francisco-based law firms: Berman Tabacco; Cooper & Kirkham, P.C.; Saveri & Saveri,
16 Inc.; Lieff Cabraser Heimann & Bernstein, LLP; Zelle LLP; and the Law Offices of Francis O.
17 Scarpulla. When the case approached trial in 2021-22, as detailed below, the Zelle and Scarpulla firms
18 voluntarily withdrew from further active participation in trial preparation and further and financial
19 support. Throughout the period 2012-2022, as evidenced and measured by the investment of time and
20 money, Berman Tabacco chaired the overall effort to lead the pretrial litigation and be the lead trial
21 counsel. Since 2012, the six law firms advanced substantial, additional expenses, mostly related to
22 expert opinion testimony and for aspects of trial preparation, and expended an additional \$9,842,434.25
23 in collective lodestar based on 13,510.05 hours of billable attorney and paraprofessional time.

24 132. Counsel for the six law firms leading the efforts on behalf of Plaintiffs and the Class have
25 each submitted declarations detailing the efforts they each made to prosecute this case, the associated
26 hours spent by attorneys and paraprofessionals and their hourly rates, each firms' lodestar, and the
27 expenses each firm incurred. See **Exhibits M-O** attached hereto (Berman Tabacco's lodestar and
28

expenses); Declaration of Eric B. Fastiff, filed herewith, ¶¶6-12 & Exs. B-D (Lieff Cabraser’s lodestar and expenses); Declaration of Tracy R. Kirkham, filed herewith, ¶¶5-10 & Exs. B-D (Cooper & Kirkham’s lodestar and expenses); Declaration of R. Alexander Saveri, filed herewith, ¶¶5-10 & Exs. B-D (Saveri & Saveri’s lodestar and expenses); Declaration of Judith A. Zahid, filed herewith, ¶¶5-10 & Exs. B-D (Zelle’s lodestar and expenses); Declaration of Francis O. Scarpulla, filed herewith, ¶¶6-11 & Exs. B-D (Scarpulla firm’s lodestar and expenses). A summary of the lodestar incurred by these six firms is set forth in the following tables:

TABLE #1
Plaintiffs’ Counsel’s Lodestar - Inception to Nov. 30, 2011

Firm	Hours	Lodestar
Berman Tabacco	38,529.00	\$ 12,833,031.25
Cooper & Kirkham	6,317.70	\$ 3,279,451.00
Lieff Cabraser	2,398.50	\$ 1,133,400.50
Saveri & Saveri	2,867.00	\$ 1,412,062.50
Zelle LLP	11,220.25	\$ 4,863,913.75
Law Office of Francis O. Scarpulla	635.50	\$ 511,800.00
TOTAL	61,967.95	\$ 24,033,659.00

TABLE #2
Plaintiffs’ Counsel’s Lodestar - Dec. 1, 2011 to June 30, 2022

Firm	Hours	Lodestar
Berman Tabacco	7,691.60	\$ 5,776,420.00
Cooper & Kirkham	1,335.80	\$ 1,152,752.50
Lieff Cabraser	760.00	\$ 453,946.00
Saveri & Saveri	890.05	\$ 750,278.75
Zelle LLP	2,589.70	\$ 1,462,872.50
Law Office of Francis O. Scarpulla	242.90	\$ 246,164.50
TOTAL	13,510.05	\$ 9,842,434.25

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//
//

TABLE #3		
Plaintiffs' Counsel's Lodestar - Inception to June 30, 2022		
Firm	Hours	Lodestar
Berman Tabacco	46,220.60	\$ 18,609,451.25
Cooper & Kirkham	7,653.50	\$ 4,432,203.50
Lieff Cabraser	3,158.50	\$ 1,587,346.50
Saveri & Saveri	3,757.05	\$ 2,162,341.25
Zelle LLP	13,809.95	\$ 6,326,786.25
Law Office of Francis O. Scarpulla	878.40	\$ 757,964.50
TOTAL	75,478.00	\$ 33,876,093.25

A. Lodestar

133. Plaintiffs' counsel's lodestar for the six firms as shown in the Tables above from December 1, 2011 to June 30, 2022 is \$9,842,434.25. It is important to note that a significant amount of work on the litigation was undertaken by both the firms in the MDL and the California and Other State law firms from the inception of the case back in 2002 through November 30, 2011. All of this lodestar was reported to the Court in connection with the GM Canada final settlement and fee and expense approval. Plaintiffs' counsel in the aggregate for all of the firms that worked on the litigation reported \$54 million of total lodestar from inception through November 30, 2011. *See Exhibit D* (Kramer 2012 Fee Order), at 5:10-11. Another lodestar crosscheck would be to add all of this prior lodestar to the \$9,842,434.25 in additional lodestar incurred since Nov. 30, 2011. Doing so results in a total lodestar for all firms who worked on the case of over \$63.8 million. The lodestar multiplier for a 33.3% fee from the \$82 million Ford Canada Settlement would equal 0.42.

134. While one benchmark would be to look to the \$63.8 million of lodestar for a cross check of the reasonableness of the 33.3% of the Settlement Fund requested here, We recognize the potential burden that a lodestar cross check on the entire \$68.8 Million lodestar among dozens of law firms might present. Accordingly, we are limiting the lodestar cross check just to the six law firms that actively litigated the case from December 1, 2012 to the present. With regard to the new lodestar now reported to the Court, that is for the period December 1, 2011 through June 30, 2022 reflected on Table 2.

Counsel conducted a detailed peer review of the time records submitted by the six law firms. This peer-

1 review process involved certain the firms reviewing the detailed time records of one or more of the five
2 other firms. This review included a line-by-line assessment of whether each time entry: (1) included an
3 adequate description of the work conducted; (2) represented a task reasonably necessary to the
4 prosecution of this action; and (3) reflected an appropriate length of time for that task. Following this
5 review, Plaintiffs' counsel determined that the hours recorded as presented in the Tables above by the
6 six firms were reasonable and necessary to the advancement of this litigation.

7 135. Counsel's hourly rates are reasonable. The historical rates billed for attorneys range from
8 \$200 to \$1,325 per hour. Counsel's hourly rates are set forth in the declarations from four of the six
9 firms, with the exception of the Law Offices of Francis O. Scarpulla. These rates are reasonable given
10 the substantial experience of Plaintiffs' counsel in complex class actions and antitrust litigation.

11 136. The characteristics of this case meant the risk of nonpayment was present from the start
12 and remained present even as counsel ultimately advanced over \$13 million in litigation expenses at risk
13 of total loss.

14 137. Nor did the risk of nonpayment lessen over time. Even with the Toyota/CADA settlement
15 and GM Canada settlement (described below), in the last ten years, the six law firms undertook to
16 persevere in the litigation against Ford, and roll the dice to advance significant out-of-pocket costs, win
17 two appeals of case-ending judgments, and thoroughly prepare the case for trial, expending an additional
18 13,500 hours and \$9.8 million in lodestar in the process, all in the face of the significant risk that none of
19 their work over the last ten years would be compensated.

20 **B. Unreimbursed Expenses**

21 138. Plaintiffs' counsel have incurred substantial expenses in prosecuting this action to its
22 successful conclusion. The following chart summarizes the expenses for which Plaintiffs' counsel seek
23 reimbursement:

24 //

25 //

26 //

1 **Plaintiffs’ Counsel’s Expense Summary**

2

DESCRIPTION	AMOUNT
Litigation Fund Expenses*	\$1,291,249.82
Berman Tabacco Expenses**	\$289,596.82
Cooper & Kirkham, PC Expenses**	\$8,925.58
Lieff Cabraser Heimann & Bernstein, LLP Expenses**	\$1,843.39
Saveri & Saveri, Inc. Expenses**	\$1,572.56
Zelle LLP Expenses**	\$25,635.81
TOTAL EXPENSES REQUESTED:	\$1,618,823.98

8

9 *Does not include any balance in litigation fund.

10 **Does not include contributions made to litigation fund.

11 139. The following describes the main categories of expenses incurred by Plaintiffs’ counsel
12 that remain unreimbursed from any prior settlement.

13 **1. Expert fees**

14 140. As described below, in 2021, Plaintiffs’ counsel had to retain a new testifying economics
15 expert and a new economics consulting firm just months before the start of trial. Plaintiffs’ new expert
16 and consultants were required to spend considerable time reviewing and vetting the extensive work
17 completed by Plaintiffs’ prior testifying expert and consultants, reviewing and analyzing defendants’
18 experts’ reports (totaling over a dozen reports), preparing for deposition, and preparing for trial
19 testimony. For this crucial expert work, Plaintiffs’ counsel incurred \$736,728.61 in expenses for expert
20 fees.

21 **2. Trial graphics and jury consultants**

22 141. A second large category of expenses relates to the preparation of trial exhibits and trial
23 presentations and demonstratives. This work was performed in conjunction with counsel by well-
24 regarded trial graphic experts and was critical to the proper preparation of the case for trial, and totaled
25 \$7,055.50.

1 142. Other significant expense categories included the employment of jury consultants and the
2 associated work undertaken with jury focus groups. For this work, counsel retained Sonia Chopra,
3 Ph.D., of Chopra Koonan Litigation Consulting, which resulted in total billings of \$17,460.00.

4 **3. Court reporters, videography**

5 143. Other categories of expenses include expenditures for court reporters and videographers
6 for depositions and for court hearings, and the various costs related to the two major appeals to the
7 California Court of Appeal, and Ford Canada's efforts to appeal both decisions to the California
8 Supreme Court and the United States Supreme Court, as described below.

9 **4. Ford U.S.'s Bill of Costs**

10 144. Another significant cost was the Ford U.S.'s Bill of Costs that was taxed against
11 Plaintiffs in the amount of \$199,464.98 and \$491.83, and which cost Plaintiffs' counsel advanced on
12 behalf of Plaintiffs by payment to Ford U.S. Attached hereto as **Exhibit F** are true and correct copies of
13 checks showing this payment to Ford U.S.

14 **5. Mediator services**

15 145. Finally, the considerable but modest cost relative to the results achieved was Plaintiffs'
16 share of the JAMS mediation fees for the outstanding services of Judge Edward A. Infante (ret.) who
17 masterfully guided the parties through three rigorous, all-day mediation sessions that resulted in the \$82
18 million settlement now before the Court.

19 **6. Previously Unreimbursed Expenses**

20 146. Reimbursement is sought now for \$495,173.32 of expenses incurred before 2012 for
21 which counsel were not able to seek reimbursement in connection with the Toyota/CADA and GM
22 Canada settlements. The reason that \$495,173.32 of reasonable and necessary expenses could not be
23 reimbursed from the prior settlements is that through a clerical error, counsel underestimated the total
24 expenses actually incurred when they asked the Court to approve notice to the Toyota/CADA and
25 GMCL Settlement Classes. The notices stated that counsel would request reimbursement of expenses in
26 the amounts of \$6.27 million and \$5.2 million, respectively, from the Toyota/CADA and GM Canada
27 settlements, totaling \$11.47 million. *See* Supp. Decl. of Joseph J. Tabacco, Jr. in Supp. of Pls.' Appl. For
28

1 Attorneys' Fees, Expenses and Incentive Awards (Jan. 13, 2012) ("Tabacco Decl. Jan. 13, 2012"), at ¶8
2 (a true and correct copy of which is attached hereto as **Exhibit P**); Order Granting Preliminary Approval
3 of Proposed Settlement, Conditional Class Certification and Directing Dissemination of Notice to
4 California Class (Sept. 13, 2011), at Ex. C, p.1 (a true and correct copy of which is attached hereto as
5 **Exhibit Q**). However, the necessary and reasonable expenses ultimately totaled \$11,965,173.32, as
6 documented to the Court. *See* **Exhibit P** (Tabacco Decl. Jan. 13, 2012), at ¶ 8. This amounts to a
7 difference of \$495,173.32.

8 147. This shortfall of expense reimbursement was recognized by Judge Kramer in this Court's
9 order approving attorneys' fees and expenses in connection with the GMCL settlement.

10 Plaintiffs' counsel have incurred approximately \$12 million in costs to prosecute this
11 action, the federal action, and the other various state actions ... The court is aware that
12 Plaintiffs' counsel have sought reimbursement of \$6.27 million from the proceeds of the
13 Toyota and CADA settlements in the federal action ... If Plaintiffs' counsel's requests for
costs are granted here and in the federal action, counsel will not be fully reimbursed for
the approximately \$12 million expended in litigating these actions.

14 **Exhibit D** (Kramer 2012 Fee Order), at 6:5-13. As the sum was expended and unreimbursed for the last
15 ten years, the Class benefitted from the paid costs (overwhelmingly for expert expenses) and it is proper
16 to reimburse Class counsel now, out of the Ford Canada settlement proceeds.

17 **C. Litigation Fund Accounting**

18 148. Berman Tabacco has maintained a litigation fund for this Action, which was funded
19 through contributions by the law firms Berman Tabacco, Cooper & Kirkham, Lieff Cabraser, and Saveri
20 & Saveri to pay for reasonable and necessary litigation expenses to prosecute this Action. These
21 expenses are detailed *supra* ¶¶136-44. Total contributions made to the litigation fund were
22 \$1,295,173.42. The following chart summarizes the expenditures made from the litigation fund:

Automobile Antitrust Cases Litigation Fund
EXPENSE SUMMARY
December 1, 2011 to July 30, 2022

DESCRIPTION	AMOUNT
Court Hearing and Deposition Transcripts	\$27,528.12
Court Messenger Service	\$584.78
Courtroom Graphics	\$7,055.50
Discovery Document Management System	\$2,860.00
Expert Fees (Incurred 2012 - 2022)	\$520,773.91
Expert Fees (Incurred pre-2012, but not previously reimbursed)	\$495,173.32
Filing Fees	\$1,174.00
Jury Consultant	\$17,460.00
Mediation	\$16,536.47
Outside Copier	\$3,233.71
Payment of Ford US Bill of Costs	\$199,956.81
Settlement Fund Tax and Accounting	\$875.00
TOTALS:	\$1,293,211.62

149. Plaintiffs' counsel's request for reimbursement of expenses does not include any amount remaining in the litigation fund.

V. BERMAN TABACCO'S LODESTAR AND UNREIMBURSED EXPENSES

150. During the course of this litigation, Berman Tabacco, as Chair of the Coordinating Committee, has been involved or overseen all aspects of this coordinated litigation on behalf of Plaintiffs and the Class. Previously, in connection with the settlement reached with GM Canada, my firm submitted a declaration describing the work we accomplished on behalf of Plaintiffs and the Class from inception of the case to November 30, 2011. A copy of Berman Tabacco's prior declaration, without exhibits, is attached hereto as **Exhibit M** and incorporated herein.

151. Since November 30, 2011, my firm has continued its work on behalf of Plaintiffs and the Class, which has included all of the activities described herein.

1 152. The schedule attached as **Exhibit N**, and incorporated herein, is a detailed summary of
2 the amount of time spent by my firm's partners, attorneys and professional support staff who were
3 involved in this litigation. The lodestar calculation is based on my firm's billing rates in effect at the
4 time services were performed (historic rates). **Exhibit N** was prepared from contemporaneous time
5 records regularly prepared and maintained by my firm. The hourly rates for my firm's partners,
6 attorneys and professional support staff included in **Exhibit N** are or were at the time the usual and
7 customary hourly rates charged for their services in similar complex class actions.

8 153. **Exhibit N** presents my firm's lodestar from December 1, 2011 to June 30, 2022. The
9 Tobacco Declaration attached hereto as **Exhibit M** attests to my firm's lodestar from inception of this
10 case to November 30, 2011.

11 154. The total number of hours expended on this litigation by my firm and total lodestar are
12 set forth below:

Time Period:	Hours:	Lodestar:
Inception to Nov. 30, 2011	38,529.00	\$ 12,833,031.25
Dec. 1, 2011 to June 30, 2022	7,691.60	\$ 5,776,420.00
Total: Inception to June 30, 2022	46,220.60	\$ 18,609,451.25

13
14
15
16
17 155. My firm's lodestar is based on the firm's billing rates, which do not include charges for
18 expense items. Expense items are billed separately and are not duplicated in my firm's lodestar.

19 156. My firm expended a total of \$704,596.82 in unreimbursed expenses necessary in
20 connection with the prosecution of this litigation. These expenses are described in **Exhibit O**, which is
21 attached hereto and incorporated herein.

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

25 158. Attached here to as **Exhibit R** is a true and correct copy of the Declaration of Craig S.
26 Corbitt in Support of Plaintiffs' Application for Attorneys' Fees, Expenses and Incentive Award, filed in
27 this action on December 5, 2011 (without attachments).

1 159. Attached here to as **Exhibit S** is a true and correct copy of the Declaration of Joseph J.
2 Tabacco. Jr. in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement and
3 Allocation Plan and Application for Attorneys’ Fees, Expenses and Incentive Awards, filed herein on
4 December 5, 2011 (without attachments).

5 160. Attached here to as **Exhibit T** is a true and correct copy of the Declaration of Joseph J.
6 Tabacco. Jr. in Support of Plaintiffs’ Motion for Preliminary Approval of Settlement with Ford Canada,
7 filed herein on April 6, 2022.

8 161. Attached here to as **Exhibit U** is a true and correct copy of Declaration of Todd A.
9 Seaver in Support of Plaintiffs’ Motion For Entry of an Order Entering Satisfaction of Judgment and
10 Objection to [Proposed] Amended Judgment in Favor of Ford Motor Company filed herein on
11 September 1, 2017.

12 162. Attached here to as **Exhibit V** is a true and correct copy of Order Awarding Attorneys’
13 Fees and Costs entered herein on April 30, 1999.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct.

16 Executed this 12th day of August, 2022, at San Francisco, California.

17
18 
19 _____
20 Todd A. Seaver

1 Joseph J. Tabacco, Jr. (Bar No. 75484)
Todd A. Seaver (Bar No. 271067)
2 Matthew D. Pearson (Bar No. 235339)
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7 *Attorneys for Plaintiffs*

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION**

10 COORDINATION PROCEEDING SPECIAL)
11 TITLE (Cal. R. Ct. 1550(b)))

Judicial Council Coordination
Proceeding Nos. No. 4298 and 4303

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AUTOMOBILE ANTITRUST CASES I, II)

CJC-03-004298 and CJC-03-004303

CLASS ACTION

_____)
This document relates to:)
All Actions)

**EXHIBITS IN SUPPORT OF
DECLARATION OF TODD A. SEAVER
IN SUPPORT OF PLAINTIFFS':
(I) MOTION FOR FINAL APPROVAL
OF SETTLEMENT WITH FORD
CANADA; AND (II) MOTION FOR
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND PAYMENT OF SERVICE
AWARDS (VOL. 1 – EXHIBITS A-L)**

Date: October 5, 2022
Time: 10:00 a.m.
Dept: 306
Judge: Honorable Anne-Christine Massullo

Date Complaint Filed: October 6, 2003
(Consolidated Amended Class Action
Complaint)

EXHIBIT A

SETTLEMENT AGREEMENT

This Agreement is made and entered into this 30th day of March, 2022, by and among defendant Ford Motor Company of Canada, Limited, and Plaintiffs, both individually and on behalf of the Class. Capitalized terms used herein are defined in Paragraph 1 below.

WHEREAS, Plaintiffs allege that Ford Canada participated in an unlawful combination and conspiracy with the Other Defendants to prevent the export of new motor vehicles from Canada to the United States which resulted in the reduction of competition in the United States market, including competition in California, and caused the prices for new motor vehicles to be artificially raised in violation of California's Cartwright Act;

WHEREAS, Ford Canada denies Plaintiffs' allegations and admits no wrongdoing of any kind whatsoever;

WHEREAS, Plaintiffs have conducted a thorough investigation into the facts and the law regarding the Action and have concluded that a settlement with Ford Canada according to the terms set forth below is in the best interest of Plaintiffs and the Class;

WHEREAS, Ford Canada, despite its belief that its actions have been proper and that Ford Canada is not liable for the claims asserted and has good defenses thereto, has nevertheless agreed to enter into this Agreement solely to avoid further expense, inconvenience, and the burden of this protracted litigation;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned Parties that the Action be settled, compromised, and dismissed on the merits with prejudice as to

the Releasees, and except as hereinafter provided, without costs against Plaintiffs, the Class, or Ford Canada, subject to the approval of the Court pursuant to applicable class action procedural rules, on the following terms and conditions:

DEFINITIONS

1. The following terms have the following meanings for purposes of this Agreement:
 - a. “Accounting Firm” means a certified public accounting firm, chosen by the Escrow Agent or Class Escrow Counsel, which will perform additional tax reporting regarding the Escrow Account.
 - b. “Action” means the civil action captioned *Automobile Antitrust Cases I and II*, JCCP Nos. 4298 and 4303, currently pending in the Superior Court for the City and County of San Francisco before the Honorable Anne-Christine Massullo, including all actions originally filed in California state court and subsequently consolidated into JCCP Nos. 4298 and 4303.
 - c. “Agreement” means this document, entitled *Settlement Agreement*, an agreement between the Parties.
 - d. “Antitrust Laws” means any and all federal, state, international, foreign, or local antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, common law unjust enrichment, trade practice, consumer protection, fraud protection, racketeering law, civil conspiracy, or similar laws.
 - e. “Authorized Claimant” has the meaning described in Paragraph 21.

f. “Authorized Dealer” means any person or entity authorized by Ford Canada, Ford Motor Company, or any Other Defendant that sells new motor vehicles directly to customers.

g. “Business Days” means a period of days as computed in Federal Rule of Civil Procedure 6(a).

h. “Class” means: All persons and entities residing in California on November 15, 2010, who purchased or leased a new motor vehicle manufactured or distributed by Ford Motor Company; Ford Motor Company of Canada, Limited; Volvo Cars of North America LLC; Volvo Cars of Canada Ltd.; General Motors Corporation; General Motors of Canada, Ltd.; Saab Cars USA, Inc.; Saturn Corporation; DaimlerChrysler AG; DaimlerChrysler Corporation; DaimlerChrysler Motors Co., LLC; DaimlerChrysler Canada, Inc.; DaimlerChrysler AG; DaimlerChrysler Corporation; DaimlerChrysler Motors Co., LLC; DaimlerChrysler Canada, Inc.; Toyota Motor Corporation; Toyota Motor Sales USA, Inc.; Toyota Canada, Inc.; Honda Motor Company, Ltd.; American Honda Motor Company, Inc.; Honda Canada, Inc.; Nissan Motor Company, Ltd.; Nissan North America, Inc.; or Nissan Canada, Inc. from an Authorized Dealer located in California, during the period January 1, 2001 through April 30, 2003, for their own use.

i. “Class Escrow Counsel” means the law firm of Berman Tabacco.

j. “Class Member” means any person or entity falling within the definition of the Class. “Class Members” means each and every Class Member.

k. “Court” means the court presiding over the Action.

l. “Defendant” means Ford Canada.

- m. “Escrow Agent” means the escrow agent under the Escrow Agreement.
- n. “Escrow Agreement” means the escrow agreement substantially in the form included as Appendix A to this Agreement.
- o. “Escrow Account” means the escrow account established for the Settlement Fund pursuant to the Escrow Agreement.
- p. “Escrow Funds” means the monies in the Escrow Account.
- q. “Execution Date” means the first day on which each and every of the undersigned Parties or their designees have fully signed and executed this Agreement under the counterpart execution provisions of Paragraph 28.
- r. “Final” means that all of the conditions stated in Paragraph 10 have been satisfied.
- s. “Ford Canada” means Ford Motor Company of Canada, Ltd., and its past or present subsidiaries, parents, affiliates, and predecessors.
- t. “Other Defendants” means Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, Toyota Canada Inc., American Honda Motor Company, Inc., Honda Canada Inc., Honda Motor Company, Ltd., DaimlerChrysler Corporation, DaimlerChrysler Canada Inc., DaimlerChrysler Motors Co., LLC, DaimlerChrysler Aktiengesellschaft, Nissan North America, Inc., Nissan Canada Inc., Nissan Motor Company, Ltd., Canadian Automobile Dealers’ Association, National Automobile Dealers Association, Volvo Cars of North America, LLC, Volvo Cars of Canada, Ltd., and all other persons or entities that have been, are, or may be in the future defendants in this Action, together with their respective subsidiaries, parents, affiliates,

predecessors, successors-in-interest, and co-conspirators, but not including Ford Canada or Ford Canada's past or present subsidiaries, parents, affiliates, and predecessors. "Other Defendant" means any one of the Other Defendants.

u. "Plaintiff" means any person or entity named as a plaintiff in this Action.

"Plaintiffs" means each and every Plaintiff collectively.

v. "Plaintiffs' Counsel" means the law firms listed as the Plaintiffs' Steering Committee below.

w. "Parties" means Plaintiffs and Ford Canada. "Party" means any one of the Parties.

x. "Recognized Claim Amount" has the meaning described in Paragraph 21.

y. "Released Claims" has the meaning described in Paragraph 11.

z. "Releasees" means, jointly and severally, Ford Canada and its respective past, present, and future officers, directors, employees, agents, stockholders, attorneys, representatives, parents, subsidiaries, affiliates, distributors, dealers, partners, insurers, and all other persons, partnerships, or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. The definition of "Releasees" does not include any of the Other Defendants. "Releasee" means any one of the Releasees.

aa. "Releasers" means, jointly and severally, the Plaintiffs, the Class Members, and their respective past and present officers, directors, employees, agents, stockholders, attorneys, representatives, parents, subsidiaries, affiliates, partners, insurers, and all other persons,

partnerships, or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

bb. “Settlement” means the settlement contemplated by this Agreement.

cc. “Settlement Fund” means eighty-two million United States dollars (\$82,000,000.00) and all interest earned thereon after becoming Escrow Funds.

APPROVAL OF THIS AGREEMENT AND DISMISSAL OF CLAIMS AGAINST FORD CANADA

2. Authority to Execute. The undersigned representative of Ford Canada represents that such representative is fully authorized to enter into and execute this Agreement on Ford Canada’s behalf. The undersigned Plaintiffs’ Counsel in the Action represents that such counsel is duly authorized to enter into and execute this Agreement on behalf of Plaintiffs in the Action and on behalf of the Class.

3. Best Efforts to Effectuate this Settlement. The Parties agree to undertake their best efforts and mutually cooperate, including all steps and efforts contemplated by this Agreement and any other steps and efforts which may become necessary or appropriate, by the Court’s orders or otherwise, to effectuate this Settlement, including cooperating in seeking to secure the Court’s preliminary approval, and, subsequently, the complete and final dismissal with prejudice and on the merits of the Action as to Ford Canada. However, in no event shall Ford Canada have any responsibility or duty to identify or locate Class Members or otherwise assist in the notice of the Settlement to the Class or, in the event this Settlement becomes Final, distribution of the Settlement Fund to Class Members. As set forth in Paragraph 8, however, Ford Canada agrees that up to \$5

million of the Settlement Fund may be used to pay for notice to the Class and claims administration.

4. Stay of Action. The Parties agree that, to the extent necessary, the Parties will submit stipulations at an appropriate time, prepared by Plaintiffs, to the Court to stay all proceedings in the Action between the Plaintiffs, individually and on behalf of the Class, and Ford Canada, except those proceedings necessary to carry out this Agreement, and suspend all time deadlines accordingly until such time as the Agreement is rescinded or the Action is dismissed as to Ford Canada.

5. No Admission or Evidence of Wrongdoing. This Agreement, whether or not it becomes Final, and any and all negotiations, documents, exhibits, statements, information exchanges, and discussions associated with it, will not in any event be construed or be deemed to be an admission or concession on the part of any Releasee or anyone acting on a Releasee's behalf of any liability or wrongdoing whatsoever or as any evidence of any wrongdoing or violation by a Releasee of any statute or law. This Agreement, any of its provisions or related documents, or evidence of any negotiations or proceedings in pursuance of the Settlement, will not be discoverable, offered, or received, directly or indirectly, in any action or proceeding as an admission or concession of any liability or wrongdoing whatsoever on the part of any Releasee or anyone acting on a Releasee's behalf or as any evidence of any violation by any Releasee of any statute or law.

6. Motion for Preliminary Approval. As soon as reasonably practical and in no event later than fifteen (15) Business Days after the Execution Date, Plaintiffs will submit to the Court

a motion for preliminary approval of the Settlement. The motion will include a proposed form of, method, and date of dissemination of notice to Class Members.

7. Good-Faith Determination. Ford Canada may, at its option, file papers with the Court seeking a determination of good-faith of the settlement under California Code of Civil Procedure section 877.6. If Ford Canada elects to file such motion, the filing must be made at the same time Plaintiffs move for preliminary approval of the Settlement.

8. Notice to the Class. In the event that the Court preliminarily approves the Settlement, Plaintiffs, in accordance with applicable rules of civil procedure and in accordance with the Court's orders, will provide notice of the Settlement and the date of the hearing the Court schedules to consider the fairness, adequacy, and reasonableness of the proposed Settlement. To the extent reasonably possible, direct notice will be provided to as many Class Members as can be identified. Plaintiffs will take all necessary and appropriate steps to ensure that Plaintiffs provide such notice in accordance with the Court's orders. Plaintiffs may withdraw monies in a reasonable amount, not to exceed \$5 million, from the Escrow Account for the purpose of disseminating notice to the Class and administering claims, subject to the Court's approval. Any additional monies required for notice and administration are subject to further agreement by the Parties and approval by the Court. Plaintiffs will inform Ford Canada in writing of all such withdrawals. In no event will Ford Canada be responsible for giving, or providing any assistance in giving, notice of the Settlement to the Class, including but not limited to the expense and cost of such notice.

9. Proposed Order and Final Judgment. If the Court grants preliminary approval of the Settlement, Plaintiffs will seek entry of an order and final judgment by the Court, the text of which Plaintiffs and Ford Canada will agree upon, that includes the following provisions:

- a. approving fully and finally this Settlement and its terms as being fair, reasonable, and adequate as to the Class Members and directing its consummation according to its terms;
- b. incorporating the terms of the release as outlined in Paragraph 11 of this Agreement;
- c. directing that, as to Ford Canada, the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;
- d. reserving continuing and exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of the Settlement, to the Court; and
- e. determining that there is no just reason for delay and directing that the judgment of dismissal as to Ford Canada is final.

10. Final Approval. The Settlement will become “Final” when all of the following conditions are satisfied:

- a. The Court has entered a final order approving this Settlement;
- b. Only if Ford Canada elects to file a motion for a good-faith determination as described in Paragraph 7, the Court has entered an order finding a good-faith settlement under California Code of Civil Procedure section 877.6 or

concluding that any motion for a good-faith settlement determination is not applicable for reasons unrelated to whether the Settlement was made in good-faith under section 877.6;

- c. The Court has entered final judgment dismissing the claims against Ford Canada in the Action on the merits and with prejudice and without costs other than those provided for in this Agreement; and
- d. Either (i) the time for appeal or to seek permission to appeal the Court's order approving this Settlement as described in clause (a), above, and the final judgment as to Ford Canada as described in clause (c), above, has expired with no appeal having been taken or permission to appeal having been sought; or (ii) such approval and final judgment have been affirmed in their entirety by the court of last resort to which any appeal has been taken or petition for review has been presented, and such affirmance has become no longer subject to further appeal or review.

RELEASE, DISCHARGE, AND COVENANT NOT TO SUE

11. Release. In addition to the effect of any final judgment entered in accordance with this Agreement, upon the Settlement becoming Final, and in consideration of payment of the Settlement Fund and for other valuable consideration, the Releasors will completely release, acquit, and forever discharge the Releasees from the Released Claims. "Released Claims" means any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs,

expenses, penalties, and attorneys' fees, known or unknown, derivative or direct, suspected or unsuspected, accrued or unaccrued, asserted or unasserted in law or equity, including, without limitation, claims which have been asserted or could have been asserted in the Action that any of the Releasors ever had, now has, or hereafter can, will, or may have against the Releasees, based upon the direct or indirect purchases of new motor vehicles, and which arise under the Antitrust Laws, from the beginning of time to the Execution Date. The foregoing release, discharge, and covenant not to sue will not include claims by any Releasor for personal injury, breach of contract, breach of warranty, product defect, negligence, or other causes of action that do not arise under the Antitrust Laws. After the Execution Date, Releasors covenant not to sue Releasees and will not seek to establish liability or seek to recover against any of the Releasees based, in whole or in part, upon any of the Released Claims. Releasees release Releasors and their attorneys from any claims for fees, costs, or otherwise arising out of the subject matter of the Action.

12. Waiver of Rights. Upon the Settlement becoming Final, each Class Member will be deemed to have waived and released, with respect to the Released Claims that such Class Member has released pursuant to Paragraph 11, any and all provisions, rights, and benefits conferred either (a) by section 1542 of the California Civil Code, which reads:

“General release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party[;]”

or (b) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542 of the California Civil Code. Each Class Member may hereafter discover facts other than or different from those that it knows or believes

to be true with respect to the subject matter of the Released Claims that such Class Member has released pursuant to Paragraph 11; but each Class Member, upon the Settlement becoming Final, will be deemed to have waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the Released Claims that such Class Member has released pursuant to Paragraph 11, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

13. Agreement Is a Complete Defense. Any Releasee may plead the Agreement as a full and complete defense to, and may use the Agreement as the basis for an injunction against, any suit or other proceeding that a Releasor may institute, prosecute, or attempt in breach of this Agreement.

THE SETTLEMENT FUND

14. Payment of the Settlement Fund. Ford Canada will cause the Settlement Fund to be paid within twenty (20) Business Days of the entry of the order preliminarily approving the Settlement. Ford Canada will deposit the Settlement Fund payment in the Escrow Account under the custody of the Escrow Agent. Subject to Paragraphs 16, 17, 18, and 20, the Settlement Fund will be held in the Escrow Account until finally distributed pursuant to Paragraphs 17, 19, or 21. Until such distribution, except as expressly provided in this Agreement or in the Escrow Agreement, no distribution to any Class Member or disbursement of any kind may be made from the Escrow Funds.

15. Settlement Fund Satisfies All Claims. Releasors will look solely to the Settlement Fund for settlement and satisfaction against Releasees of all Released Claims. Except as provided for by orders from the Court, no Releasor will have any interest in the Settlement Fund or any portion thereof. Releasees shall not be liable or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expense on behalf of, any person or entity (including, without limitation, Plaintiffs, Class Members, Plaintiffs' Counsel, and any other plaintiffs' counsel who appeared in the Action), directly or indirectly, in connection with the Action or this Settlement Agreement, except as expressly provided for herein.

16. Disbursements from the Escrow Funds. Disbursements for reasonable expenses associated with providing notice of the Settlement to the Class as described in Paragraph 8 may be made from the Escrow Funds, subject to approval of the Court, and will not be refundable to Ford Canada in the event the Agreement is rescinded or the Settlement is not approved or otherwise fails to become Final. Fees of the Escrow Agent, tax payments concerning the Escrow Account, and expenses of administering the Settlement Fund (excluding attorneys' fees) may be made from the Escrow Funds, subject to approval of the Court, and will not be refundable to Ford Canada in the event that the Agreement is rescinded or the Settlement is not approved or otherwise fails to become Final.

17. Attorneys' Fees, Expenses, and Costs Disbursed from the Escrow Funds. Any award of attorneys' fees, expenses, and costs is payable out of the Escrow Funds, as determined by the Court, and Ford Canada shall have no other obligation to pay any award of attorneys' fees, expenses, or costs. Escrow Funds shall be disbursed for attorneys' fees, expenses, and costs only

pursuant to and consistent with orders from the Court awarding such attorneys' fees, expenses, and costs. If the conditions specified in Paragraphs 10(a), (b), and (c) are satisfied and no appeal of either the Settlement or final judgment is filed, any award of attorneys' fees, expenses, and costs shall be paid from the Escrow Funds within five (5) Business Days after the expiration of the appeal periods for those events. If an appeal is filed, any award of attorneys' fees, expenses, and costs shall be paid from the Escrow Funds within twenty (20) Business Days of the expiration of the period for appeals to be filed, subject to the condition precedent for such payment that the Parties reach an agreement as to adequate protections for security of repayment to Ford Canada in the event that the Settlement does not become Final or the Agreement is rescinded, terminated, or voided for any reason, whether by reason of disapproval by the Court or otherwise. Such repayment is to occur within ten (10) Business Days of the event triggering the repayment obligation as described in the prior sentence. If an appeal is filed and approval of the Settlement and final judgment have been affirmed in their entirety by the court of last resort to which any appeal has been taken or petition for review has been presented, or the appeal has otherwise been dismissed, any remaining attorneys' fees, expenses, and costs that have not yet been withdrawn under the provisions of this paragraph shall be paid from the Escrow Funds within five (5) Business Days after such affirmance or dismissal has become no longer subject to further appeal or review. Any order of the Court authorizing a payment of attorneys' fees, expenses, and costs under this paragraph shall incorporate the terms and conditions set forth in this paragraph.

18. Attorneys' Fees and Reimbursement of Expenses and Costs Separate. The procedure for and the allowance or disallowance by the Court of any attorneys' fees or

reimbursement of expenses and costs are not part of the Settlement set forth in this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, except for the limitations specified in the first sentence of Paragraph 17 regarding such award of attorneys' fees and reimbursement of expenses and costs. Any order or proceeding in the Court relating solely to the payment of any attorneys' fees, expenses, and costs, or any fee and/or expense application, or any appeal from any order relating thereto, or a reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the judgments approving the Agreement and settlement of the Action set forth herein.

19. Return of the Settlement Fund to Ford Canada. Ford Canada shall be entitled to a return of the Settlement Fund in accordance with this paragraph in the event that the Settlement does not become Final or the Agreement is rescinded, terminated, or voided for any reason, whether by reason of disapproval by the Court, or otherwise. In such event, and upon the Escrow Agent's receipt of either (i) written notice from Ford Canada and Class Escrow Counsel or (ii) an order of the Court so directing, the Escrow Agent will arrange the return of the Settlement Fund within ten (10) Business Days to Ford Canada in an amount equal to its Settlement Fund payment, together with all interest paid or accrued upon it, minus disbursements described in Paragraph 16.

20. Treatment of the Escrow Account. In accordance with the Escrow Agreement, the Parties agree to treat the Escrow Account as being at all times "qualified settlement funds" within the meaning of the Treas. Reg. Section 1.468B-1, and to that end the Parties will cooperate and will not take a position in any filing or before any tax authority that is inconsistent with such

treatment. At Ford Canada's request, a "relation-back election" (as defined in Treas. Reg. Section 1.468B-1) will be made so as to enable the Escrow Account to be treated as qualified settlement funds from the earliest date possible, and the Accounting Firm will take all actions as may be necessary or appropriate to this end. Such election will be made in compliance with the procedures and requirements contained in such regulations. The Escrow Agent will pay taxes or estimated taxes on any income earned on the Escrow Funds and all related costs and expenses from the Escrow Account after approval by the Court and whether or not the Settlement is Final. In the event federal or state income tax liability is finally assessed against and paid by Ford Canada as a result of any income earned on the Escrow Funds, Ford Canada will be entitled to reimbursement of such payment from any remaining balance in the Escrow Funds after approval by the Court and whether or not the Settlement is Final.

21. Distribution of the Settlement Fund. After the Settlement becomes Final, the Settlement Fund (net of Court-approved fees, expenses, and any other Court-approved deductions) will be distributed to the extent possible according to an allocation plan that will permit members of the Class to be paid out on a weighted *pro rata* basis based on the damages analysis completed by Plaintiffs' experts, Dr. Janet Netz and Professor Robert E. Hall, Ph.D., which based the amount of damages on the vehicle make and model, and the month and year of purchase. Each purchase or lease made by a Class Member who makes a valid claim ("Authorized Claimant") will be assigned a Recognized Claim Amount based on the vehicle's make, model, and month of purchase. The Recognized Claim Amount equates to the estimated damages assigned to that particular vehicle by Plaintiffs' experts resulting from the alleged unlawful conduct at issue in the Action.

The claims administrator will sum up the total Recognized Claim Amounts for all purchases or leases made by an Authorized Claimant, which will be the Authorized Claimant's Total Recognized Claim Amount. The Authorized Claimant's share of the settlement proceeds will be calculated by multiplying the Settlement Fund (net of Court-approved fees, expenses, or any other Court-approved deductions) by the ratio of the Authorized Claimant's Total Recognized Claim Amount to the sum of all Authorized Claimants' Total Recognized Claim Amounts. Plaintiffs will create a proposed plan of allocation, in consultation with Ford Canada, and it shall to the extent possible provide payments to Authorized Claimants, and any residual amount shall be handled subject to approval by the Court, with all reasonable efforts made to distribute any residual to Authorized Claimants until further distributions to Authorized Claimants are not economically feasible. Under no circumstance will any residual be paid back to Ford Canada. Should the number of vehicle purchases or leases claimed by all Authorized Claimants by the Court-ordered claims filing deadline be less than 45,000 vehicles in the aggregate, Plaintiffs, in consultation with Ford Canada, will petition the Court to approve an acceptable plan to make a supplemental distribution to Class Members. Plaintiffs will move for the plan of allocation's approval at the appropriate time in the Court, subject to any award of attorneys' fees and costs, service awards to named Plaintiffs, and any notice and administration costs as approved by the Court.

RESCISSION OR VOIDING OF THE AGREEMENT

22. Effect of Disapproval. If the Court enters an order either refusing to approve or materially modifying the Settlement, or if such approval is materially modified or set aside on appeal, or if the Court refuses to enter the final judgment, or if the Court enters the final judgment

and appellate review of the final judgment is sought, and on such review, such final judgment is not affirmed in its entirety, then the Parties will each, in their sole discretion and not limited by any other paragraph in this Agreement, have the option to rescind the Agreement in its entirety, provided that the Parties have made all reasonable efforts to obtain an order granting preliminary or final approval without material modifications. Additionally, if, in light of motions filed by Plaintiffs in the Action under Paragraph 9, the Court refuses to or enters an order refusing to dismiss Ford Canada with prejudice, or if the Court dismisses Ford Canada with prejudice and appellate review of the dismissal is sought, and on such review, such dismissal is not affirmed in its entirety, then Ford Canada, in its sole discretion and not limited by any other paragraph in this Agreement, has the option either (i) to rescind the Agreement in its entirety or (ii) to have the Parties to meet and confer in good faith on relevant modifications to the Agreement including but not limited to a reduction in the Settlement Fund. Written notice of the exercise of any such right under this paragraph will be made according to the terms of Paragraph 30 within ten (10) Business Days of the event giving rise to the rescission. A modification or reversal on appeal of any amount of attorneys' fees, administrative and tax expenses, expenses associated with providing notice of the Settlement to the Class, or expenses of the Escrow Agent, which the Court awards to Plaintiffs' Counsel from the Settlement Fund, will not be deemed a modification of all or a part of the terms of this Agreement or such final judgment and cannot give rise to a rescission of this Agreement.

PROHIBITION ON CONTRIBUTION AND INDEMNIFICATION ACTIONS

23. Contribution Bar. The Parties agree that no valid and enforceable claim for contribution and/or indemnification against any Releasee is likely to exist as a matter of law, but

in any event the Parties agree that the relevant federal and state statutes and common law bar any such claims. Despite anything to the contrary contained in the Agreement, in consideration of the terms hereof and in order to induce Ford Canada to enter into the Agreement, the Releasors will exclude from the dollar amount of any judgment collectable against any Other Defendant an amount equal to the percentage or amount of such judgment for which any Releasee would be responsible pursuant to a valid and enforceable claim for contribution and/or indemnification (other than any such claim that arises out of any voluntarily assumed contribution and/or indemnification obligation of such Releasee). Plaintiffs agree that the undertaking set forth in this paragraph is not only for the benefit of the Releasees but also for the benefit of any person against whom any such judgment is entered in the Action and that this undertaking may be enforced by any such person as a third-party beneficiary. This paragraph does not in any way diminish the Settlement Fund.

MISCELLANEOUS

24. Public Comments Regarding Settlement. The Parties agree that public comments by them and their counsel about the Settlement or litigation shall not disparage and or defame the Parties. Nothing in this provision shall prohibit the Parties from speaking or communicating truthfully with professional advisors or with any governmental entity or from testifying truthfully under oath.

25. Choice of Forum and Law. The Court will retain exclusive jurisdiction over the implementation, enforcement, and performance of this Agreement, and will, to the fullest extent of the law, have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of

or relating to the Settlement or the applicability of the Agreement that the Parties cannot resolve through negotiation and agreement. The Agreement will be governed by and interpreted according to the substantive laws of the state of California without regard to its choice of law or conflict of laws principles.

26. Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the Parties pertaining to the Settlement of the Action against the Releasees, and supersedes all prior and contemporaneous undertakings of the Parties in connection herewith. This Agreement may not be modified or amended except in writing executed by the Parties and approved by the Court.

27. Binding Effect. This Agreement will be binding upon, and inure to the benefit of, the Parties' successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs and/or Plaintiffs' Counsel will bind all Releasees.

28. Execution in Counterparts. The Parties may execute this Agreement in counterparts. A facsimile or electronically scanned signature will be deemed an original signature for purposes of executing the Agreement.

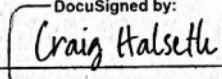
29. No Party Is the Drafter. No Party will be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

30. Notice Between the Parties. Where this Agreement requires a Party to provide notice or any other communication or document to the other, such notice, communication, or document will be provided to counsel of record for the Party to whom notice is being provided either by (a) electronic mail together with simultaneous letter by U.S. First Class Mail, or (b) letter by overnight delivery.

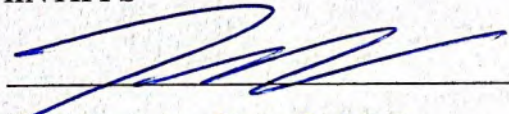
31. Severability. If any provision of this Agreement is not enforceable, the remaining portions of the Agreement will be enforced to the extent that they can be severed from the portion that is not enforceable.

IN WITNESS WHEREOF, the Parties, through their fully-authorized representatives, have agreed to this Agreement.

FORD CANADA

By: 
Name: Craig Halseth
Title: Counsel
Date: Mar-30-2022

PLAINTIFFS

By: 
Date: March 30, 2022
Joseph J. Tabacco, Jr.
Todd A. Seaver
Matthew D. Pearson
BERMAN TABACCO
44 Montgomery Street, Suite 650
San Francisco, California 94104

ATTORNEYS FOR PLAINTIFFS AND THE CLASS

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EXHIBIT B

THE FIRM

Berman Tabacco is a national law firm with 34 attorneys located in offices in Boston and San Francisco. Since its founding in 1982, the firm has devoted its practice to complex litigation, primarily representing plaintiffs seeking redress under U.S. federal and state securities, antitrust and consumer laws.

Over the past almost four decades, Berman Tabacco's attorneys have prosecuted hundreds of class actions, recovering billions of dollars on behalf of the firm's clients and the classes they represented. In addition to financial recoveries, the firm has achieved significant changes in corporate governance and business practices of defendant companies. Indeed, the firm appears as among the firms with the most settlements on the list of the top 100 largest securities class actions in SCAS' published report, *Top 100 U.S. Class Action Settlements of All Time (as of 12/31/2021)*.¹ According to ISS Securities Class Action Services' "Top 50 for 2015" report, Berman Tabacco was one of only six firms that recovered more than half-a-billion dollars for investors in 2015.² SCAS similarly ranked the firm among the few that obtained over half-a-billion in settlements in 2004 and 2009, and ranked the firm 3rd in terms of settlement averages for class actions in 2009, 2010 and 4th in 2004 (SCAS ceased rankings according to settlement sizes in 2012). The firm currently holds leadership positions in securities, antitrust and consumer cases around the country.

Berman Tabacco is rated AV Preeminent® by *Martindale-Hubbell*®. *Benchmark Litigation* ranked the firm as a *Top Ten Plaintiffs' Firm* for its work "on behalf of individuals and institutions who have suffered financial harm due to violations of securities or antitrust laws" for the sixth consecutive year (2017-2022). *Benchmark Litigation* also ranked the firm as *Highly Recommended* in 2022 – the eleventh consecutive time the firm has received that distinction.³ *The Legal 500* also ranked the firm as *recommended* in securities litigation in its 2017-2022 U.S. editions and as *recommended* in antitrust litigation in its 2019-2022 U.S. editions, noting in 2019 that the firm is known for its "soup-to-nuts excellence, from legal analysis through to trial preparation and trial," and that clients had noted that the firm makes a "very comprehensive effort, with no stone left unturned." In 2020, *The Legal 500* reported client praise for Berman including that the firm has "[a]n excellent team from top to bottom. It provides superb responsiveness and is able to dig in hard at a moment's notice." And further that, the team is "always prepared and [has] deep knowledge of the issue. It is a pleasure to observe a team that so well coordinated." Additionally, *Chambers USA* recognized the firm in its *Securities Litigation – Mainly Plaintiff* category in 2021 and 2022 in both its *USA Nationwide* and *California* editions. The firm was previously recognized by *Chambers USA* in the same category in 2017 and 2018 in its *USA Nationwide* edition. Berman Tabacco was also recognized in both securities and antitrust litigation by *U.S. News & World Report—Best Lawyers* in the twelfth Edition of the *Best Law Firms* rankings (2022 ed.) and was previously recognized in antitrust (2019-2021) and securities (2020-2021)

¹ *Top 100 U.S. Class Action Settlements of All Time as of December 31, 2021*, pp. 13, 18 (ISS SCAS 2022), <http://www.bermantabacco.com/wp-content/uploads/2022/01/SCAS-Top-100-US-Settlements-of-All-Time-as-of-2021-12-31.pdf>.

² ISS's report "lists the top 50 plaintiffs' law firms ranked by the total dollar value of the final class action settlements occurring in 2015 in which the law firm served as lead or co-lead counsel." ISS Securities Class Action Services, *Top 50 for 2015*, at p. 4 (May 2016), <https://www.bermantabacco.com/wp-content/uploads/2018/05/scastop502015.pdf>.

³ See <https://www.benchmarklitigation.com/Firm/Berman-Tabacco-California/Profile/109234#review>.

litigation. Berman Tabacco's lawyers are frequently singled out for favorable comments by our clients, presiding judges and opposing counsel.

ANTITRUST PRACTICE

Berman Tabacco has a national reputation for our work prosecuting antitrust class actions involving price-fixing, market allocation agreements, patent misuse, monopolization and group boycotts among other types of anticompetitive conduct. Representing clients ranging from Fortune 500 companies and public pension funds to individual consumers, the experienced senior attorneys in our Antitrust Practice Group have engineered substantial settlements and changed business practices of defendant companies, recovering more than \$1 billion for our clients overall.

Berman Tabacco has played a major role in the prosecution of numerous landmark antitrust cases. For example, the firm was lead counsel in the Toys "R" Us litigation, which developed the antitrust laws with respect to "hub and spoke" conspiracies and resulted in a \$56 million settlement. Berman Tabacco brought the first action centered on so-called "reverse payments" between a brand name drug maker and a generic drug maker, resulting in an \$80 million settlement from the drug makers, which had been accused of keeping a generic version of their blood pressure medication off the market.

The firm's victories for victims of antitrust violations have come at the trial court level and also through landmark appellate court victories, which have contributed to shaping private enforcement of antitrust law. For example, in the Cardizem CD case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action and obtained a pioneering ruling in the federal court of appeals regarding the "reverse payment" by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer's payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a *per se* unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

In the firm's case against diamond giant De Beers, the Third Circuit, sitting *en banc*, vacated an earlier panel decision and upheld the certification of a nationwide settlement class, removing the last obstacle to final approval of an historic \$295 million settlement. The Third Circuit's important decision provides a roadmap for obtaining settlement class certification in complex, nationwide class actions involving laws of numerous states.

In 2016, the firm won reversal of a grant of summary judgment for defendant automakers in a group boycott-conspiracy case involving the export of new motor vehicles from Canada to the U.S. The California Court of Appeal found that plaintiffs had presented evidence of "patently anticompetitive conduct" with evidence gathered in the pre-trial phase, which was powerful enough to go to a jury. The ruling is a rare example of an appellate court analyzing and reversing a trial court's evidentiary rulings to find evidence of a conspiracy.

Today the firm currently represents clients in significant antitrust class actions around the country, including actively representing major public pension funds in prosecuting price-fixing in the financial derivatives and commodities markets in the Euribor and Yen LIBOR actions and the Foreign Currency Exchange Rate action.

While the majority of antitrust cases settle, our attorneys have experience taking antitrust class actions to trial. Because we represent only plaintiffs in antitrust matters, we do not have the conflicts of interest of other national law firms that represent both plaintiffs and defendants. Our experience also allows us to counsel medium and larger-sized corporations considering whether to participate as a class member or opt-out and pursue an individual strategy.

RESULTS

ANTITRUST SETTLEMENTS

Over the past nearly three decades, Berman Tabacco has actively prosecuted scores of complex antitrust cases that led to substantial settlements for its clients. These include:

In re NASDAQ Market-Makers Antitrust Litigation, No. 94-cv-3996 (S.D.N.Y.). The firm played a significant role in one of the largest antitrust settlements on record in a case that involved alleged price-fixing by more than 30 NASDAQ Market-Makers on about 6,000 NASDAQ-listed stocks over a four-year period. The settlement was valued at nearly \$1 billion.

In re Foreign Currency Conversion Fee Antitrust Litigation, MDL No. 1409 (S.D.N.Y.). Berman Tabacco, as head of discovery against defendant Citigroup Inc., played a key role in reaching a \$336 million settlement. The agreement settled claims that the defendants, which include the VISA, MasterCard and Diners Club networks and other leading bank members of the VISA and MasterCard networks, violated federal and state antitrust laws in connection with fees charged to U.S. cardholders for transactions effected in foreign currencies.

In re DRAM Antitrust Litigation, No. M:02-cv-01486 (N.D. Cal.). As liaison counsel, the firm actively participated in this multidistrict litigation, which ultimately resulted in significant settlements with some of the world's leading manufacturers of Dynamic Random Access Memory (DRAM) chips. The defendant chip-makers allegedly conspired to fix prices of the DRAM memory chips sold in the United States during the class period. The negotiated settlements totaled nearly \$326 million.

Sullivan v. DB Investments, Inc., No. 04-02819 (D.N.J.). Berman Tabacco represented a class of diamond resellers, such as diamond jewelry stores, in this case alleging that the De Beers group of companies unlawfully monopolized the worldwide supply of diamonds in a scheme to overcharge resellers and consumers. In May 2008, a federal judge approved the settlement, which included a cash payment to class members of \$295 million, an agreement by De Beers to submit to the jurisdiction of the United States court to enforce the terms of the settlement and a comprehensive injunction limiting De Beers' ability to restrict the worldwide supply of diamonds in the future. This case is significant not only because of the large cash recovery but also because previous efforts to obtain jurisdiction over De Beers in both private and government actions had failed. On August 27, 2010, the United States Court of Appeals for the Third Circuit agreed to hear arguments over whether to uphold the district court's certification of the settlement class. By agreeing to schedule an *en banc* appeal before the full court, the Third Circuit vacated a July 13, 2010 ruling by a three-judge panel of the appeals court that, in a 2-to-1 decision, had ordered a remand of the case back to the district court, which may have required substantial adjustments to the original settlement. On February 23, 2011, the Third Circuit, sitting *en banc*, again heard oral argument from the parties. On

December 20, 2011, the *en banc* Third Circuit handed down its decision affirming the district court in all respects.

In re Lithium Ion Batteries Antitrust Litigation, No. 13-md-2420-YGR (N.D. Cal.). As co-lead class counsel for Direct Purchaser Plaintiffs (“DPPs”) in this multidistrict antitrust litigation, the firm achieved settlements totaling \$139.3 million. The litigation arose from an alleged worldwide conspiracy to fix prices of lithium-ion rechargeable batteries (“LiBs”). LiBs are components of LiB camcorders, digital cameras and laptop computers. The alleged conspiracy involved some of the largest companies in the world—Sony, Samsung SDI, Panasonic, Sanyo, LG Chem, Toshiba, Hitachi Maxell and NEC Corp. The lawsuit alleges that defendants participated in a conspiracy to fix the prices of LiBs, which affected the prices paid for the batteries and certain products in which the batteries are used. Plaintiffs successfully defeated multiple motions to dismiss involving complex issues of antitrust standing and the pleading of conspiracy allegations. Berman Tabacco and the team negotiated multiple settlements totaling \$139.3 million. The court granted final approval on May 16, 2018.

In re Sorbates Direct Purchaser Antitrust Litigation, No. C 98-4886 CAL (N.D. Cal.). The firm served as lead counsel alleging that six manufacturers of Sorbates, a food preservative, violated antitrust laws through participation in a worldwide conspiracy to fix prices and allocations to customers in the United States. The firm negotiated a partial settlement of \$82 million with four of the defendants in 2000. Following intensive pretrial litigation, the firm achieved a further \$14.5 million settlement with the two remaining defendants, Japanese manufacturers, in 2002. The total settlement achieved for the class was \$96.5 million.

In re Disposable Contact Lens Antitrust Litigation, MDL No. 1030 (M.D. Fla.). The firm acted as co-lead counsel and chief trial counsel. Representing both a national class and the State of Florida, the firm helped secure settlements from defendants Bausch & Lomb and the American Optometric Association before trial and from Johnson & Johnson after five weeks of trial. The settlements were valued at more than \$92 million and also included significant injunctive relief to make disposable contact lenses available at more discount outlets and more competitive prices.

In re Cardizem CD Antitrust Litigation, No. 99-01278 (E.D. Mich.). In another case involving generic drug competition, Berman Tabacco, as co-lead counsel, helped secure an \$80 million settlement from French-German drug maker Aventis Pharmaceuticals and the Andrx Corporation of Florida. The payment to consumers, state agencies and insurance companies settled claims that the companies conspired to prevent the marketing of a less expensive generic version of the blood pressure medication Cardizem CD. The state attorneys general of New York and Michigan joined the case in support of the class. The firm achieved a significant appellate victory in a first of its kind ruling that the brand name drugmaker’s payment of \$40 million per year for the generic company to delay bringing its generic version of blood-pressure medication Cardizem CD to market constituted an agreement not to compete that is a *per se* violation of the antitrust laws.

In re Toys “R” Us Antitrust Litigation, MDL No. 1211 (E.D.N.Y.). Berman Tabacco negotiated a \$56 million settlement to answer claims that the retailer violated laws by colluding to cut off or limit supplies of popular toys to stores that sold the products at lower prices. The case developed the antitrust laws with respect to a “hub and spoke” conspiracy, where a downstream power seller coerces upstream manufacturers to the detriment of consumers. One component of the settlement required Toys “R” Us to donate \$36 million worth of toys to needy children throughout the United States over a three-year period.

In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation, MDL No. 05-1671 (C.D. Cal.). Berman Tabacco, as co-lead counsel, negotiated a \$48 million settlement with Union Oil Company and Unocal. The agreement settled claims that the defendants manipulated the California gas market for summertime reformulated gasoline and increased prices for consumers. The noteworthy settlement delivered to consumers a combination of clean air benefits and funding for alternative fuel research.

In re Abbott Laboratories Norvir Antitrust Litigation, Nos. 04-1511, 04-4203 (N.D. Cal.). Berman Tabacco acted as co-lead counsel in a case on behalf of indirect purchasers alleging that the defendant pharmaceutical company engaged in an illegal leveraged monopoly in the sale of its AIDS boosting drug known as Norvir (or Ritanovir). Plaintiffs were successful through summary judgment, including the invalidation of two key patents based on prior art, but were reversed on appeal in the Ninth Circuit as to the leveraged monopoly theory. The case settled for \$10 million, which was distributed net of fees and costs on a *cy pres* basis to 10 different AIDS research and charity organizations throughout the United States.

Automotive Refinishing Paint Antitrust, J.C.C.P. No. 4199 (Cal. Super. Ct.). In this class action, indirect purchaser-plaintiffs brought suit in California State Court against five manufacturers of automotive refinishing coatings and chemicals alleging that they violated California law by unlawfully conspiring to fix paint prices. Settlements were reached with all defendants totaling \$9.4 million, 55% of which was allocated among an End-User Class consisting of consumers and distributed on a *cy pres*, or charitable, basis to thirty-nine court-approved organizations throughout California, and the remaining 45% of which was distributed directly to a Refinishing Class consisting principally of auto-body shops located throughout California.

ATTORNEYS

JOSEPH J. TABACCO, JR.



Joseph J. Tabacco, Jr., the founding member of Berman Tabacco's San Francisco office and member of the firm's Executive Committee, actively litigates antitrust, securities fraud, commercial high tech and intellectual property matters.

Prior to 1981, Mr. Tabacco served as senior trial attorney for the U.S. Department of Justice, Antitrust Division in both the Central District of California and the Southern District of New York. In that capacity, he had major responsibility for several criminal and civil matters, including the antitrust trial of *United States v. IBM*. Since entering private practice in the early 1980s, Mr. Tabacco has served as trial or lead counsel in numerous antitrust and securities cases and has been involved in all aspects of state and federal litigation. In private practice, Mr. Tabacco has also tried a number of securities cases, each of which resolved successfully at various points during or after trial, including *In re MetLife Demutualization Litigation* (settled after jury empaneled), *Gutman v. Howard Savings Bank* (plaintiffs' verdict after six-week trial), *In re Equitec Securities Litigation* (settled after six months of trial) and *In re Ramtek Securities Litigation*.

Mr. Tabacco currently oversees the firm's class action litigation teams in the firm's price-fixing/market manipulation cases alleging that major banks colluded to fix the prices of derivatives and other financial instruments by manipulating numerous financial benchmark rates. This includes representing California State Teachers' Retirement System, one of the country's largest public pension funds, in (i) *Sullivan v. Barclays PLC et al.*, No. 13-cv-2811 (S.D.N.Y.), a class action against numerous Wall Street banks for price-fixing financial instruments tied to the Euro Interbank Offered Rate (the "Euribor"), which has total approved settlements in the amount of \$491.5 million; and (ii) *Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y), two related class actions against numerous financial institutions for price-fixing financial instruments tied to the London Interbank Offered Rate ("LIBOR") for the Japanese Yen and the Euroyen Tokyo Interbank Offered Rate ("TIBOR"), which have total approved settlements in the amount of \$307 million.

Mr. Tabacco was one of the firm's lead attorneys representing the Wyoming State Treasurer and Wyoming Retirement System in the *In re IndyMac Mortgage-Backed Securities Litigation* in which the firm achieved settlements totaling \$346 million. He also oversaw *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.), the pioneering case that held credit rating agencies (Standard & Poor's and Moody's) financially responsible for their negligence in rating structured investment vehicles. After settling with both McGraw Hill Companies and Moody's, California Public Employees' Retirement System' total recovery for the case was \$255 million. Over the decades, Mr. Tabacco has prosecuted numerous securities fraud and antitrust cases against both domestic and international companies.

Mr. Tabacco recently oversaw *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), which achieved settlements in the total amount of \$139.3 million for a class of direct purchasers of lithium-ion rechargeable batteries (final approval on the last three settlements was granted on May 16, 2018). The lawsuit alleged that defendants, including LG, Panasonic, Sony, Hitachi and Samsung, participated in a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries are used and which the defendants sell.

Since 2008, Mr. Tabacco has served as an independent member of the Board of Directors of Overstock.com, a publicly traded company internet retailer. He is Chair of the Board's Nominating & Corporate Governance Committee and also serves as a member of the Board's Audit and Compensation Committees. He has also served as a member of the American Antitrust Institute Advisory Board since 2008. He also frequently lectures and authors articles on securities and antitrust law issues and is a member of the Advisory Board of the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law and the Advisory Board of the Center for Law, Economics & Finance at the George Washington School of Law. Mr. Tabacco is also a former teaching fellow of the Attorney General's Advocacy Institute in Washington, D.C., and has served on the faculty of ALI-ABA on programs about U.S.-Canadian business litigation and trial of complex securities cases.

For 16 consecutive years, he has been among the top U.S. securities litigators ranked by *Chambers USA* (2007-2021) and is also AV Preeminent® rated by *Martindale-Hubbell*®. Mr. Tabacco has been featured by the *Daily Journal* as one of the *Top Antitrust Lawyers in California* in 2020, as one of the *Top Plaintiffs Lawyers in California* in 2017, and as one of California's top 30 securities litigators, a group chosen from both the plaintiff and defense bars. He was also recognized by *Global Competition Review's Who's Who Legal: Competition*, most recently in 2021 – a designation he has received for the past 8 years since the

creation of the publication's Plaintiffs section. Additionally, for 19 consecutive years, Mr. Tabacco has been named a *Super Lawyer* by *Northern California Super Lawyers Magazine*, which features the top 5% of attorneys in the region (2004-2022). Additionally, Mr. Tabacco was ranked in the *Top 100 list* of attorneys in California in the *Northern California Super Lawyers Magazine* (2019-2022). He was ranked by *Benchmark Litigation* as a *California State Litigation Star* (2019-2022), *San Francisco Local Litigation Star* (2017-2022), *Noted Star in Plaintiff Work* (2020-2021), and *Noted Star in Antitrust, Intellectual Property, and Securities* (2019-2020). *The Best Lawyers in America*® recognized Joe as *Lawyer of the Year in Litigation-Securities* for 2022. He has further been recognized by *The Best Lawyers in America*® for *Litigation-Antitrust* (2018-2022) and for *Litigation-Securities* (2019-2022). He was also selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021). Mr. Tabacco has also been singled out by a top defense attorney for exemplifying "the finest tradition of the trial bar." In 2019, *Chambers USA* hailed Mr. Tabacco as "a formidable plaintiff-side litigator, with a wealth of experience handling securities class actions. A market source describes him as 'a master of orchestrating lawsuits and striking settlements,' adding: 'He strikes fear in the heart of defendants.'" *Chambers* has previously noted a client's praise for Mr. Tabacco: "His legal knowledge and skills are at the highest level. His combined intelligence and experience results in well-reasoned and thoughtful arguments to further our case."

Mr. Tabacco earned a J.D., *with honors*, from George Washington School of Law in 1974, and a B.A. in Government from University of Massachusetts-Amherst in 1971.

Mr. Tabacco is a member in good standing in the states of California and New York, and the Commonwealth of Massachusetts, as well as the U.S. District Courts for all districts in California, the District of Massachusetts, the District of Colorado (currently inactive), Eastern District of Michigan, the Southern and Eastern Districts of New York, the District of Columbia (currently inactive), the First, Second, Third, Sixth and Ninth Circuits of the U.S. Courts of Appeal and the U.S. Supreme Court.

TODD A. SEAVER



A partner in the San Francisco office, Todd A. Seaver litigates both antitrust and investment-related matters, with a primary focus on developing and litigating antitrust cases. He has led the day-to-day management of one of the largest antitrust class actions in history, and has litigated antitrust cases involving varied industries of high-tech, pharmaceuticals, autos, chemicals, consumer electronics, biotech, diamonds and online retailing. He is a leader of the firm's antitrust practice group, marshalling the firm's extensive investigative resources and then litigating the cases.

Currently, Mr. Seaver is co-lead counsel for consumer plaintiffs in an antitrust class action against American Express, *Oliver v. American Express Co.*, No. 1:19-cv-00566-NGG (E.D.N.Y.). The action is at the forefront of the payments industry and is now shaped by the landmark ruling in *Ohio v. American Express Co.*, 138 S. Ct. 2274 (2018), in which the U.S. Supreme Court articulated a new analytical framework for so-called "two-sided" markets.

Mr. Seaver is also presently counsel for plaintiffs and represents California State Teachers' Retirement System (CalSTRS) in the Euribor (*Sullivan v. Barclays PLC, et al.*, No. 13-cv-2811 (S.D.N.Y.)) and Yen

Libor (*Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y)) antitrust cases involving Wall Street banks' manipulation of interest rate benchmarks and bid-ask spread price fixing on interest rate derivatives. He also currently represents Orange County Employees' Retirement System (OCERS) in an ongoing antitrust class action (*Dennis v. JP Morgan Chase & Co.*, No. 16-cv-06496-LAK (S.D.N.Y)) alleging that U.S., European, and Australian banks manipulated the interest rate benchmark used to price derivatives that were denominated in Australian dollars and sold to U.S. investors. He also currently represents Fresno County Employees' Retirement Association (FCERA) in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-07789 (S.D.N.Y.), an antitrust class action against Wall Street banks for manipulating a foreign currency exchange rate benchmark and fixing bid-ask spreads on trillions of dollars of foreign currency exchange transactions.

He also leads plaintiffs' efforts in *In re New Motor Vehicles Canadian Export Antitrust Litigation*, in which Berman Tabacco is lead counsel. The case alleges that major auto manufacturers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States for use or resale. The case has partially settled with Toyota Motor Sales U.S.A. for \$35 million and with General Motors of Canada for \$20.15 million. The litigation is ongoing in California state court, with the California Court of Appeal having recently reversed the trial court's grant of summary judgment in favor of defendant Ford Canada.

Mr. Seaver recently had a leading role in several cases, including, *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), where the firm was co-lead counsel for direct purchaser plaintiffs. Settlements were reached totaling \$139.3 million for the direct purchaser class (final approval on the last three settlements was granted on May 16, 2018). The lawsuit alleged that defendants, including LG, Panasonic, Sony, Hitachi and Samsung, participated in a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries were used and which the defendants sold. Mr. Seaver argued and defeated motions to dismiss and deposed fact witnesses and defendants' expert economist and made the oral argument in opposition to defendants' *Daubert* motions to exclude plaintiffs' expert economist's opinions at class certification.

Mr. Seaver led efforts for the firm in an action against Netflix and Wal-Mart, *In re Online DVD Rental Antitrust Litigation*, in which Berman Tabacco was among lead counsel. He was responsible for managing many aspects of discovery, class certification and summary judgment, as well as for achieving partial settlement with defendant Wal-Mart. He successfully argued in Ninth Circuit Court of Appeals for that case on an issue of first impression regarding the Class Action Fairness Act and settlements involving a mix of cash consideration and electronic store gift cards. He was also one of the lead counsel in *In re Optical Disk Drive Antitrust Litigation* and also worked on a number of the firm's high-profile cases including *Cardizem CD*, still the leading generic drug competition case, which settled in 2003 for \$80 million. In the *Cardizem CD* case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action and obtained a pioneering ruling in the federal court of appeals regarding the "reverse payment" by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer's payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a per se unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

Mr. Seaver spearheaded the landmark case against the major credit rating agencies (Standard & Poor's and Moody's), *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal.

Super. Ct. San Francisco Cty.). The case, filed on behalf of the nation's largest state pension fund, the California Public Employees' Retirement System (CalPERS), was groundbreaking litigation that held the rating agencies financially responsible for negligent misrepresentations in rating structured investment vehicles. Moody's and Standard & Poor's agreed to pay a total of \$255 million (\$130 million and \$125 million, respectively) to settle CalPERS' claim that "Aaa" ratings on three SIVs were negligent misrepresentations under California law. This case was groundbreaking in that (i) the settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages; and (ii) it resulted in a published appellate court opinion finding that rating agencies can, contrary to decades of jurisprudence, be liable for negligent misrepresentations under California law for their ratings of privately-placed securities.

Mr. Seaver was previously associated with the law firm Devine, Millimet & Branch, P.A., where he practiced commercial litigation. He was an adjunct Professor of Law with the New England School of Law in 2003, teaching Appellate Advocacy.

Mr. Seaver is a member of the American Bar Association's Antitrust Section and served a two-year term as a Director for the San Francisco Bar Association's Antitrust Committee in 2012-2013.

Mr. Seaver was ranked by *Benchmark Litigation* as a *California Litigation Star* (2022), *Local Litigation Star* (2019-2020, 2022), *California Future Star* (2020-2021), and *Noted Star* (2019-2021) in *Plaintiff Work and Securities*. He was also named a *Super Lawyer* by *Northern California Super Lawyers Magazine* (2017-2022), and has been recognized by *Global Competition Review's Who's Who Legal: Competition* (2017-2019). *Who's Who Legal* has also named Mr. Seaver a *Thought Leader in Competition* (2019-2020, 2022). He was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021). In 2020, *The Legal 500* reported a client's praise for Mr. Seaver stating that he "displays deep knowledge of specialized finance."

Mr. Seaver graduated *magna cum laude* from Boston University in 1994 with a B.A. in International Relations. He earned a M.Sc. from the London School of Economics in 1995 and graduated *cum laude* from the American University Washington College of Law in 1999. While in law school, Mr. Seaver served as a law clerk at the Federal Trade Commission's Bureau of Competition and as a judicial extern for the Honorable Ricardo M. Urbina, U.S. District Court for the District of Columbia.

Mr. Seaver is a member in good standing in the Commonwealth of Massachusetts, the states of California and New Hampshire, as well as the U.S. District Courts for the District of Massachusetts, the District of New Hampshire, and the Northern, Eastern, Central and Southern Districts of California.

MATTHEW D. PEARSON



A partner in the firm's San Francisco office, Matthew D. Pearson focuses his practice on securities, antitrust and consumer protection litigation. Mr. Pearson is an integral member of the firm's New Case Investigations Team and devotes a substantial amount of his time to evaluating and investigating potential new cases. Mr. Pearson also monitors foreign securities litigation, tracks developments in foreign class action and securities law, and assists clients interested in litigating abroad.

Since joining the firm in 2005, Mr. Pearson has served in key roles on a number of the firm's leading securities and antitrust cases. On the securities side, Mr. Pearson was part of the litigation team in *In re The Bear Stearns Cos. Inc. Securities, Derivative and ERISA Litigation*, Master File No. 08-MDL No. 1963 (S.D.N.Y.), which resulted in settlements totaling \$294.9 million for aggrieved investors.

In his antitrust practice, Mr. Pearson was a prominent member of the firm's team leading the *In re New Motor Vehicles Canadian Export Antitrust Litigation*, No. 03-md-1532 (D. Me.), involving allegations that major automakers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States. Mr. Pearson was involved in all aspects of this nationwide, multi-jurisdictional litigation, including discovery, class certification, extensive expert reports, summary judgment, appeals in multiple courts, and settlement. The federal case ended in 2009. Mr. Pearson currently represents car buyers in a related litigation in California state court, captioned *In re Automobile Antitrust Cases I and II*, JCCP Nos. 4298 and 4303 (San Francisco Superior Court), which continues against one remaining automaker defendant. To date, the firm has achieved settlements totaling over \$55 million for class members in the federal and California actions.

Mr. Pearson also assisted in the firm's efforts to achieve a historic \$295 million settlement with De Beers, where the firm represented a class of diamond resellers alleging De Beers unlawfully monopolized the worldwide supply of diamonds. The settlement was significant because, in addition to the \$295 million cash payment, the settlement included an agreement by De Beers to submit to the jurisdiction of the U.S. court to enforce the terms of the settlement and a comprehensive injunction limiting De Beers' ability to restrict the worldwide supply of diamonds in the future. The firm's work in this case – believed to be the first successful prosecution of De Beers under U.S. antitrust laws – serves as a template for corralling foreign monopolists.

Mr. Pearson co-authored an amicus brief submitted to the California Supreme Court on behalf of three unions in the Kwikset case, involving products falsely labeled as "Made in the USA." The California Supreme Court's ultimate opinion (*Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011)), was highly favorable to our clients' interests and became one of the leading opinions regarding standing under California's Unfair Competition Law.

In 2021 and 2022, Mr. Pearson was selected as a *Super Lawyer* by *Northern California Super Lawyers* magazine.

Mr. Pearson received his law degree in 2004 from the University of California, Davis, School of Law, where he completed the King Hall Public Service Law Program. He completed his undergraduate studies at the

University of California, Los Angeles, earning a Bachelor of Arts in Political Science, with an International Relations concentration.

Mr. Pearson is a member in good standing in the state bar of California, and the United States District Courts for the Northern, Central and Southern Districts of California.

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EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

IN RE: NEW MOTOR VEHICLES)
CANADIAN EXPORT ANTITRUST)
LITIGATION)
_____)

MDL Docket No. O3-md-1532
ALL CASES

FILED
San Francisco County Superior Court
JUN 18 2004
BY: GORDON PARK-II, Clerk
Gordon Park-II
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Coordinated Proceeding Special Title)
(Rule 1550(b)))
_____)

AUTOMOBILE ANTITRUST CASES I,)
II)
_____)

JCCP NOS. 4298 and 4303
ALL CASES

JOINT COORDINATION ORDER

A Multidistrict Proceeding is pending in the District of Maine involving 26 cases transferred from 7 jurisdictions. Their subject matter is antitrust claims concerning alleged restrictions on the importing of Canadian motor vehicles.

Lead and liaison counsel have been appointed in the Multidistrict Proceeding. The Multidistrict Court has ruled on a variety of motions to dismiss, and the case is going forward.

Parallel proceedings are pending in state courts in Arizona, California (two batches of many cases), Florida, Minnesota, New Jersey (four cases),¹ New Mexico, New York (two cases), Tennessee, and Wisconsin (two cases), involving the same subject matter with substantial overlap of parties. They are at various stages of progress, and

¹ The New Jersey state proceeding has been dismissed and is on appeal.

some state courts have stayed proceedings, at least temporarily, while waiting to see what the Multidistrict Proceeding will do.

It is obvious that there is great risk of duplication of effort and unnecessary expense, and consequently a need for coordination.

All parties in the Multidistrict Proceeding have proposed a consolidated discovery and pretrial order. After conferring, they have agreed on proposed language that has gone through several iterations. It is based largely on a joint coordination order that Commissioner Bruce Mitchell of California and Judge Hornby of the District of Maine entered in their respective music CD antitrust lawsuits (another multidistrict litigation case) three years ago. Counsel from some of the state court proceedings disagree with the proposal. They prefer what was done in the Microsoft litigation. They have conferred with multidistrict counsel, but have been unable to reach agreement. They have therefore submitted their own separate proposal. At their request, the Multidistrict Court delayed entering a consolidated discovery and pretrial order pending ruling on the motions to dismiss. Those rulings have now been issued, and it is time to make a decision on the coordination proposals.

Although there are a number of differences between the competing coordination proposals, the three most important seem to be: (1) where will discovery disputes be heard (the multidistrict parties propose a federal magistrate judge in the Maine proceeding; the state proceeding parties propose a special master appointed in California); (2) will the multidistrict proceeding be the lead case; and (3) should the multidistrict proceeding protective order govern discovery in state court lawsuits, especially if it affects parties and issues that are not part of the multidistrict proceeding. On the first question, Maine offers videoconferencing and teleconferencing for discovery disputes quickly before a magistrate judge; the Maine alternative is therefore less expensive than appointing a special master, and not materially less convenient than

physical access to a master in California. On the second question, the largest concentration of resources is in the Multidistrict Proceeding and that court is likely to have the most time and resources to shepherd the proceedings along. On the third issue, there has been no showing that the multidistrict protective order is excessively onerous. If it is, it can be amended upon request. If the concern is that it is not strong enough, it can be strengthened, or an individual state can make it stronger for its own proceedings, albeit not for the federal or other state proceedings.

A federal multidistrict court cannot bind the state courts in parallel proceedings, and the state courts cannot bind the federal court. No court that signs this Order intends to violate that principle. But if the multidistrict court and a given state court simultaneously enter an order, they can collectively and effectively direct the parties and counsel before them to coordinate. Other state courts then can sign on, as and when they choose to. Some state courts may decide to go forward on their own, regardless of the progress of the Multidistrict Proceeding. Some state courts may choose to stay their actions pending the outcome of the Multidistrict Proceeding. But some may join the Coordination Order to achieve maximum coordination so as to serve the interests of judicial economy and reduction of attorney fees and costs for many of the cases. It is in that spirit that this order is entered.

Accordingly, Judge Hornby of the District of Maine (the Multidistrict Court) and Judge Richard Kramer of the California Superior Court (San Francisco) (henceforth a Coordinated Action) having consulted by telephone, fax and e-mail concerning the terms of the proposed order, do hereby enter this Order for their respective cases and their respective jurisdictions.

DEFINITIONS

1. The Multidistrict Proceeding: MDL 1532, In re New Motor Vehicles Canadian Export Antitrust Litigation, District of Maine.

2. The Multidistrict Court: Judge D. Brock Hornby of the United States District Court for the District of Maine.

3. State Court Actions: any state court lawsuits involving the same subject matter as the Multidistrict Proceeding.

4. Coordinated Action: Automobile Antitrust Cases I and II, J.C.C.P. Nos. 4298, 4303 in California Superior Court, San Francisco County, before Judge Richard A. Kramer; and any other state court lawsuit that subsequently enters this Order.

OPERATIVE TERMS

NOW, THEREFORE, IT IS ORDERED that the parties are to work together to coordinate discovery in order to prevent duplication of effort and to promote the efficient and speedy resolution of the MDL Proceeding and the Coordinated Actions and, to that end, the following procedures for discovery and pretrial proceedings shall be adopted:

A. Discovery and Pretrial Scheduling

1. All discovery and discovery-related pretrial scheduling in the Coordinated Actions will be coordinated with the discovery and discovery-related pretrial scheduling in the MDL Proceeding. The MDL Proceeding shall be used as the lead case for discovery and discovery-related pretrial scheduling in the Coordinated Actions.

2. Parties in the Coordinated Actions and their counsel shall be entitled to participate in discovery in the MDL Proceeding as set forth in this Order and in accordance with the terms of the Stipulated Protective Order submitted in the MDL Proceeding. All discovery will be conducted in accordance with the Federal Rules of Civil Procedure and the Local Rules and Orders of the MDL Court, all as interpreted by the MDL Court. Parties in the MDL Proceeding and their counsel shall be entitled to participate in discovery in any Coordinated Action as set forth in this Order.

3. A Stipulated Protective Order was submitted in the MDL Proceeding on September 26, 2003. As of the date of this Order, no similar confidentiality or protective order has been submitted in any of the Coordinated Actions. Counsel for all parties in the MDL Proceeding and the Coordinated Actions shall meet and confer regarding the adoption of a single confidentiality order in the MDL Proceeding and in each of the State Court actions (the "Master Protective Order"). The Master Protective Order shall be submitted to the MDL Court and, when issued by the MDL Court, shall govern discovery in the MDL Proceeding and in all Coordinated Actions. If any Court in a Coordinated Action enters further restrictions, those further restrictions apply only to the action before

that court, and shall not bind the parties in proceedings before the Multidistrict Court or in proceedings in other Coordinated Actions.

B. Use of Discovery Obtained in the MDL Proceeding or the Coordinated Actions

4. Counsel representing a party in a Coordinated Action will be entitled to receive all discovery taken in the MDL Proceeding, provided that such discovery responses and documents shall be used or disseminated in accordance with the terms of the Master Protective Order. Counsel representing a party in the MDL Proceeding shall be entitled to receive all discovery taken in any Coordinated Action; any such discovery responses and documents shall be used or disseminated in accordance with the terms of the Master Protective Order.

5. Requests for documents, interrogatories, depositions on written questions and requests for admission propounded in the MDL Proceeding will be deemed to have been propounded and served in the Coordinated Actions. Requests for documents, interrogatories, depositions on written questions and requests for admission propounded in the Coordinated Actions will be deemed to have been propounded and served in the MDL Proceeding. The parties' responses to such requests for documents, interrogatories, depositions on written questions and requests for admission will be deemed to be made in either action and may be used in either action, subject to and in accordance with the terms of the Master Protective Order, as if they had been taken under the applicable civil discovery rules of the respective jurisdictions.

6. Depositions taken in the MDL Proceeding may be used in the Coordinated Actions, subject to and in accordance with the terms of the Master Protective Order, as if they had been taken under the applicable civil discovery rules of the respective jurisdictions. Depositions taken in the Coordinated Actions may be used in the MDL Proceeding, subject to and in accordance with the terms of the Master Protective Order, as if they had been taken under the applicable discovery rules of the District of Maine.

C. Service and Coordination Among Counsel

7. The MDL Court has previously appointed Liaison Counsel for all parties in the MDL Proceeding (the "MDL Liaison Counsel") and Lead Counsel for the Class Plaintiffs (those counsel are identified in the attached Exhibit A). The Defendants' Liaison Counsel shall file with the MDL Court and serve upon all MDL Liaison Counsel copies of all Coordination Orders, Confidentiality or Protective Orders, and Orders designating plaintiffs' liaison counsel that are entered in the Coordinated Actions. Service may be made by electronic means.²

² All forms of service made under this Joint Coordination Order shall be deemed mailed in accordance with Rule 6 of the Federal Rules of Civil Procedure.

8. Any court wishing to grant the parties before it access to coordinated discovery may do so by joining this Order pursuant to paragraph 26, below, and appointing one Plaintiffs' Liaison Counsel to facilitate coordination of discovery in the Coordinated Action and discovery in the MDL Proceeding.

9. The Defendants' Liaison Counsel shall promptly serve upon Plaintiffs' Liaison Counsel in each Coordinated Action all discovery requests (including requests for documents, interrogatories, depositions on written questions, requests for admission and subpoenas *duces tecum*), responses and objections to discovery requests; deposition notices; correspondence or other papers modifying discovery requests or schedules; and discovery motions (*i.e.*, motions under Rules 26 through 37 or Rule 45 of the Federal Rules of Civil Procedure) or requests for hearing on discovery disputes regarding coordinated discovery matters that are served upon the parties in the MDL Proceeding. Service may be made by electronic means. Deposition notices shall be served by facsimile or other electronic means. Plaintiffs' Liaison Counsel in the Coordinated Actions shall be responsible for distributing such documents to other counsel for plaintiffs in their respective actions.

10. The Defendants' Liaison Counsel shall promptly serve upon Plaintiffs' Liaison Counsel in the MDL Proceeding all discovery requests (including requests for documents, interrogatories, depositions on written questions, requests for admissions and subpoenas *duces tecum*), responses and objections to discovery requests, deposition notices, correspondence or other papers modifying discovery requests or schedules, and discovery motions (*i.e.*, motions under the applicable state law equivalents of Rules 26 through 37 or Rule 45 of the Federal Rules of Civil Procedure) or requests for hearing on discovery disputes regarding coordinated discovery matters that are served upon the parties in any Coordinated Action. Service may be made by electronic means. Deposition notices shall be served by facsimile or other electronic means. Plaintiffs' Liaison Counsel in the MDL Proceeding shall be responsible for distribution of such documents to other counsel for plaintiffs in that proceeding.

11. The Defendants' Liaison Counsel shall maintain a log of all Orders entered in the MDL Proceeding or any Coordinated Action and all discovery requests and responses sent and received in the MDL Proceeding or any Coordinated Action and shall transmit a copy of said log by facsimile or other electronic means to Plaintiffs' Liaison Counsel in the MDL Proceeding and in each Coordinated Action by the seventh (7th) day of each month, or upon written request. The MDL Liaison Counsel will promptly transmit a copy of each order entered in the MDL Proceeding to Plaintiffs' Liaison Counsel in the Coordinated Actions. Defendants' Liaison Counsel in the Coordinated Actions will promptly transmit a copy of each order entered in any Coordinated Action to Plaintiffs' Liaison Counsel in the MDL Proceeding.

D. Participation in Depositions

12. Each deposition taken in the MDL Proceeding and Coordinated Actions will be conducted on reasonable written notice, to be served, electronically or otherwise, on all parties' Liaison Counsel.

13. Plaintiffs in the MDL Proceeding and Coordinated Actions shall coordinate with one another in noticing depositions so that all depositions shall be jointly scheduled, noticed and conducted. At least one Lead Counsel for the MDL Plaintiffs, or their designee, shall confer with Plaintiffs' Liaison Counsel in the Coordinated Actions, or their designees, in advance of each deposition noticed, taking such steps as may be necessary to prevent multiple interrogators and avoid duplicative questions, including the appointment of a single lead questioner for all plaintiffs in the MDL Proceeding and all plaintiffs in all Coordinated Actions ("Plaintiffs' Lead Questioner").

14. Counsel representing a party in a Coordinated Action shall be permitted to attend any deposition scheduled in the MDL Proceeding. One Plaintiffs' Counsel from each Coordinated Action (and one counsel for the MDL Plaintiffs if MDL Lead Counsel is not Plaintiffs' Lead Questioner in any deposition) shall be permitted a reasonable amount of time to question the deponent in those depositions following questioning by the Plaintiffs' Lead Questioner. Each such counsel shall be permitted to make objections during examination by other counsel, in accordance with the Federal Rules of Civil Procedure, the Local Rules of the MDL Court and the Orders of the MDL Court entered in the MDL Proceeding, and in accordance with the terms and procedures set forth in subparts (a) through (c) below, providing that:

- (a) the court in which the Coordinated Action is pending has adopted the Master Protective Order;
- (b) any questions asked by Plaintiffs' Counsel from the Coordinated Action shall be non-duplicative of questions previously asked in the deposition; and
- (c) participation of Plaintiffs' Counsel from the Coordinated Actions shall be arranged so as not to delay discovery or other proceedings as scheduled in the MDL Proceeding.

15. Counsel representing any party to the MDL Proceeding or any Coordinated Action may obtain directly from the court reporter at counsel's own expense a transcript of any deposition taken in the MDL Proceeding or in any other Coordinated Action. The transcript of any deposition taken shall not be used or disseminated in violation of the terms of this Order and the Master Protective order, or applicable law in a coordinated proceeding.

16. Depositions noticed by counsel in the MDL Proceeding shall be deemed to have been noticed in each of the Coordinated Actions.

17. Counsel and parties in either the MDL Proceeding or any Coordinated

Action who do not attend a jointly noticed deposition are prohibited from re-taking that deposition except for good cause shown.

18. Defendants (directly or through counsel for plaintiffs in the MDL Proceeding or any Coordinated Action) may invite plaintiffs in parallel state cases in which coordination orders have not been entered (“Non-coordinated Actions”) to attend depositions jointly noticed under this Order. Counsel for plaintiffs in Non-coordinated Actions may examine the witness after counsel for plaintiffs in the MDL Proceeding and Coordinated Actions have completed their examinations. The unwillingness of one or more plaintiffs in Non-coordinated actions to participate in a deposition shall not be grounds for rescheduling the deposition. If Defendants invite plaintiffs in Non-coordinated Actions to attend a deposition, Defendants’ Liaison Counsel shall provided Plaintiffs’ Lead Counsel in the MDL Proceeding and Plaintiffs’ Liaison Counsel in the Coordinated Actions written notice of any person who has been extended an invitation at least five days in advance of the deposition.

19. If the MDL Plaintiffs or MDL Defendants and Plaintiffs’ Liaison Counsel in any Coordinated Action have received notice of a deposition in either the MDL Proceeding or any Coordinated Action, such deposition may be used in the MDL Proceeding and each Coordinated Action for all purposes permitted under the Federal Rules of Civil Procedure without regard to whether any MDL Plaintiffs’ Counsel or any MDL Defendants’ Counsel or any counsel representing plaintiffs or defendants in any Coordinated Action attend or cross examine at the noticed deposition.

E. Written Discovery

20. At least one Lead Counsel for the MDL Class Plaintiffs, or their designee, shall confer with Plaintiffs’ Liaison Counsel in the Coordinated Actions, or their designees, in advance of the service of requests for written discovery in either the MDL Proceeding or in any Coordinated Action, taking such steps as may be necessary to serve joint written discovery, and to prevent additional duplicative interrogatories, depositions on written questions, requests for admission and requests for documents in either the MDL Proceeding or the Coordinated Actions.

21. All parties to the MDL Proceeding and the Coordinated Actions, through their respective Liaison Counsel, shall be entitled to receive copies of responses to interrogatories, responses to depositions on written questions, responses to requests for admission and documents produced in either the MDL Proceeding or in any Coordinated Action. Any party or counsel otherwise entitled under this order to receive copies of discovery from other parties or counsel shall reimburse the producing party for actual out-of-pocket costs incurred in connection with the copying and shipping of such discovery (including but not limited to document productions) and shall use such materials only in accordance with the terms of the Master Protective Order.

22. Counsel for all parties in the MDL Proceeding and Coordinated Actions shall meet and confer regarding the establishment of a joint document depository, including joint maintenance of physical or electronic files and the equitable sharing of expenses.

23. Any counsel representing a plaintiff in either the MDL Proceeding or a Coordinated Action shall, in accordance with any orders of any applicable court and subject to the terms of the Master Protective Order, have access to any document depository that may be established. No party or its counsel shall have access to any depository which may be established unless such party has paid its fair share of the cost of establishing and maintaining such depository. Any controversy over the fair share of costs shall be determined in the Multidistrict Court.

F. Discovery Dispute Resolution

24. In the event that the parties are not able to resolve any disputes that may arise in the coordinated pretrial discovery, such disputes will be decided in the MDL Proceeding, including disputes as to the interpretation of the Master Protective Order. Such disputes will be presented to the MDL Court. Resolution of such disputes shall be pursuant to the applicable federal law and such resolution may be sought by any party permitted by this Order to participate in the discovery in question.

25. Nothing contained herein shall constitute or be deemed to constitute a waiver of any objection of any defendant or plaintiff to the admissibility at trial of any documents, deposition testimony or exhibits, or written discovery responses provided or obtained in accordance with this Order, whether on grounds of relevance, materiality or any other basis, and all such objections are specifically preserved. The admissibility into evidence in any Coordinated Action of any material provided or obtained in accordance with this Order shall be determined by the court in which such action is pending.

G. Implementing This Order

26. Any court before which a State Court Action is pending may join this Order, thereby authorizing the parties to that State Court Action to participate in coordinated discovery as and to the extent authorized in this Order, provided that Plaintiffs' Liaison Counsel is first appointed for the State Court Action.

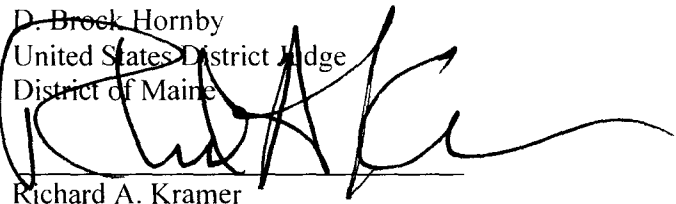
27. Each court that joins this Order shall retain jurisdiction to modify, rescind and/or enforce the terms of this Order as it affects proceedings before that particular court.

IT IS SO ORDERED.

April 28, 2004

/s/ D. Brock Hornby

D. Brock Hornby
United States District Judge
District of Maine



Richard A. Kramer
Coordination Trial Judge
San Francisco Superior Court

State Court Judge
State Court Action

Attachments: Exhibit A: MDL Lead and Liaison Counsel

*Automobile Antitrust
Cases I + II
JCC 4298 and 4303*

EXHIBIT D

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FILED
Superior Court of California
County of San Francisco

JAN 13 2012

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

COORDINATION PROCEEDING SPECIAL)
TITLE (RULE 1550(b)))
AUTOMOBILE ANTITRUST CASES I)
AND II)
This Document Relates to:)
All Actions)

Judicial Council Coordination
Proceeding Nos. 4298 and 4303
**MEMORANDUM OF OPINION
AND ORDER ON PLAINTIFFS'
APPLICATION FOR ATTORNEYS'
FEES, EXPENSES, AND
INCENTIVE AWARDS**
Honorable Richard A. Kramer
Coordination Trial Judge
Dept.: 304

1 In this coordinated proceeding, purchasers of new automobiles brought claims against
2 a number of automobile manufacturers under the Cartwright Act (Bus. & Prof. Code
3 §§ 16720, *et seq.*) and the Unfair Competition Law (Bus. & Prof. Code §§ 17200, *et seq.*).
4 Plaintiffs allege that Defendants conspired to keep lower-priced, yet virtually identical, new
5 cars from being exported from Canada to the United States, which kept new vehicle prices in
6 California higher than they should have been. After eight years of litigation, Plaintiffs and
7 defendant General Motors of Canada, Ltd. (“GMCL”), entered into a settlement of the
8 remaining state court actions in California, Florida, New Mexico, and Wisconsin. GMCL has
9 agreed to pay \$20,150,000 for the benefit of class members in these four states.

10 Before the court is Plaintiffs’ application for an award of attorneys’ fees and
11 reimbursement of expenses incurred in connection with this action and the other state actions
12 and federal multidistrict litigation, and payment of incentive awards to named Plaintiffs.
13 Plaintiffs’ counsel seek an award of attorneys fees of \$6,709,950.00, reimbursement of
14 expenses of \$5.2 million, and incentive award payments of \$750 to each of the named
15 Plaintiffs. After conducting a noticed hearing on the matter on January 5, 2012, the court
16 hereby **GRANT** Plaintiffs’ application.

17 BACKGROUND

18 Plaintiffs’ application for an award of fees and expenses comes after over eight years
19 of litigation. Although substantial litigation occurred in the parallel federal multidistrict
20 litigation before The Honorable D. Brock Hornby in the United States District Court for the
21 District of Maine,¹ the parties litigated extensively in this court. The parties briefed and
22 argued, and this court decided, a number of important matters, such as personal jurisdiction,
23 class certification, and summary judgment. These matters are discussed briefly below.

24 In early 2003, Plaintiffs filed a number of actions that were coordinated and assigned
25 to this Court. *See* Order Assigning Coordination Motion Judge, Apr. 21, 2003; Order

26
27 ¹ For a description of the proceedings before Judge Hornby, see the Declaration of Matthew
28 D. Pearson in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement
and Allocation Plan and Application for Attorneys’ Fees, Expenses & Incentive Awards,
filed December 5, 2011 (“Pearson Decl.”).

1 Assigning Coordination Motion Judge & Setting Hearing, Apr. 24, 2003. The court approved
2 coordination of the underlying actions—which numbered over a dozen—and was assigned as
3 the coordination trial judge over the coordinated proceeding. *See* Recommendations
4 Regarding Coordination & Stay Order, June 5, 2003; Order Assigning Coordination Trial
5 Judge, July 1, 2003.

6 Through the late summer and early fall of 2003, the court issued pretrial orders
7 governing how the litigation would proceed. Pretrial Order No. 1 set an organizing structure
8 for Plaintiffs' counsel that has endured throughout the litigation,² and Pretrial Order No. 2 set
9 the schedule for Plaintiffs to file their consolidated complaint and for Defendants to file
10 responsive pleadings.³ Plaintiffs filed their consolidated amended complaint on October 6,
11 2003.

12 During 2004 and into 2005, the court considered a number of motions filed by
13 Defendants, including motions to quash service, motions contesting personal jurisdiction, and
14 demurrers to the consolidated complaint. Several of the Defendants were foreign entities, and
15 the court heard argument and issued orders on personal jurisdiction and limited discovery
16 related thereto. General discovery efforts also began, and the court issued a Joint
17 Coordination Order, in concert and in consultation with Judge Hornby in the federal
18 litigation, that coordinated discovery between this California action, the federal action, and
19 other state actions. *See* Joint Coordination Order, filed June 18, 2004.

20 In the spring of 2005, Plaintiffs filed their motion for class certification. On
21 Defendants' motion, the court deferred consideration of the class certification motion
22 pending a ruling on class certification by Judge Hornby in the federal proceeding. Order re
23 Moving Defs.' Mot. to Defer Consideration of Pls.' Class Certification Mot., June 14, 2005.

24 During the time that class certification proceedings were deferred in this Court, the
25 parties conducted coordinated discovery under the Joint Coordination Order, and the federal
26 plaintiffs litigated their class certification motion in federal court. Coordinated discovery was

27 ² *See* Pretrial Order No. 1: Organization of Pls.' Counsel, Aug. 21, 2003.

28 ³ *See* Pretrial Order No. 2: Case Management & Initial Scheduling Order, Aug. 28, 2003.

1 extensive and complex, involving review of millions of pages of documents, analysis of
2 extensive amounts of data, multiple sets of interrogatories, hundreds of requests for
3 admission, over 130 depositions taken at various locations in the United States and Canada,
4 and substantial non-party foreign discovery through letters rogatory. *See* Decl. of Craig C.
5 Corbitt in Supp. of Pls.' Application for Attorneys' Fees, Expenses & Incentive Awards ¶ 4,
6 Dec. 5, 2011; Pearson Decl. ¶¶ 19-58. Expert testimony was highly sophisticated, involving
7 over a dozen expert witnesses and multiple reports and depositions. *See* Pearson Decl. ¶¶ 45-
8 58. The documents, testimony, and other evidence gathered through coordinated discovery
9 provided the foundation for the complex class certification and summary judgment motions
10 heard before this Court, described below.

11 The fact that plaintiffs' counsel coordinated pre-trial matters for the federal
12 multidistrict proceeding, the proceedings in California before this court, as well as the other
13 state court actions is significant with respect to the Plaintiffs' application for an award of
14 attorneys' fees and reimbursement of expenses. The work carried out by plaintiffs' counsel
15 in each action benefitted all actions. This was by design. It was done after Judge Hornby
16 and this court formulated the coordination orders that were subsequently adopted by all of the
17 other state courts and the federal court overseeing these various actions. As a result, it is not
18 possible now to divide the attorneys' fees or expenditures amongst the various actions as
19 attributable to one or another. Far more important, the coordinated pre-trial efforts by
20 plaintiffs' counsel produced efficient, streamlined work and allocation of resources.

21 In late 2008, after Judge Hornby ruled on the federal plaintiffs' class certification
22 motion,⁴ and after related appellate proceedings in federal court,⁵ a hearing date and a
23 briefing schedule were set for Plaintiffs' motion for class certification in this court. *See*
24 Minutes of Case Management Conference, Oct. 20, 2008. On May 18, 2009, after extensive

25 ⁴ *See In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, MDL Docket No. 1532, 2006
26 U.S. Dist. LEXIS 10240 (D. Me. Mar. 10, 2006) (certifying nationwide injunctive class); *In*
27 *re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 235 F.R.D. 127 (D. Me. 2006)
(certifying exemplar state damage classes).

28 ⁵ *See In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 522 F.3d 6 (1st Cir. 2008)
(vacating federal district court's certification orders).

1 briefing and two days of oral argument, this court granted Plaintiffs' motion for class
2 certification. Order Granting Pls.' Mot. for Class Certification, May 18, 2009. The court of
3 Appeal denied Defendants' petition for writ of mandate seeking review of the class
4 certification order. *See Order, General Motors of Canada, Ltd. v. Superior Court*, No.
5 A125424 (Ct. App., 1st App. Dist., Aug. 13, 2009).

6 In January 2010, the remaining Defendants—Ford Motor Co. and Ford Motor Co. of
7 Canada, Ltd. (collectively, "Ford"), American Honda Motor Co., Inc. and Honda Canada Inc.
8 (collectively, "Honda"), Nissan North America, Inc. ("Nissan"), and GMCL—filed motions
9 for summary judgment. Defendants also moved to exclude testimony of Plaintiffs' expert
10 witness. The parties filed voluminous briefs and supporting materials in support of and in
11 opposition to these motions. This court held hearings over four days in the spring of 2011 on
12 Defendants' summary judgment motions, specifically on the element of conspiracy. The
13 parties also lodged and responded to a great number of evidentiary objections, on which this
14 court ruled. During this time period, GMCL and Plaintiffs settled the remaining state actions.
15 The court eventually granted the motions of Ford, Honda, and Nissan for summary
16 judgment.⁶

17 Through the course of the extensive proceedings in this coordinated proceeding, this
18 court has personally observed the zealous advocacy of plaintiffs' counsel on behalf of the
19 Class against very formidable opposition by nationally recognized defense counsel. The
20 issues briefed were complex, and counsel expended great time and effort litigating the
21 various motions before me. Plaintiffs' counsel were ultimately successful in achieving a
22 significant recovery for the Class through the settlement with GMCL, which is remarkable in
23 light of my summary judgment rulings in favor of the other remaining defendants. The
24 Settlement, reached through plaintiffs' counsel's effort, produces a real benefit to the Class in
25 the form of cash recovery.

26
27 ⁶ *See Order Granting Summ. J. for Defs. American Honda Motor Co., Inc., Honda Canada*
28 *Inc., & Nissan North America, Inc., Feb. 7, 2011; Order Granting Mots. for Summ. J. by*
Def. Ford Motor Co. & Ford Motor. Co. of Canada, Ltd., Nov. 4, 2011.

1 **ATTORNEYS' FEES**

2 Plaintiffs seek an award of \$6,709,950.00 in attorneys' fees to be paid from the
3 Settlement Fund. Pls.' Notice of Application & Application for Attorneys' Fees, Expenses &
4 Incentive Awards at 1, Dec. 5, 2011 ("Pls.' Fee Appl."). This represents 33.3% of the
5 \$20,150,000 Settlement Fund. I am aware that plaintiffs' counsel have sought an award of
6 attorneys' fees in the amount of \$4.92 million from the proceeds of settlements reached with
7 defendants Toyota Motor Sales, U.S.A., Inc. ("Toyota") and the Canadian Automobile
8 Dealers' Association ("CADA") in the federal action. *See* Pls.' Mem. of Points & Authorities
9 in Supp. of Pls.' Application for Attorneys' Fees, Expenses & Incentive Awards at 2 ("Pls.'
10 Fee Br."). Plaintiffs' counsel incurred total lodestar of over \$54 million. *See* Pls.' Fee Br. at 6
11 (citing the fee declarations submitted by Plaintiffs' counsel) and declarations revising top
12 hourly rates in accordance with court's directive. Thus, the \$6.71 million award sought here,
13 even if added to the \$4.92 million award sought in from the Toyota and CADA settlements,
14 will result in a total fee award that is substantially less than the total lodestar expended by all
15 counsel in the coordinated litigations.

16 The terms of the settlement agreement between Plaintiffs and GMCL call for
17 reasonable attorney fees to be awarded to Plaintiffs' counsel. In addition to the court's power
18 to enforce the contract, the court also has the equitable power to award attorneys' fees and
19 costs where, as here, a litigation produces a common fund or common benefit for a group.
20 *Serrano v. Priest*, 20 Cal.3d 25, 35 (1977). In reviewing Plaintiffs' counsel's fee request, the
21 court has considered (1) the novelty and difficulty of the questions involved, (2) the skill
22 displayed in presenting them, (3) the extent to which the nature of the litigation precluded
23 other employment by attorneys, (4) the contingent nature of the fee award, (5) the results
24 obtained, (6) the risk of nonpayment, and (7) the delay in payment of fees. *See Ketchum v.*
25 *Moses*, 24 Cal.4th 1122, 1132 (2001); *Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553,
26 582-584 (2004). The court finds that all of these factors support granting plaintiffs' fee
27 request, and that the requested fee amount is reasonable under either the percentage of
28 recovery or lodestar times a multiplier methods of calculating attorneys' fees. *See Wershba v.*

1 *Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (discussing both methods). Also
2 compelling is that no class members have objected to Plaintiffs' counsel's fee request after
3 receiving due notice.

4 **REIMBURSEMENT OF EXPENSES**

5 Plaintiffs' counsel seek \$5.2 million in litigation expenses to be paid from the
6 Settlement Fund. Pls.' Fee Appl. at 1. Plaintiffs' counsel have incurred approximately \$12
7 million in costs to prosecute this action, the federal action, and the other various state actions.
8 Pls.' Fee Br. at 16 (citing declarations of Craig C. Corbitt, Joseph J. Tabacco, Jr., and J.
9 Douglas Richards, filed Dec. 5, 2011). The court is aware that Plaintiffs' counsel have sought
10 reimbursement of \$6.27 million from the proceeds of the Toyota and CADA settlements in
11 the federal action. *See* Pls.' Fee Br. at 2. If Plaintiffs' counsel's requests for costs are granted
12 here and in the federal action, counsel will not be fully reimbursed for the approximately \$12
13 million expended in litigating these actions.

14 The court finds that the amount Plaintiffs request for reimbursement of litigation costs
15 is reasonable. No objections were made to Plaintiffs' request for expense reimbursement. The
16 \$5.2 million requested represents a reasonable percentage of costs that may be deemed
17 attributable to the state actions that are a part of this Settlement. The California Class has
18 benefited greatly from the joint efforts of Plaintiffs' counsel through coordinated discovery.

19 **INCENTIVE AWARDS FOR NAMED PLAINTIFFS**

20 Plaintiffs' seek incentive awards in the amount of \$750 to be paid to each of the
21 eleven named class representatives. The court finds such awards to be reasonable in light of
22 the service each class representative provided to the Class and as compared to incentive
23 awards granted in other California cases. *See, e.g., Cellphone Fee Termination Cases*, 186
24 Cal.App.4th 1380, 1393-95 (awarding \$10,000 to each of four class representatives); *Munoz*
25 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010) (awarding \$5,000 each to
26 two representatives); *In re Cal. Indirect Purchaser X-Ray Film Antitrust Litig.*, No. 960886,
27 1998 WL 1031494, at *11 (Alameda Super. Ct. Oct. 22, 1998) (awarding \$1,000 to each of
28 nine representatives).

1
2 **ORDER**

3 In consideration of the foregoing, and the briefing and argument presented to me
4 before at the fairness hearing held January 5, 2012, and good cause appearing, THE
5 FOLLOWING MATTERS ARE DETERMINED AND ORDERED FOR PURPOSES OF
6 THIS CALIFORNIA ACTION and are recommended, but not binding, on the Courts
7 overseeing the three state actions pending in Florida (*Humberto Beckford, et al. v. General*
8 *Motors Corp., et al.*, No. 03-6443 CA 10, pending in the Circuit Court of the Eleventh
9 Judicial Circuit in and for Miami-Dade County, Florida); New Mexico (*Emanuele Corso v.*
10 *General Motors Corp., et al.*, No. D-0101-CV-2003-00668, pending in the First Judicial
11 District Court, County of Santa Fe, New Mexico); and Wisconsin (*David Rasmussen, et al.*
12 *v. General Motors Corp., et al.*, No. 03-CV-001828, pending in the Circuit Court for
13 Milwaukee County, Wisconsin).

14 1. Plaintiffs' counsel are awarded attorneys' fees in the amount of \$
15 6,709,950.00. Plaintiffs' counsel are further awarded reimbursement of their costs and
16 expenses in the amount of \$ 5,200,000.00. These awards shall be paid from the Settlement
17 Fund.

18 2. Plaintiffs George Bell; Laurance De Vries; Joshua Chen; Jason Gabelsberg;
19 Ross Lee; Jeffrey M. Lohman; Christine Nichols; United Food & Commercial Workers,
20 Local 588; Estelle Weyl; Michael Wilsker; and W. Scott Young shall be awarded \$ 750.00
21 each as incentive awards. These awards are to be paid from the Settlement Fund.

22 3. This Order is made pursuant to California case law (*see, e.g., Serrano v.*
23 *Priest*, 20 Cal. 3d 25 (1997)); this court's legal power to enforce the settlement contract and
24 equitable power to award attorneys' fees and costs when litigation proceeding in a
25 representative capacity secures a substantial benefit for a group; and this Court's equitable
26 power to award class representatives a reasonable incentive award pursuant to California law.

27 4. An award of attorneys' fees of \$ 6,709,950.00, shall be paid from the
28 Settlement Fund. Given the complexity of this litigation and the unique knowledge

1 possessed by MDL Action Lead Counsel and California and other State firm members of the
2 Coordinating Committee, pursuant to their prior agreement, they shall be authorized to
3 allocate any aggregate fee ultimately awarded in a manner consistent with the Coordinating
4 Committee Agreement, and also in a manner that reflects the hours expended by and relative
5 contributions of each firm. In the event of a dispute, Plaintiffs' counsel shall submit any
6 dispute on allocation for resolution by mediation or arbitration through JAMS.

7 5. The award of fees is based on the percentage-of-the-fund approach with a
8 cross-check of the lodestar-times-multiplier method for determining a reasonable award of
9 attorneys' fees. The fee award is 33.3 percent of the Settlement Fund. Applying the
10 percentage of recovery analysis, the court determines that an award of fees of approximately
11 33.3 percent of the total settlement consideration is consistent with fee awards in similar
12 cases, consistent with the market for contingent litigation of this nature, and is reasonable and
13 appropriate under the circumstances of this case. The court finds that the lodestar Plaintiffs'
14 counsel have accumulated was reasonable and consistent with the litigation in this case. This
15 court further finds that Plaintiffs' counsel's hourly rates were reasonable for the work they
16 performed. Plaintiffs' counsel are awarded a fractional multiplier of approximately 0.12 on
17 the aggregate lodestar. This multiplier is appropriate in light of the contingent nature of the
18 case, the risk, expense, and delay in payment undertaken by Plaintiffs' counsel, and the
19 outstanding result achieved on behalf of the Class, as well as the other circumstances of this
20 case.

21 6. Both the application of the lodestar-times-multiplier method and the
22 percentage-fee method for awarding reasonable fees are available to the court, both produce
23 the same result, and the court relies on each method as an independent basis for its
24 determination of a reasonable award of attorneys' fees.

25 7. In setting an award of attorneys' fees, costs, and expenses, the court has
26 considered the following factors: (1) the novelty and difficulty of the questions involved; (2)
27 the skill displayed in the litigation; (3) the extent the litigation precluded other employment
28 by counsel; (4) the contingent nature of the fee award; (5) the result obtained; (6) the risk of

1 nonpayment; and (7) the delay in payment of fees. *See, e.g. Ketchum v. Moses*, 24 Cal. 4th
2 1122, 1132 (2001); *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 582-84 (2004).

3 Application of all these factors demonstrates both that a percentage-fee award of 33.3 percent
4 of the total Settlement Fund, or an award of Plaintiffs' counsel's aggregate lodestar times a
5 multiplier of 0.12, are appropriate.

6 8. The costs and expenses incurred by Plaintiffs' counsel were reasonably
7 incurred and appropriate given the circumstances of this action. These costs of \$
8 5,200,000.00 are awarded in addition to the fees already described.

9
10 Dated: 1-13-12



Honorable Richard A. Kramer
Coordination Trial Judge

EXHIBIT E

REC'D MAY 15 2009

FILED

San Francisco County Superior Court

MAY 19 2009

GORDON PARK-LI, Clerk

BY: *Attila Kelen*
Deputy Clerk

Zelle Hofmann Voelbel & Mason LLP
44 Montgomery Street - Suite 3400
San Francisco, CA 94104

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

COORDINATION PROCEEDING SPECIAL
TITLE (RULE 1550(b))
AUTOMOBILE ANTITRUST CASES I
AND II

Judicial Council Coordination
Proceeding Nos. 4298 and 4303

CLASS ACTION

This Document Relates to:
All Actions

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION

Date: April 21-22, 2009
Time: 9:30 a.m.
Dept.: 304
Judge: Hon. Richard Kramer

Trial Date: None set

Zelle Hofmann Vogelbe & Mason LLP
44 Montgomery Street - Suite 3400
San Francisco, CA 94104

RAK

RAK

1 Plaintiffs' motion for class certification came on for hearing on April 21-22, 2009, before the
2 Honorable Richard A. Kramer. The Court has heard and considered all papers filed and all
3 arguments in support of and in opposition to said motion.

4 IT IS HEREBY ORDERED that, for the reasons below and those set forth in the Court's oral
5 rulings at the April 21-22, 2009 hearings, plaintiffs' motion for class certification is GRANTED.
6 The above-entitled action is certified as a plaintiff class action upon the findings and pursuant to the
7 terms set forth below

8 1. The class is defined as:

9 All persons and entities residing in California on the date notice is first published,
10 who purchased or leased a new motor vehicle manufactured or distributed by a
11 defendant, from an authorized dealer located in California, during the period
12 January 1, 2001 through April 30, 2003, for their own use. Excluded from the
13 class are the defendants; the officers, directors or employees of any defendant; any
14 entity in which any defendant has a controlling interest; the affiliates, legal
15 representatives, attorneys, heirs or assigns of any defendant; any governmental
16 entity; any judge, justice, or judicial officer presiding over this matter, and the
17 members of their immediate families and judicial staffs.

18 2. The class is ascertainable and well defined, and satisfies the numerosity requirement
19 in that there ~~are~~ ^{appear to be at} least many thousands of individuals who purchased new motor vehicles in
20 California during the class period.

21 3. The plaintiffs have presented substantial evidence that there is a well-defined
22 community of interest among the members of the class. Common questions of law and fact exist and
23 predominate over questions affecting individual members of the class. Some of the common
24 questions include the existence of the alleged conspiracy and injury to class members. The
25 plaintiffs' theory of recovery ^{appears} is amenable to class treatment.

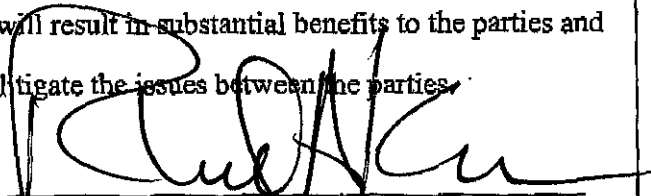
26 4. The claims or defenses of the class representatives are typical of those of the class as a
27 whole. The named plaintiffs, George Bell, Laurance De Vries, Joshua Chen, Jason Gabelsberg, Ross
28 Lee, Jeffrey M. Lohman, Christine Nichols, United Food & Commercial Workers, Local 588, Estelle
Weyl, Michael Wilsker, and W. Scott Young, shall serve as class representatives. They are members
of the class. The class representatives and their counsel can adequately represent the class.

///
///

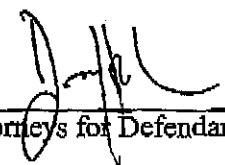
5. Maintenance of the case as a class action will result in substantial benefits to the parties and the Court, and is superior to any other method to litigate the issues between the parties.

DATED: 5/18, 2009

By:


Hon. Richard A. Kramer
Coordination Trial Judge

Approved as to form:


Attorneys for Defendants

Automobile Anti-trust Cases I & II
(JCCP 4298 & 4303)

#3217225

Zelle Hofmann Vuelbel & Mason LLP
44 Montgomery Street - Suite 3400
San Francisco, CA 94104

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EXHIBIT F

1 Joseph J. Tabacco, Jr. (SBN 75484)
2 Todd A. Seaver (SBN 271067)
3 Jessica Moy (SBN 272941)
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6 San Francisco, CA 94104
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10 tseaver@bermantabacco.com
11 jmoy@bermantabacco.com

12 *Attorneys for Class Plaintiffs*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
09/01/2017
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **CITY AND COUNTY OF SAN FRANCISCO**
15 **UNLIMITED JURISDICTION**

16 COORDINATION PROCEEDING SPECIAL) Judicial Council Coordination
17 TITLE (RULE 1550(b))) Proceeding Nos. 4298
18)
19 AUTOMOBILE ANTITRUST CASES I) CJC-03-004298
20 AND II)
21 _____) CLASS ACTION
22)
23 This document relates to:) **DECLARATION OF TODD A. SEAVER IN**
24 All Actions) **SUPPORT OF PLAINTIFFS' MOTION**
25) **FOR ENTRY OF AN ORDER ENTERING**
26) **SATISFACTION OF JUDGMENT AND**
27) **OBJECTION TO [PROPOSED] AMENDED**
28) **JUDGMENT IN FAVOR OF FORD**
) **MOTOR COMPANY**
)
) Date: September 29, 2017
) Time: 10:30 a.m.
) Dept: 304
) Judge: Honorable Curtis E.A. Karnow
) Date Complaint Filed: October 6, 2003
) (Consolidated Amended Class Action
) Complaint)

Exhibit 3

CITY NATIONAL BANK

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For Inquiries Call 800-773-7100

CASHIER'S CHECK

16-1606
1220

30521458

DATE August 31, 2017

PAY TO THE ORDER OF **Ford Motor Company**

\$ *****199,464.98**

PAY **ONE HUNDRED NINETY NINE THOUSAND FOUR HUNDRED SIXTY FOUR DOLLARS AND NINETY EIGHT CENTS

Ford Cost Award-Principal Amount
Branch: 432

[Handwritten Signature]
AUTHORIZED SIGNATURE

Two signatures required over \$50,000

⑈ 30521458⑈ ⑆ 122016066⑆ 112⑈851844⑈

CITY NATIONAL BANK

The way up.[®]

For Inquiries Call 800-773-7100

CASHIER'S CHECK

16-1606
1220

30521459

DATE August 31, 2017

PAY TO THE ORDER OF **Ford Motor Company**

\$ *****491.83**

PAY **FOUR HUNDRED NINETY ONE DOLLARS AND EIGHTY THREE CENTS**

Ford Cost Award-Interest Amount
Branch: 432

[Handwritten Signature]
AUTHORIZED SIGNATURE

Two signatures required over \$50,000

⑈ 30521459⑈ ⑆ 122016066⑆ 112⑈851844⑈

Superior Court of California,
County of San Francisco
Civil/Small Claims

Aug-31-2017 15:47:55 W15178310017 BLEU

CASE NUMBER: CSC-03-004298

AUTOMOBILE ANTITRUST CASES I

OTHER TRUST DEPOSIT

FILED BY WILLSEY, ROBERT

FEE: \$199,464.98 PAID BY MONEY ORDER

THANK YOU

034877

SAN FRANCISCO SUPERIOR COURT

CASE: CSC-03-004298 CASHIER: MLJU

AUTOMOBILE ANTITRUST CASES I

DATE: Aug-31-2017 TIME: W15178310017

Filing Type: DEPOSIT OF UNDERTAKING

Pay Type: MONEY ORD Amt: \$199,464.98
NO. BALANCE DUE

Paid By:

TOBB A. SERVER (271057)

BERNARD DEVALERIO

44 HORTONERY STREET

SUITE 350

SAN FRANCISCO, CALIFORNIA 94104

Superior Court of California,
County of San Francisco
Civil/Small Claims

Aug-31-2017 15:51:30 W15178310018 BLIU

CASE NUMBER: CJC-03-004298

AUTOMOBILE ANTITRUST CASES I

OTHER TRUST DEPOSIT

FILED BY BELL, GEORGE

FEE: \$491.83 PAID BY MONEY ORDER

THANK YOU

034898

SAN FRANCISCO SUPERIOR COURT

CASE: CJC-03-004298 CASHER: BLIU

AUTOMOBILE ANTITRUST CASES I

DATE: Aug-31-2017 TXNO: W15178310018

Filing Type: DEPOSIT OF UNDERTAKING

Pay Type: MONEY ORD Amt: \$491.83
DU. BALANCE DUE

Paid By:

TOMM A. SEAYER (271057)

BERNAN DEVALERIO

44 MONTGOMERY STREET

SUITE 650

SAN FRANCISCO, CALIFORNIA 94104

EXHIBIT G



FILED
San Francisco County Superior Court

MAY 16 2017

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

COORDINATION PROCEEDING SPECIAL
TITLE (Cal. R. Ct. 1550(b))

J.C.C.P. No. 4298

CJC-03-004298

AUTOMOBILE ANTITRUST CASES I, II

**ORDER DENYING MOTION OF FORD
CANADA FOR SUMMARY JUDGEMENT
OR IN THE ALTERNATIVE FOR
SUMMARY ADJUDICATION**

This document relates to:
All Actions

I heard argument on Ford Canada’s motion for summary judgment re: causation May 4, 2017.¹ I asked for supplemental materials due May 15, with the motion then deemed submitted. Ford Canada asked me to hold off ruling until the hearing on its motion to be heard June 15 on issues of res judicata. However I see no good reason to postpone ruling, and argument on the res judicata motion might be focused by the discussions here. I have expressly noted that this order does not decide the res judicata issues, and even if, for example, I decide that California state law and First Circuit law are the same (compare notes 9-12, below), the result here would be the same because there are independent reasons for my decision.

The present motion was filed in January 2010. After appellate proceedings,² the case returned to the trial court and was then assigned to me. Ford Canada has renewed its motion and

¹ As described below in the text, the motion was filed several years ago. It was titled “Non-Settling, Non-Bankrupt Defendants’ Joint Motion for Summary Judgement or in the Alternative Summary Adjudication.” The more recently filed supplemental memoranda retain the title although the motion is now pressed by one defendant.

² *In Re Automobile Antitrust Cases I and II*, 1 Cal.App.5th 127, 132 (2016).

1 each side filled supplemental materials to bring the motion up to date. But the parties did not
2 trim the original motion, leaving in place a large number of irrelevant documents, objections,
3 statements of fact, and so on. The motion had been filed by multiple defendants, and much of
4 the evidence and discussion related to them; but now it is brought only by Ford Canada. The
5 bloated record—courtesy copies of papers and binders stack about 4 ½ feet high—includes e.g.,
6 Plaintiffs’ Separate Statement at 179 pages with 1035 statements of fact, most of which are now
7 irrelevant.
8

9
10 **Sealing**

11 I note that many papers filed in 2010 were filed under seal. Those issues are not before
12 me now, but I direct that no prior order regarding sealing allows any paper filed in the future to
13 be filed under seal. I must undertake a specific examination of the words, letters, or numbers
14 sought to be redacted from the public file in every instance, and the parties must comply with
15 CRC 2.550 *et seq.* to have any paper (excluding those on discovery disputes) filed under seal.³
16
17

18 **Formal Objections To Hall Opinions**

19 At the May 4 hearing, I asked the parties to extract Ford Canada’s formal objections to
20 Hall’s opinions, and plaintiffs’ responses to those. The document (I term it the Extracts⁴) was
21 provided May 15. I asked for the Extracts because Ford Canada’s motion targeted Hall’s
22 opinions and I hoped to ensure I was focused on the specific bases for that attack.
23
24

25
26 ³ Further suggestions on sealing are found in the Department’s Use Manual, available through
<http://www.sfsuperiorcourt.org/divisions/civil/litigation>.

⁴ Joint Submission Re Extracted Objections and Responses, Etc., dated May 15, 2017.

1 As plaintiffs' note, the objections were originally filed with Ford Canada's reply papers
2 and the rules of court do not provide a means by which plaintiffs could have responded to the
3 objections by some sort of sur-reply.⁵

4 While in the Extracts Ford Canada now asks me to hold that plaintiffs have waived any
5 response to Ford Canada's objections, I decline for two reasons, First, there really is nothing to
6 waive: there is no rule or statutory right which plaintiffs forfeited by e.g. not exercising it. Ford
7 Canada is right "that plaintiffs are not entitled to respond," Extracts at 2:7, but I had thought it
8 useful to ask for their position, as I might at a hearing. Second, as it happens the issues presented
9 by the objections are presented by the memoranda filed in connection with this motion anyway,
10 and I deal with them below, beginning on the next page.

11
12 The Extracts recite Objections 11-12, 885, 887, 889-96. The objections are hearsay, lack
13 of personal knowledge, and relevancy. The objections are overruled. The hearsay and lack of
14 personal knowledge objections are discussed below. The relevancy objection is overruled
15 because the opinions go to causation and impact.

16
17
18 **Overview**

19 Ford Canada claims that plaintiffs cannot prove causation. But if plaintiffs' expert
20 opinion is admissible, it creates a triable issue sufficient to defeat this motion. The motion is
21 denied because among other things Ford Canada does not show the opinion is inadmissible. It is
22 also denied because Ford does not show that plaintiffs rely solely on the opinion, that is, that
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⁵ For example CRC 3.1354 provides for objections, not responses to them. Nor does C.C.P. § 437c address responses to objections. In short, the rules and statute seem to contemplate courts' ruling on objections only having heard from one of the two sides. In practice, key evidentiary issues are often discussed by both sides at the hearing.

1 plaintiffs cannot obtain evidence on causation. I discuss the latter issue under the title *The*
2 *Aguilar Burden* below at page 6.

3 Ford Canada makes a series of arguments, although they tend to blend. It argues that
4 plaintiffs' expert Robert Hall has no reasoned analysis linking facts to his opinions (Original
5 Memo at 2:12⁶), although this is not pursued in the papers. Ford Canada also argues that Hall's
6 opinions do not rest on *admissible* facts; and (this is a distinct basis, although Ford does not treat
7 it so) that no facts support Hall's opinions.

8
9 Distinctly, it argues that the materials cited by Hall, even if presented to a jury, would not
10 establish the requisite causation. E.g., Ford Canada Supplemental Memo at 7:21-23.

11 Fundamentally, Ford might be making one of two (or both) of these legal arguments:

12 (A) Under *Sargon Enterprises, Inc. v. Univ. of S. Cal.*, 55 Cal. 4th 747 (2012), the
13 expert's opinions could be speculation. The issue whether an expert's "opinions were based on
14 assumptions of fact without evidentiary support or on speculative or conjectural factors," which
15 seemed to be the thrust of the motion here, is typically thought to be a *Sargon* issue. *Sanchez v.*
16 *Kern Emergency Med. Transportation Corp.*, 8 Cal. App. 5th 146, 162 (2017) (citing *Sargon*).
17 But at argument Ford Canada disclaimed this,⁷ noting that it intended to file in the future a
18 separate *Sargon* motion. This is despite its argument that Hall has no factual support for his
19 opinions. Original Memo at 3:21-22 (expert opinion is 'devoid of factual underpinning'); *id.* at
20 15:4-5.
21
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24 ⁶ To avoid ungainly references to the titles of the relevant memoranda of points and authorities, I will term the
25 defendants' opening 2010 memo filed January 29, 2010 the "Original Memo," their Reply filed April 28, 2010 the
26 "Original Reply," Plaintiffs' Opposition dated March 29, 2010 the "Original Opposition," and the 2017
supplemental memos dated March 29 and April 19, respectively "Ford Canada Supplemental Memo" and
"Plaintiffs' Supplemental Memo."

⁷ My informal written tentative provided to the parties before argument suggested that we had a *Sargon* issue, but at
argument Ford Canada disagreed.

1 (B) Ford Canada emphasized at argument its position that Hall had no facts, no data, to
2 support his opinion. If this is not a *Sargon* argument, it may be an argument that plaintiffs have
3 failed to set forth any admissible facts to support the opinion. Almost a year ago, our state
4 Supreme Court considered the issue of the extent to which expert opinions must be supported by
5 admissible facts and, to the contrary, the extent to which they may be supported by inadmissible
6 facts, and by theories. *People v. Sanchez*, 63 Cal. 4th 665 (2016). See also, e.g., *People v.*
7 *Stamps*, 3 Cal. App. 5th 988, 994 (2016) (applying *People v. Sanchez*). Under *Sanchez*, experts
8 may present to the fact finder general theories and non-case specific facts (even if hearsay).
9 Here, the expert's opinion relies among other things on that kind of foundation. Ford has not
10 demonstrated that Hall relied on case-specific facts (which are not otherwise in evidence), and
11 that without them the opinions have no foundation.
12
13

14 **Discussion**

15 *Background*

16 These coordinated suits were brought by a class of consumers against automobile
17 manufacturers and trade associations alleging an antitrust conspiracy. The conspirators allegedly
18 agreed to block entry into the United States of less expensive cars from Canada, in order to boost
19 U.S. prices. Plaintiffs have evidence of various techniques used to implement the conspiracy.⁸ As
20
21

22
23 ⁸ Plaintiffs have some evidence that defendants controlled the flow of Canadian cars into the US through a variety of
24 policies that put pressure on dealers and consumers. Car manufacturers purportedly created blacklists of entities
25 known to export vehicles for resale so that their Canadian dealerships could consult the list and refrain from selling
26 any more cars to those entities. Manufacturers tracked every vehicle by VIN number to determine if the car had been
made in Canada, and if a Canadian car was found in a U.S. market, many franchise agreements allowed
manufacturers to place chargebacks or impose substantial fines on the originating dealerships. Some dealership
franchises were terminated because they supplied cars to the U.S. Manufacturers also required Canadian dealers to
include a "no export" clause in the dealers' sales agreements with car buyers, under which the customer would agree
to pay a penalty if the vehicle was transferred to the United States within a certain timeframe. Dealerships in the

1 a result of settlements and court orders, one defendant is left in this case, Ford Canada. It is clear
2 that plaintiffs have sufficient evidence to demonstrate a triable issue of material fact as to
3 whether Ford Canada made “a conscious commitment to a common scheme designed to achieve
4 an unlawful objective.” *In re Automobile*, 1 Cal.App.5th at 153.

5
6 Ford Canada’s motion here seems animated by Judge Hornby’s decision in the related
7 case *In Re New Motor Vehicles Canadian Export Antitrust Litigation*, 632 F.Supp.2d 42 (D.Me.
8 2009).⁹ This is so despite the views of the judge who previously presided in this case,
9 acknowledged by defendants, that state and not First Circuit federal would control here.¹⁰ Ford
10 Canada’s motion, and Judge Hornby’s opinion, focus on the opinions of plaintiff’s expert, Robert
11 Hall.

12 *The Aguilar Burden*

13
14 As a preliminary matter, Ford Canada has not really taken on the burden that *Aguilar*
15 assigns to it, which is to present evidence that if believed would support a verdict in its favor,
16 here, that the conspiracy had no impact on the plaintiffs. Weil & Brown, et al., CALIFORNIA
17 PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶ 10:290 (Rutter: 2016) (cited as RUTTER).
18 What Ford Canada takes on is the job of undermining the Hall reports. But it doesn’t appear that
19 if Hall’s opinions had no basis Ford Canada would be entitled to a verdict as a matter of law. *Id.*
20 at ¶¶ 10:240.1, 10:241.10. The problem is that Ford Canada’s showing does not establish that
21 plaintiffs do “not possess, *and cannot reasonably obtain*, evidence that would allow such a trier
22

23 United States also would not honor warranties for cars that originated from Canadian, and parts for repair were often
24 withheld from the imported cars.

25 ⁹ After noting the mandate from the First Circuit class certification opinion in *In re New Motor Vehicles Canadian*
Exp. Antitrust Litig., 522 F.3d 6, 25 (1st Cir. 2008), the federal trial judge found that “plaintiffs definitely fail to
26 provide evidence that *each transaction sales price* was affected by the agreement.” *In re New Motor Vehicles*
Canadian Exp. Antitrust Litig., 632 F. Supp. 2d 42, 58 (D. Me. 2009).

¹⁰ Original Reply at 1 n.1. In a motion to be heard June 2017, Ford Canada will have me look at the res judicata
impact of the federal litigation, and nothing in this order decides that issue.

1 of fact to find ...[causation] more likely than not.” *Aguilar* 25 Cal. 4th at 845 (emphasis
2 supplied); RUTTER at ¶ 10:244.

3 The peculiar approach taken by this motion for summary judgment entails Ford Canada
4 presenting no expert testimony of its own. Thus it never triggered, nor attacked, an opposing
5 declaration of an expert, by showing that, e.g., the declaration is not based on facts, or
6 insufficiently shows its reasoning, and thus cannot prevent summary judgment. If we had such a
7 presentation from Ford Canada, plaintiffs’ opposition would presumably have presented a
8 declaration—perhaps from Hall—contesting the opening declaration, and presumably plaintiffs
9 would have invoked the *Garrett* rule by which I would liberally construe plaintiffs’ expert
10 declaration. *Garrett v. Howmedica Osteonics Corp.*, 214 Cal. App. 4th 173, 187-89 (2013);
11 *Jennifer C. v. Los Angeles Unified Sch. Dist.*, 168 Cal. App. 4th 1320, 1332 (2008).
12

13 This all means that it is fair to launch an attack on the Hall opinion in aid of a motion for
14 summary judgment only if Ford Canada begins by establishing that Hall’s reports are the *only*
15 basis plaintiffs have for causation. But while Ford Canada’s opening Memo *says* so (Original
16 Memo at 1:9), that Memo does not cite an undisputed fact which *establishes* that. The moving
17 papers do not say for example that a plaintiff discovery response conceded that only the Hall
18 opinions supported plaintiffs’ causation allegation, or some other admissions to that effect.
19 Compare, RUTTER at ¶ 10:244 *et seq.* And as we see later in this order when I mention
20 plaintiff’s evidence, there is indeed more -- so it is unlikely that such a discovery response exists.
21 This is enough to defeat the pending motion.
22

23 Nevertheless I turn to the substance of Ford Canada’s motion.
24
25
26

1 *Facts and Opinions*

2 At argument, Ford Canada’s counsel repeatedly invoked *Aguilar v. Atl. Richfield Co.*, 25
3 Cal. 4th 826, 855 (2001) and its emphasis on disputed and undisputed “facts,” and did so in an
4 attempt to distinguish Hall’s opinions, as if to suggest that opinions alone could not possibly be
5 enough to stop summary judgment.¹¹ This is analytically quite different from the arguments
6 summarized above. As stated, the argument is obviously invalid: expert opinions are used all the
7 time to block summary judgment. E.g., *Garrett v. Howmedica Osteonics Corp.*, 214 Cal. App.
8 4th 173, 190 (2013).

9 Ford Canada in its Supplemental Reply at 6:1-3 cites *Aguilar* for the proposition that
10 expert opinions cannot substitute for facts, but the problem in *Aguilar* was the opinion was
11 predicated on facts which did not support it. The plaintiffs there had said there was collusion
12 because (in what was an otherwise legal oligopoly), there was interdependent action. But the
13 court noted that “in an oligopoly, such as obtains here, interdependence is altogether consistent
14 with independence, and is not necessarily indicative of collusion.” *Aguilar*, 25 Cal. 4th at 864.

15 To be sure, an “opinion is only as good as the facts and reasons on which it is based,”
16 *Bozzi v. Nordstrom, Inc.*, 186 Cal. App. 4th 755, 763 (2010), and so it is perfectly reasonable to
17 attack an opinion by showing that it is not based on facts or reasons, or that they do not support
18 the opinion (see *Sargon*), but it does not follow that an admissible opinion cannot defeat a
19 summary judgment motion. The issue is not whether an opinion alone can defeat summary
20 judgement, for of course it can; the issue is whether the opinion supports the element at issue
21 (here, causation) and is admissible.
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26 ¹¹ See also, Ford Canada Supplemental Memo at 6:1 (expert opinion cannot defeat summary judgment); id. at 9:16 (Hall is not percipient [fact] witness).

1 *Causation*

2 The parties presumably agree that plaintiffs must somehow prove impact or injury as a
3 result of Ford Canada’s actions, that is, causation. But while Ford Canada cites the federal
4 decision in *In re New Motor Vehicles* (which relies only on law of the case from the First Circuit,
5 see above, n.2), the law in this state may not be in accord:
6

7 Courts have shown no hesitancy in ruling that when a conspiracy to fix prices has been
8 proven and plaintiffs have established they purchased the price-fixed goods or services,
9 the jury can *infer* plaintiffs were damaged. As the court stated in *In re Sugar Industry
Antitrust Litigation, supra*, 73 F.R.D. at page 347: “It has been held that impact will be
presumed once a plaintiff demonstrates the existence of an unlawful conspiracy

10 *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal. App. 3d 1341, 1350–51.¹²

11 *Showing By Moving Party*

12 As I intimate above, Ford Canada’s theory is not clear. It might mean to argue that *no*
13 facts support Hall’s opinions; or that *other* facts proposed by Ford Canada contradict the facts
14 Hall relies on. When the motion argues that Hall’s opinions “cannot be squared with
15

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18 ¹² As I indicate in note 10, I do not decide issues of the res judicata impact of the federal litigation. So I say “*may*
19 not” because both the First Circuit cases I have just referred to and the *B.W.I* case arose in the context of class
20 certification motions, not summary judgment or other motions which typically may not be squarely directed to the
21 liability standards. Just because a class can be certified with a proffer of only class wide (and not individual) impact
22 and causation does not as a matter of law establish that at trial individual causation will not be required—individual
23 issues can inhabit a class action as long as they do not predominate. E.g., *In re Cipro Cases I & II*, 121 Cal. App. 4th
24 402, 414 (2004) (“It is settled that ‘a class action is not inappropriate simply because each member of the class may
25 at some point be required to make an individual showing as to his or her eligibility for recovery or as to the amount
26 of his or her damages’”) (citation omitted). And concomitantly the fact that some cases hold that individual issues
predominate in indirect purchaser class actions (see e.g., Ian Simmons, et al., “Rigorous Analysis in Antitrust Class
Certification Rulings: Recent Advances on the Front Line,” *ANTITRUST* 72, 76 (Fall 2008) (surveying cases); *In re
Class 8 Transmission Indirect Purchaser Antitrust Litigation*, 140 F. Supp. 3d 339 (D. Del. 2015)) does not, alone,
require a finding that plaintiffs’ theory of antitrust impact here is invalid. But while this issue of impact and damage
often comes up in the class context, the language used by appellate opinions at least suggests that, even in the
context of trial and summary judgment, the presumption may be available to plaintiffs. *Glob. Minerals & Metals
Corp. v. Superior Court*, 113 Cal. App. 4th 836, 855 (2003) (“In the consumer context, at least a portion of the
illegal overcharge by a manufacturer will presumably be passed on by the independent distributors to consumer
class members in the form of higher prices”).

1 ...undisputed facts” (Original Memo at 1),¹³ it appears moving party is taking this latter
2 approach. See e.g., Original Memo at 11:5 et seq. (UK expert contradicts Hall). In such a case,
3 of course, we have an attempted impeachment of an opinion, not the basis to exclude it, and the
4 opinion stands to defeat a summary judgment motion.
5

6 And much of Ford Canada’s attack is in fact just impeachment. It argues that as matter of
7 fact defendants never considered Canadian imports when they set their U.S. prices. Defendants’
8 Joint Separate Statement (JSS) 85-89. Defendants also say the gray market export activity
9 during the class period was only about 1/10 in comparison to the US automotive market, and
10 thus any impact of these imports would have been minor, and moreover most gray market
11 vehicles were bought by third-party brokers in Canada and sold in the U.S. as “nearly new
12 vehicles” with no impact of new car prices. Defendants also offer facts suggesting that MSRPs
13 and dealer invoice prices are based on a variety of factors, including local demand for specific
14 categories of cars and models.
15

16 This is impeachment, not a showing that Hall’s opinions are without foundation.

17 *Asserted Lack of Basis for Opinion*

18 On the other hand as I have suggested Ford Canada might be arguing that Hall has no
19 basis for his opinions; either factual or, perhaps, theoretical.
20

21 It is important to note that under *Sanchez*, Hall can rely on economic theories¹⁴ and non-
22 case specific facts, and relate them to the fact finder, even if they are hearsay. The original
23 moving papers do not address this, and instead object that Hall’s opinion are not supported by
24 “record facts” and so must be inadmissible. Original Memo at 15:24-25; *id.* at 14:21-22.
25

26 ¹³ The Memo also argues on that page that evidence “contradict” Hall’s opinions; and so on.

¹⁴ As he does at e.g., Hall’s 2005 Report, Plaintiffs’ Ex. 708 at ¶¶ 53-56, 58 *ff.*

1 *Sanchez* was not then decided, of course, but the law then was actually far *more* generous than it
2 is now on what blatant hearsay an expert could recite to a jury, as the *Sanchez* court notes. 63
3 Cal.4th at 678-79. And of course, experts have always been able to base opinions on
4 inadmissible facts. E.g. M. Simons, CALIFORNIA EVIDENCE MANUAL § 4:23 (2017); *Sanchez*, 63
5 Cal.4th at 685. Anyway, *Sanchez* was decided by the time Ford Canada filed its Supplemental
6 Memo, but Ford Canada still, without distinguishing case-specific from non-case-specific facts,
7 just dismisses the ‘extra-record’ basis of Hall’s opinions. E.g., Supplemental Reply Memo at
8 5:10; *id.* at 9:16 (NBER study not a “record fact”).

9
10 In the supplemental briefing, Ford Canada argues that the dismissal of Ford US, Honda
11 and Nissan indicates that Hall’s analysis of the impact of the conspiracy must now be wrong;
12 because, in effect, without other members of the conspiracy we cannot possibly have any effect
13 from the conspiracy—if Ford Canada acted, it must have acted unilaterally, and unilateral action
14 entirely obviates Hall’s opinions.

15
16 To be sure, some number of manufacturers must conspire for anyone to profit from a
17 restraint. But the conspiracy did not require participation of all manufacturers to be effective,
18 and indeed this case never included all of them. Ford, GM, and Chrysler (the “Big 3”) held 62.9-
19 67.4% of the market between 2001 and 2003. If we add Toyota’s share the total market share of
20 the four manufacturers is 77.5%. PSSMF Ex. 704, Revised Ex. 4.

21
22 Anyway, even if plaintiffs can’t prove a conspiracy case against some parties does not
23 mean that multiple manufacturers did not participate in suppressing exports. Honda and Nissan
24 restricted Canadian exports of their own vehicles, even though they refused to attend meetings at
25 which the restrictions were discussed. Joint Response to Plaintiffs’ Separate Statement of
26 Additional Alleged Facts, ¶¶ 967-968, 204-206. Honda and Nissan knew of the collaboration

1 between other car companies to restrict exports, and while they may not have affirmatively
2 participated in that collaboration, they knew that their own efforts to restrict Canadian exports
3 would be more effective if they didn't compete with lower prices offered by the American car
4 companies.

5
6 Defendants also argued that Hall's analysis was flawed because he utilized data from a
7 similar export situation in the United Kingdom in September 2000 to conclude that U.S dealers
8 would have passed on lower MSRPs (resulting from the flood of cheaper Canadian imports) to
9 all vehicle purchasers. Ford Canada's argument here is not, precisely, that it is unreasonable for
10 Hall to rely (at least in part) on the UK data, but rather that the UK data alone not evidence
11 which if submitted to the jury would prove that each California consumer paid a higher price.
12 Ford Canada Supplemental Memo at 7:21-23. These two things might be both true—that the UK
13 data as such is inadmissible and that alone it does not prove impact here—but under *Sanchez* that
14 may not matter. The UK data are not fact specific to *this* case (Hall never suggests the situations
15 are identical); the economic theories¹⁵ used to apply them to this case can be recited to the jury
16 without hearsay concerns; and plaintiffs, as well Hall himself, do not rely only on those data.¹⁶

17
18 Ford Canada also notes it sold no cars in United States. But as the Court of Appeal
19 pointed out, Ford Canada (allegedly) suppressed exports of Canadian cars in order to benefit the
20 Ford company in general.

21
22 Finally Ford Canada suggests plaintiffs will have to disaggregate lawful from unlawful
23

24 ¹⁵ One central theory is that which holds intermediaries in highly competitive markets pass through cost increases,
25 dollar for dollar. P's Ex. 708 ¶¶ 58 *et seq.* (Hall July 2005 Report). Cf., *In re Static Random Access Memory*
26 *(SRAM) Antitrust Litig.*, 264 F.R.D. 603, 614 (N.D. Cal. 2009) ("average pass through rates"). See e.g., Robert H.
Lande, "New Options for State Indirect Purchaser Legislation: Protecting the Real Victims of Antitrust Violations,"
61 ALA. L. REV. 447, 500 & n.75 (2010) (varying pass through scenarios).

¹⁶ And again, if Ford Canada's point is the data do not prove each California consumer paid a higher price, that may
not matter either in this context. See above, text at note 12.

1 effects. True, but Hall's opinion—based on the 'but for' model—by definition finds impact as a
2 result of the conspiracy. This sufficiently shows causation for summary judgment purposes.

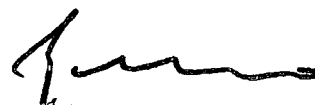
3 *Showing By Opposing Party*

4 Plaintiffs do not rely just on Hall's testimony.

5
6 There were significant gaps in the pricing between identical cars sold in Canada and
7 those sold in the United States. PSSMF 795, 810, 812. With regard to Ford cars in particular,
8 the gap was as much as \$5,000. Id. 752, 753, 761. The defendant car manufacturers stated that
9 they were concerned about the impact of Canadian imports on the pricing of US cars, describing
10 the situation as a "major problem," a "serious concern," and that the issue required "critical
11 attention." Id. at PSSMF 752, 754. The concern among car manufacturers was sufficiently high
12 that some manufacturers agreed to meet to discuss the problem. E.g., PSSMF 283-312 (facts
13 regarding the May 15, 2001 Export Sales Meeting.) Ford made concerted efforts to restrict
14 exports (id. 591-619), and Hall's analysis indicates that these efforts had the impact of artificially
15 inflating car prices in the United States. Pl's Comp. Evd., Ex. 704. Statement from defendants
16 suggested that changes in their pricing would impacted consumer transaction prices. PSSMF
17 886.

18
19 Accordingly the motion is denied.

20
21
22 Dated: May 16, 2017



23 _____
24 Curtis E.A. Karnow
25 Judge Of The Superior Court
26

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On **MAY 16 2017**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **MAY 16 2017**

T. Michael Yuen, Clerk

By: 

DANIAL LEMIRE, Deputy Clerk

EXHIBIT H

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address): Margaret M. Zwisler and William R. Sherman (admitted pro hac vice) Latham & Watkins, 555 11th St., Suite 1000, Wash., D.C. 20004-1304 Sarah M. Ray (SBN 229670) Latham & Watkins, 505 Montgomery St., Suite 2000, SF, CA 94133 TELEPHONE NO.: (202) 637-2200 FAX NO.: (202) 637-2201 E-MAIL ADDRESS: margaret.zwisler@lw.com; sarah.ray@lw.com ATTORNEY FOR (Name): Ford Motor Co. & Ford Motor Co. of Canada, Ltd. <input checked="" type="checkbox"/> ATTORNEY FOR <input checked="" type="checkbox"/> JUDGMENT CREDITOR <input type="checkbox"/> ASSIGNEE OF RECORD	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102-4515 BRANCH NAME: Civic Center Courthouse	
PLAINTIFF: Automobile Antitrust Cases I, II DEFENDANT: Ford Motor Co. & Ford Motor Co. of Canada, Ltd.	
WRIT OF <input checked="" type="checkbox"/> EXECUTION (Money Judgment) <input type="checkbox"/> POSSESSION OF <input type="checkbox"/> Personal Property <input type="checkbox"/> SALE <input type="checkbox"/> Real Property	CASE NUMBER: JCCP 4298; CJC-03-004298 <input type="checkbox"/> Limited Civil Case <input type="checkbox"/> Small Claims Case <input checked="" type="checkbox"/> Unlimited Civil Case <input type="checkbox"/> Other

1. To the Sheriff or Marshal of the County of: Los Angeles

You are directed to enforce the judgment described below with daily interest and your costs as provided by law.

2. To any registered process server: You are authorized to serve this writ only in accord with CCP 699.080 or CCP 715.040.

3. (Name): Ford Motor Company

is the judgment creditor assignee of record whose address is shown on this form above the court's name.

4. Judgment debtor (name, type of legal entity stated in judgment if not a natural person, and last known address):

Jason Gabelsberg
139 Via Los Altos
Redondo Beach, CA 90277-6433

9. See next page for information on real or personal property to be delivered under a writ of possession or sold under a writ of sale.

10. This writ is issued on a sister-state judgment.

11. Total judgment \$ 199,464.98

12. Costs after judgment (per filed order or memo CCP 685.090) \$ 0

13. Subtotal (add 11 and 12) \$ 199,464.98

14. Credits \$ 0

15. Subtotal (subtract 14 from 13) \$ 199,464.98

16. Interest after judgment (per filed affidavit CCP 685.050) (not on GC 6103.5 fees) ... \$ 96,453.61

17. Fee for issuance of writ \$ 25.00

18. Total (add 15, 16, and 17) \$ 295,943.59

19. Levying officer:

(a) Add daily interest from date of writ (at the legal rate on 15) (not on GC 6103.5 fees) of. \$

(b) Pay directly to court costs included in 11 and 17 (GC 6103.5, 68637; CCP 699.520(i)) \$

20. The amounts called for in items 11-19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

Additional judgment debtors on next page

5. Judgment entered on (date):

07/10/2012

6. Judgment renewed on (dates):

7. Notice of sale under this writ

- a. has not been requested.
- b. has been requested (see next page).

8. Joint debtor information on next page.



CLERK OF THE COURT

Issued on (date): MAY 17 2017

Clerk, by Boyan Liu, Deputy

NOTICE TO PERSON SERVED: SEE NEXT PAGE FOR IMPORTANT INFORMATION.

BOYAN LIU

PLAINTIFF: Automobile Antitrust Cases I, II	CASE NUMBER: JCCP 4298; CJC-03-004298
DEFENDANT: Ford Motor Co. & Ford Motor Co. of Canada, Ltd.	

— Items continued from page 1 —

21. **Additional judgment debtor** (name, type of legal entity stated in judgment if not a natural person, and last known address):

Michael Wilsker
 7842 W. Manchester Ave., Apt. 1
 Playa Del Rey, CA 90293-8428

22. **Notice of sale** has been requested by (name and address):

23. **Joint debtor** was declared bound by the judgment (CCP 989–994)

a. on (date): b. name, type of legal entity stated in judgment if not a natural person, and last known address of joint debtor:	a. on (date): b. name, type of legal entity stated in judgment if not a natural person, and last known address of joint debtor:
<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

c. additional costs against certain joint debtors (itemize):

24. (Writ of Possession or Writ of Sale) Judgment was entered for the following:

a. Possession of real property: The complaint was filed on (date):

(Check (1) or (2)):

(1) The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.

(2) The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.

(a) \$ _____ was the daily rental value on the date the complaint was filed.

(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify):

b. Possession of personal property.

If delivery cannot be had, then for the value (itemize in 24e) specified in the judgment or supplemental order.

c. Sale of personal property.

d. Sale of real property.

e. Description of property:

NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (Form EJ-150).
 WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.
 WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

▶ A Claim of Right to Possession form accompanies this writ (unless the Summons was served in compliance with CCP 415.46).

EXHIBIT I

EXHIBIT J



FILED
San Francisco County Superior Court

AUG 22 2017

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

COORDINATION PROCEEDING SPECIAL
TITLE (Cal. R. Ct. 1550(b))

J.C.C.P. No. 4298

CJC-03-004298

AUTOMOBILE ANTITRUST CASES I, II

ORDER DENYING IN PART AND GRANTING
IN PART PLAINTIFFS' MOTION TO TAX
COSTS OF FORD US

This document relates to:
All Actions

I heard argument August 18, 2017 on plaintiffs' motion to tax costs of Ford US.

In July 2012, Judge Kramer issued an order awarding \$199,464.98 in costs in favor of two companies, Ford Canada and Ford US. Judge Kramer's merits ruling for Ford US was affirmed, and that for Ford Canada reversed.

The parties disagreed as to whether the costs order should be enforced. I noted plaintiffs had not had an adequate opportunity to challenge the assertions that all costs were actually incurred by Ford US. June 12, 2017 Order, 1-2. Further background is set forth in that order.

This motion to tax costs followed.

Litigation Costs

Plaintiffs argue that Ford US should not be permitted to recover all of the claimed costs because: (1) some costs¹ were incurred in the a federal multidistrict litigation (the MDL), not the

¹ The only item of costs specifically identified in connection with this argument is deposition costs, the largest component of the costs. See Lamy Decl., Ex. 2.

1 California litigation; (2) if deposition costs are allowed here, they should be apportioned between
2 this action and each of the other actions (including the MDL and five other state actions); (3) all
3 litigation costs should be apportioned between Ford US and Ford Canada, either because they
4 were jointly incurred or regardless of which entity incurred them.
5

6 The first two arguments were considered and rejected by Judge Kramer. Opposition, 9-
7 15; Kuntz Decl. Exs. 1-4; Lamy Decl., Ex. 3. For the reasons discussed below, Judge Kramer's
8 ruling is not binding,² but he was actively involved in managing this litigation, and I cannot
9 improve on his consideration. I make an independent review, and adopt his reasoning. Thus I
10 decline to tax the deposition costs here, or any other costs here, because the costs were incurred
11 in the MDL or that those costs should be apportioned to the MDL or an action in another state.
12

13 The third argument has two parts.

14 First, on reply, plaintiffs argue for the first time that Ford US's current declaration
15 attesting to the fact that Ford US incurred all of the litigation costs set forth in its bill of costs is
16 contradicted by a 2012 declaration. Seaver Decl., Exs. A-B.³ Margaret Zwisler, in the 2012
17 declaration, used the term "Ford" to refer collectively to Ford US and Ford Canada. Seaver
18 Decl., Ex. A at ¶ 1. Zwisler attested to the fact that "Ford" incurred all of the claimed costs. *Id.*
19 at ¶ 2. Zwisler did not state whether those costs were incurred jointly or whether any costs were
20 incurred separately. *Compare* Reply, 1 (arguing that Zwisler attested to the fact that the costs
21 were jointly incurred). In the 2017 declaration, William Sherman declared that Ford US incurred
22 all of the claimed costs. Seaver Decl., Ex. B at ¶ 2. This is not logically inconsistent with the
23
24

25 ² The dismissal of plaintiffs' appeal does not preclude plaintiffs from raising these issues. *See* Lamy Decl., Ex. 5.

26 ³ In the moving papers, Plaintiffs argued only that the submission of a joint bill of costs created the inference that both Ford US and Ford Canada incurred costs. Motion, 9. This argument is unpersuasive. June 12, 2017 Order, 1 (original cost memorandum was not allocated, likely because allocation was irrelevant then).

1 Zwisler Declaration.

2 Second, plaintiffs ask me to exercise discretion to allocate costs between Ford US and
3 Ford Canada, even if Ford US paid all of the defense costs. Plaintiffs argue costs paid by either
4 of the Ford entities benefited both, suggesting a 50% allocation. Prevailing defendant may be
5 awarded all costs incurred, even if those benefit another non-prevailing party. *Kramer v.*
6 *Ferguson*, 230 Cal.App.2d 237, 250-51 (1964); *Charton v. Harkey*, 247 Cal.App.4th 730, 743-45
7 (2016). The differences between the Zwisler Declaration and the Sherman Declaration are
8 insufficient to undercut Ford US's showing, in the Sherman Declaration, that Ford US actually
9 incurred the costs claimed and that those costs were reasonably necessary to Ford US's defense.
10 Accordingly, the costs are properly recovered, in full, by Ford US.

11 **Interest**

12
13 The question is whether interest on this court's cost award accrues from the date of the
14 original judgment in favor of Ford US or from the date of this cost order. At the hearing, the
15 parties correctly agreed that the date on which interest accrues turns on whether Judge Kramer's
16 cost order was in effect affirmed or reversed by the Court of Appeal, with interest running from
17 2012 if the cost order was affirmed and from the date of this order if Judge Kramer's 2012 cost
18 order was reversed.
19

20
21 Judge Kramer entered separate judgments in favor of Ford US and Ford Canada. Then he
22 entered a joint cost order. Lamy Decl., Ex. 3. The Court of Appeal affirmed the judgment on the
23 merits as to Ford US and reversed as to Ford Canada; and then granted plaintiffs' motion to
24 dismiss their appeal as to Judge Kramer's joint cost order. In that dismissal, the Court of Appeal
25 stated: "The granting of this motion is without prejudice to the parties raising any issues relating
26 to costs in the trial court in connection with further proceedings below following remand of

1 appeal A134913.” Lamy Decl., Ex. 5. The Court of Appeal’s instructions anticipated that
2 further proceedings on the costs issue were necessitated by the reversal of the Ford Canada
3 judgment. The dismissal of the appeal remands the cost issue to this court, and does not affirm
4 Judge Kramer’s order granting costs.
5

6 Judge Kramer did not determine the costs to which Ford US, standing alone, was entitled,
7 and that issue was remanded to this court. There was a reversal of the cost order with a remand
8 for further fact-finding. I held a further evidentiary hearing, in which Ford US submitted new
9 evidence to demonstrate *its* entitlement to the costs at issue. Interest accrues from the date of this
10 Court’s new cost order. *Munoz v. City of Union City*, 173 Cal.App.4th 199 (2009); *Stockton*
11 *Theatres, Inc. v. Palermo*, 55 Cal.2d 439 (1961).
12

13 **Conclusion**

14 Plaintiffs’ motion to tax is granted to the extent it objects to interest accrued following
15 the entry of Judge Kramer’s 2012 joint cost order, and it is otherwise denied. Ford US is entitled
16 to costs in the amount of \$199,464.98.
17

18
19 Dated: August 22, 2017



20 Curtis E.A. Karnow
21 Judge Of The Superior Court
22
23
24
25
26

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On **AUG 23 2017**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated:

AUG 23 2017

T. Michael Yuen, Clerk

By: 

DANIAL LEMIRE, Deputy Clerk

EXHIBIT J

1 Joseph J. Tabacco, Jr. (Bar No. 75484)
2 Todd A. Seaver (Bar No. 271067)
3 Christopher T. Heffelfinger (Bar No. 118058)
4 Matthew D. Pearson (Bar No. 235339)
5 **BERMAN TABACCO**
6 44 Montgomery Street, Suite 650
7 San Francisco, CA 94104
8 Telephone: (415) 433-3200
9 Facsimile: (415) 433-6382
10 Email: jtabacco@bermantabacco.com
11 tseaver@bermantabacco.com
12 cheffelfinger@bermantabacco.com
13 mpearson@bermantabacco.com

14 *Attorneys for Plaintiffs*

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

**10/27/2021
Clerk of the Court**

**BY: JUDITH NUNEZ
Deputy Clerk**

15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SAN FRANCISCO**
18 **UNLIMITED JURISDICTION**

19 COORDINATION PROCEEDING SPECIAL)
20 TITLE (Cal. R. Ct. 1550(b)))

Judicial Council Coordination
Proceeding Nos. No. 4298 and 4303

21 AUTOMOBILE ANTITRUST CASES I, II)

CJC-03-004298 and CJC-03-004303

CLASS ACTION

22 _____)
23 This document relates to:)
24 All Actions)

**DECLARATION OF JOSEPH J.
TABACCO, JR. IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANT FORD CANADA'S
MOTION TO EXCLUDE PLAINTIFFS'
EXPERT DR. JANET NETZ**

Date: December 3, 2021

Time: 10:00 a.m.

Dept: 304

Judge: Honorable Anne-Christine Massullo

Trial Date: February 7, 2022

Date Complaint Filed: October 6, 2003
(Consolidated Amended Class Action
Complaint)

1 I, Joseph J. Tabacco, Jr., declare and state as follows:

2 1. I am a partner of Berman Tabacco and have served since the 2003 inception of this litigation as
3 Chair of the Joint Executive Committee of Plaintiffs' counsel. The cases have been coordinated and jointly
4 prosecuted by the Executive Committee under my firm's leadership, including this sole remaining action in this
5 Court against Ford Canada.

6 2. I write this declaration to further explicate plaintiffs' counsel recent substitution of Professor
7 Janet Netz as their testifying expert economist on impact and damages in place of Professor Robert Hall.
8 Plaintiffs' counsel retained Professor Hall in 2004 shortly after the commencement of the litigation in 2003 to
9 provide economic expertise to assist us in proving impact and damages stemming from the horizontal conspiracy
10 at the heart of this litigation.

11 3. Professor Hall, at the time was Chair of the Hoover Institute at Stanford University and an active
12 scholar in the field of economics. Professor Hall issued at total of six reports in this coordinated litigation from
13 2005 to 2008 and was deposed on four separate occasions and gave a total of six days of testimony at those
14 depositions.

15 4. He was always intended to be plaintiffs testifying expert at trial in either the MDL Federal action
16 which was subsequently dismissed in 2009 or in this case, pending before the Court. Plaintiffs were preparing
17 the Case for trial when in 2012, Judge Kramer granted summary Judgement in favor of Ford U.S. and Ford
18 Canada among others. Plaintiffs subsequent appealed that decision resulting in a ruling nearly five years later,
19 reversing as to Ford Canada. *See In re Auto. Antitrust Cases I & II*, 1 Cal. App. 5th 127 (2016).

20 5. I was in touch with Professor Hall following that appeal and the case's subsequent reassignment
21 to Judge Karnow in 2016. At that time Professor Hall, although indicating that he was no longer taking on new
22 litigation matters and was winding down both his teaching schedule and consulting duties, said he would plan on
23 continuing as our testifying expert at the then-upcoming trial.

24 6. However, as this Court is aware, in 2017 Judge Karnow granted Ford Canada judgment on res
25 judicata grounds. Plaintiffs again appealed. In 2020, the Court of Appeals reversed and reinstated plaintiffs' case
26
27

1 plaintiffs' case against Ford Canada. In 2020, this Court set a firm trial date of February 7, 2022. I was
2 again in contact with Professor Hall following the Court of Appeals decision and the trial setting
3 schedule.

4 7. Professor Hall informed me that given his advancing years and current health, that
5 regrettably, he was no longer in a position to be able to commit to testifying at trial. He said that he had
6 not testified live in any matter since 2014 and that he was now facing physical limitations that would
7 preclude him from being able to fulfil the rigors of live expert testimony at trial.

8 8. Accordingly, at the end of 2020 Plaintiffs' counsel began a search for a possible
9 replacement expert witness. Fortunately, Dr. Janet Netz, a very experienced and highly regarded
10 economist indicated her willingness to review the case and the work undertaken by Professor Hall. Dr.
11 Netz has long experience in complex antitrust litigation and has a national reputation for the quality of
12 her work and analysis. Attached as Exhibit A is Dr. Netz' resume. After a thorough review of the case
13 record as well as a thorough review of Professor Hall's work, Dr. Netz in the Spring of 2021 agreed to
14 be retained by Plaintiffs' counsel as a testifying witness to testify in the same areas as Dr. Hall was to
15 testify.

16 I declare under penalty of perjury pursuant to the laws of the State of California that the
17 foregoing is true and correct.

18 Executed this 27th Day of October 2021, at San Francisco, California.

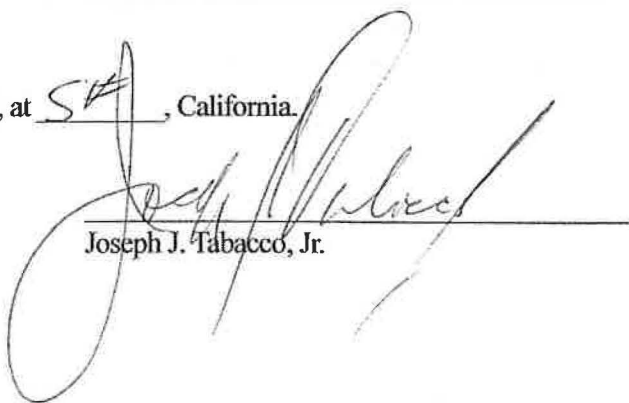
19
20 
21 _____
22 Joseph J. Tabacco, Jr.
23
24
25
26
27

EXHIBIT A

Dr. Janet S. Netz

Contact Information

applEcon LLC
617 E. Huron Street
Ann Arbor, MI 48104

Office: (734) 214-2213 (direct)
Fax: (734) 213-1935
E-mail: netz@applEcon.com
Web: www.applEcon.com

Education

Ph.D. Economics, University of Michigan, 1992
M.A. Economics, University of Michigan, 1990
B.A. Economics, University of California at Berkeley, 1986, *cum laude*

Employment

Founder and Partner, applEcon, May 2001 to present
Visiting Associate Professor, University of Michigan, Fall 2001, Fall 2002, Fall 2003
Associate Professor, Purdue University, Fall 2001 to January 2003
Visiting Assistant Professor, University of Michigan, Winter 2001
Assistant Professor, Purdue University, Fall 1994 to Spring 2001
Assistant Professor, University of Delaware, Fall 1992 to Summer 1994

Courses Taught

Industrial Organization (undergraduate and doctoral)
Antitrust and Regulation (undergraduate)
Intermediate Microeconomics (undergraduate and master's)
Microeconomic Principles (undergraduate)
International Economics (undergraduate and master's)

Honors and Awards

Outstanding Antitrust Litigation Achievement in Economics, awarded by the American Antitrust Institute, for work In re TFT-LCD Antitrust Litigation, 2013.

Outstanding Economics Professor of the Year, Economics Club, Purdue University, 1999.

Publications

- “Are All Men’s College Basketball Players Exploited?”, with Erin Lane and Juan Nagel, *Journal of Sports Economics*, 15(3), June 2014, 237-262.
- “Price Regulation: Theory and Performance”, in *Regulation and Economics*, Roger J. Van den Bergh and Alessio M. Paccas, eds., Edward Elgar Publishing, 2011.
- “Sports Trivia: A Review of The Economics of Intercollegiate Sports by Randy R. Grant, John Leadley, and Zenon Zygmunt”, *Journal of Economic Literature*, 47(2), June 2009, 485-489.
- “One-Way Standards as an Anti-Competitive Strategy”, with Jeffrey K. MacKie-Mason, in *Standards and Public Policy*, Shane Greenstein and Victor Stango, eds., Cambridge Press, 2007.
- “International Integration and Growth: A Further Investigation on Developing Countries”, with Claire Economidou and Vivian Lei, *International Advances in Economic Research*, 12(4), November 2006, 435-448.
- “Maximum or Minimum Differentiation? An Empirical Investigation into the Location of Firms”, with Beck A. Taylor, *Review of Economics and Statistics*, 84(1), February 2002, 162-175.
- “International Integration and Growth: A Survey and Empirical Investigation”, with Vivian Lei and Jon D. Haveman, *Review of Development Economics*, 5(2), June 2001, 289-311.
- “Price Regulation: A (Non-Technical) Overview”, in *Encyclopedia of Law and Economics*, Boudewijn Bouckaert and Gerrit De Geest, eds, Edward Elgar and University of Ghent, 2000.
- “Exercising Market Power in Proprietary Aftermarkets,” with Severin Borenstein and Jeffrey K. MacKie-Mason, *Journal of Economic and Management Strategy*, 9(2), Summer 2000, 157-188.
- “All in the Family: Family, Income, and Labor Force Attachment”, with Jon D. Haveman, *Feminist Economics*, 5(3), November 1999, 85-106.
- “Why Do All Flights Leave at 8am?: Competition and Departure-Time Differentiation in Airline Markets”, with Severin Borenstein, *International Journal of Industrial Organization*, 17(5), July 1999, 611-640.
- “An Empirical Test of the Effect of Basis Risk on Cash Market Positions”, *Journal of Futures Markets*, 16(3), May 1996, 289-312.
- “The Effect of Futures Markets and Corners on Storage and Spot Price Variability”, *American Journal of Agricultural Economics*, 77(1), February 1995, 182-193.
- “Antitrust Policy in Aftermarkets”, with Severin Borenstein and Jeffrey K. MacKie-Mason, *Antitrust Law Journal*, 63(2), Winter 1995, 455-482.
- “The Economics of Customer Lock-In and Market Power in Services”, with Severin Borenstein and Jeffrey K. MacKie-Mason, in *The Service Productivity and Quality Challenge*, Patrick T. Harker, ed., Kluwer Academic, 1994.

Working Papers and Work in Progress

- “LCDs and Antitrust: Does Crime Pay?”, with Nick Navitski and Josh Palmer
- “Fantasy Football Points as a Measure of Performance”, with Erin Lane and Juan Nagel

“Non-Profits and Price-Fixing: The Case of the Ivy League”

“The End of Collusion? Competition after Justice and the Ivy League and MIT Settle”

“Basis and Exchange Rate Risks and their Impact on Storage and Exports”

Research Grants

“Product Customization and Product-Space Positioning”, Dauch Center for the Management of Manufacturing Enterprises, Summer 2000.

“Trade Barriers, Trade Blocs, Growth, and Convergence”, Purdue Research Foundation, 1998-1999.
“Effects of Informational Asymmetry on Competition in the Residential Long Distance Calling Market”, Purdue Research Foundation, 1997-1998.

“Basis and Exchange Rate Risks and their Impact on Storage and Exports”, Center for International Business and Economic Research, Summer 1997.

Global Initiative Faculty Grant (Course Development), “Industrial Organization in an International Marketplace”, Purdue University, Summer 1997.

“Trade, Not Aid”, Purdue Research Foundation, Summer 1996.

“Trade, Not Aid”, Center for International Business and Economic Research, Summer 1996.

“The Effect of Price-Fixing by Institutions of Higher Education”, Purdue Research Foundation, Summer 1995.

“Applied Microeconomics/International Workshop”, Purdue University, Spring 1995.

“The Market Structure of Higher Education”, University of Delaware, Summer 1993.

Research Associate, Center for the Study of Futures Markets, Columbia University, 1991.

Rackham Merit Fellowship, University of Michigan, 1987-1989.

Chancellor’s Scholar, University of California at Berkeley, 1983-1986.

Referee

American Economic Review
Contemporary Economic Policy
Economics Bulletin
Feminist Economics
International Journal of the Economics of Business
International Journal of Industrial Organization
Journal of Economic Education
Journal of Economic and Management Strategy
Journal of Family and Economic Issues
Journal of Futures Markets
Journal of Industrial Economics
Journal of Law and Economics
Journal of Law, Economics, and Organization
Management Science
Review of Economics and Statistics
Scandinavian Journal of Economics

Telecommunications Systems

Conference and Workshop Presentations

Panel participant, “*Apple v. Pepper*: SCOTUS Clarifies Application of *Illinois Brick*”, ABA Section of Antitrust Law, May 2019.

Panel participant, “Is ‘Direct’ Really Correct? Bricks, Tix, Kicks, and Apps after *Apple v. Pepper*”, ABA Section of Antitrust Law, Pricing Conduct and Civil Practice and Procedure Committees Program, October 2018.

Panel participant, “Will Apple’s App Store Lead to the end of *Illinois Brick*”, CLA Antitrust, UCL & Privacy Law Section and ABA Antitrust Section’s Global Private Litigation Committee program, San Francisco, CA, July 2018.

Guest lecturer, Antitrust Law, University of San Francisco Law School, April 2017 and 2018.

Panel participant, “The Challenge of Circumstantial Proof of Cartel Behavior and of Presenting Economic Issues and Concepts to Judges and Juries”, American Antitrust Institute, 10th Annual Private Enforcement Conference, Washington, DC, November 2016.

Panel participant, “Winning or Losing: Class Certification Post-Comcast”, American Bar Association, 62nd Antitrust Law Spring Meeting, Washington, DC, March 2014.

Panel participant, “Preparing Early and Often”, State-of-the-Art Strategies for Managing Class Action Experts, American Bar Association, 16th Annual National Institute on Class Actions, Chicago, IL, October 2012.

Panel participant, “Hot Topics Involving Experts in Antitrust Litigation”, New York State Bar Association, Antitrust Law Section, Annual Meeting, New York, NY, January 2011.

Guest lecturer, Alternative Dispute Resolution Practicum, University of Michigan Law School, April 2008.

“The Economics of Indirect Purchaser Cases”, State Bar of Arizona Annual Conference, Phoenix, AZ, June 2004.

“Manipulating Interface Standards as an Anti-Competitive Strategy”, Standards and Public Policy Conference, Federal Reserve Bank of Chicago, Chicago, IL, May 2004.

“One-Way Standards as an Anti-Competitive Strategy”, Telecommunications Policy Research Conference, Alexandria, VA, September 2002.

“Product Proliferation and Product Space Location”, Econometric Society Meetings, New Orleans, January 2001.

“The End of Collusion? Competition after Justice and the Ivy League and MIT Settle”, American Economics Association Meetings, New Orleans, January 2001.

“The End of Collusion? Competition after Justice and the Ivy League and MIT Settle”, Indiana University-Purdue University Indianapolis, November 2000.

“Maximum or Minimum Differentiation? An Empirical Investigation into the Location of Firms”, University of British Columbia, March 2000.

“Non-Profits and Price-Fixing: The Case of the Ivy League”, University of Illinois, October 1999.

"The End of Collusion? Competition after Justice and the Ivy League and MIT Settle", Baylor University, September 1999.

"The End of Collusion? Competition after Justice and the Ivy League and MIT Settle", Western Economic Association Meetings, San Diego, July 1999.

"Non-Profits and Price-Fixing: The Case of the Ivy League", University of Chicago, April 1999.

"Non-Profits and Price-Fixing: The Case of the Ivy League", Indiana University, December 1998.

"International Integration and Growth: A Survey and Empirical Investigation", Dynamics, Economic Growth, and International Trade, III, Taiwan, August 1998.

Discussant ("Fiscal Policy and International Demand Spillovers"), Dynamics, Economic Growth, and International Trade, III, An International Conference, Taiwan, August 1998.

"International Integration and Growth", Workshop on Empirical Research in International Trade and Investment, Copenhagen, June 1998.

Discussant ("Factor Endowments and the Pattern of Affiliate Production by Multinational Enterprises," by Karolina Ekholm), Workshop on Empirical Research in International Trade and Investment, Copenhagen, June 1998.

"Non-Profits and Price-Fixing: The Case of the Ivy League", Department of Justice Antitrust Division, April 1998.

"Non-Profits and Price-Fixing: The Case of the Ivy League", American Economics Association Meetings, Chicago, January 1998.

Discussant ("Equilibrium under Satisficing," by Ralph W. Pfouts), International Atlantic Economics Society, ASSA Meetings, Chicago, January 1998.

Discussant ("Overseas Investments and Firm Exports," by Keith Head and John Ries), Fourth Annual Empirical Investigations in International Trade conference, Purdue University, November 1997.

"Maximum or Minimum Differentiation? An Empirical Investigation into the Location of Firms", International Atlantic Economic Association Conference, Philadelphia, October 1997.

Discussant ("Antidumping Enforcement in a Reciprocal Model of Dumping: Theory and Evidence," Taiji Furusawa and Thomas J. Prusa) and session chair, Third Annual Empirical Investigations in International Trade conference, Purdue University, November 1996.

"The Effect of Price-Fixing by Institutions of Higher Education", Indiana University-Purdue University Indianapolis, April 1996.

"Exercising Market Power in Proprietary Aftermarkets", with Severin Borenstein and Jeffrey K. MacKie-Mason, Indiana University - Purdue University - IUPUI First Tri-School Conference, March 1996.

"All in the Family: Family, Income, and Labor Force Attachment", with Jon D. Haveman, American Economic Association Meetings, San Francisco, January 1996.

"Family Matters: Unemployment, Wage Changes, and Mobility", with Jon D. Haveman, Southern Economics Association Meetings, New Orleans, November 1995.

Discussant and session chair, Second Annual Empirical Investigations in International Trade conference, Purdue University, November 1995.

“Competition and Anti-Competitive Behavior”, ICLE (The State Bar of Michigan) Conference on Antitrust and Intellectual Property, July 1995.

“Price-Fixing, Tuition, and Financial Aid”, Midwest Economics Association Meetings, Cincinnati, April 1995.

“Family Matters: Unemployment, Wage Changes, and Mobility,” Midwest Economics Association Meetings, Cincinnati, April 1995.

Discussant and session chair, “Customer Discrimination, Entrepreneurial Decisions, and Investment”, Midwest Economics Association Meetings, April 1995.

“An Empirical Test of the Effect of Basis Risk on Cash Market Positions”, University of Illinois, Urbana-Champaign, February 1995.

Discussant and session chair, First Annual Empirical Investigations in International Trade conference, Purdue University, November 1994.

“Antitrust Policy in Aftermarkets”, with Severin Borenstein and Jeffrey K. MacKie-Mason, FTC/DOJ/ABA Conference on Post-Chicago Economics, Washington, D.C., May 1994.

“The Effect of Price-Fixing by Institutions of Higher Education, University of Delaware, May 1994.

“The Effect of Futures Markets and Corners on Storage and Spot Price Variability”, Purdue University, February 1994.

“An Empirical Test of the Effect of Basis Risk on Cash Market Positions”, University of California at Davis, February 1993.

Discussant, Econometrics Association, Anaheim, 1992 Annual Meetings.

“Testing the Principle of Minimum Differentiation: Airline Departure-Time Crowding”, Econometrics Association, Washington, D.C., 1990 Annual Meetings.

Consulting and Testifying

Contant v. Bank of America, 2019-
United States District Court, Southern District of New York, No. 17-cv-3139-LGS
Testifying expert for plaintiffs

Barroqueiro, et al. v. Qualcomm Incorporated, et al., 2019-
Supreme Court of British Columbia, VLC-S-S1410987
Antitrust analysis regarding various cellular phone components

Confidential client, 2018-
Antitrust analysis regarding pharmaceutical products

In re Malden Transportation, Inc. et al., v. Uber Technologies, Inc., 2018-
United States District Court, District of Massachusetts, No. 1:16-cv-12538-NGM
Testifying expert for plaintiffs
Confidential client, 2017-2018

Antitrust analysis regarding various cellular phone components
In re Automotive Parts Antitrust Litigation
United States District Court, Eastern District of Michigan Southern Division, No. 2:12-cv-02311
Testifying expert for plaintiffs

- In re Occupant Safety Systems, No. 2:12-cv-00603, 2018-
- In re Heater Control Panels, No. 2:12-cv-00403, 2018-
- In re Anti-Vibrational Rubber Parts, No. 2:13-cv-00803-MOB-MKM, 2016-
- In re Bearings, No. 2:12-cv-00500, 2016-
- In re Automotive Wire Harness Systems Antitrust Litigation, No. 12-md-00101, 2012-
- In re Shock Absorbers Cases, No. 2:16-cv-0332, 2015-

Alarm Detection Systems, Inc. v. Orland Fire Protection District, et al., 2016-2019
United States District Court, Northern District of Illinois, No. 14-cv-00876
Testifying expert for plaintiff
Deposed May 2017
Testified at trial May 2017

In re LIBOR-Based Financial Instruments Antitrust Litigation, 2016-
United States District Court, Southern District of New York, No. 1:11-md-02262-NRB
Testifying expert for plaintiffs
Deposed March 2017, June 2017

Stacey Pierce-Nunes, on behalf of herself and all others similarly situated, v. Toshiba American Information Systems, 2015-
United States District Court, Central District of California, No. 3:14-CV-00796 JST
Testifying expert for plaintiffs
Deposed April 2016

John Moseley v. Toshiba America Information Systems, Inc., 2015-
Judicial Arbitration and Mediation Services No. 1200049482
Testifying expert for claimant
Deposed July 2015

In re Cathode Ray Tube (CRT) Antitrust Litigation, 2008-
United States District Court, Northern District of California, San Francisco Division, No. CV-07-5944-SC
Testifying expert for plaintiffs
Deposed November 2012, March 2013, June 2014, September 2014, October 2014

In re Photochromic Lens Antitrust Litigation, 2010-2012
United States District Court Middle District of Florida, Tampa Division, No. 8:10-md-02173-JDW-EAJ
Testifying expert for plaintiffs
Deposed August 2012

Datel Holdings and Datel Design and Development v. Microsoft, 2010-2011
United States District Court, Northern District of California, San Francisco Division, No. 09-cv-05535
Testifying expert for plaintiffs
Deposed October 2011

In re Prefilled Propane Tank Marketing and Sales Practices Litigation, 2010-2011
United States District Court, Western District of Missouri, Western Division, No. 4:09-cv-00465
Testifying expert for plaintiffs

In re Florida Cement and Concrete Antitrust Litigation, 2010
United States District Court, Southern District of Florida, Miami Division, No. 1:09-cv-23493-CMA
Consulting expert for plaintiffs

Altair Engineering v. MSC Software, 2009-2010
United States District Court, Eastern District of Michigan, Southern Division, No. 2:07-cv-12807
Testifying expert for plaintiff
Deposed May 2010

In re Optical Disk Drive products Antitrust Litigation, 2009-2010
United States District Court, Northern District of California, San Francisco Division, No. M:2010-cv-02143
Consulting expert for plaintiffs

In re Flash Memory Antitrust Litigation, 2008-2011
United States District Court, Northern District of California, Oakland Division, No. C-07-0086-SBA
Testifying expert for plaintiffs
Deposed August 2009

Valassis Communications, Inc. v. News America, Inc., 2008-2009
United States District Court, Eastern District of Michigan, Southern Division, No. 2:06-cv-10240
Circuit Court of the State of Michigan, County of Wayne, No. 07-0706645-CZ
Consulting expert for plaintiff

In re TFT-LCD (Flat Panel) Antitrust Litigation, 2008-2012
United States District Court, Northern District of California, San Francisco Division, No. M:07-cv-01827
Testifying expert for plaintiffs
Deposed July 2009, June 2011, August 2011

Houston Baptist University v. NCAA, 2008-2009
United States District Court in and for the Southern District of Texas, Houston Division
Testifying expert for plaintiff

Seoul Semiconductor Co. v. Nichia Corp., 2008
United States District Court, Northern District of California, No. 3:08-cv-04932-PJH
Testifying expert for plaintiffs

Albert Andy Cohn v. Office Depot, 2008
Superior Court of the State of California, County of Los Angeles, Central District, No. BC 372449
Testifying expert for defendant

In re Graphics Processing Units Antitrust Litigation, 2007-2008
United States District Court Northern District of California, No. M:07-CV-01826-WHA
Testifying expert for plaintiffs
Deposed June 2008

Pro-Sys Consultants Ltd. and Neil Godfrey v. Microsoft, 2007-2018
Supreme Court of British Columbia, No. L043175, *Vancouver Registry*
Testifying expert for plaintiffs
Deposed December 2008

In re Dynamic Random Access Memory (DRAM) Antitrust Litigation, 2007
United States District Court, Northern District of California, No. 02-cv-01486
Consulting expert for plaintiffs

Jason White et al. v. NCAA, 2006-2008
United States District Court Central District of California, No. CV 06-0999 RGK (MANx)
Testifying expert for plaintiffs
Deposed October 2007

In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation, 2004-2008
United States District Court Central District of California, No. 05-1671 CAS
Testifying expert for plaintiffs
Deposed December 2006

Carlisle, settlement negotiations with Crompton, EPDM price-fixing cartel, 2005-2007
Consulting expert

Caterpillar and Carlisle, settlement negotiations with DuPont-Dow Elastomers, PCP (or CR) and EPDM price-fixing cartels, 2004-2005
Consulting expert

City and County of San Francisco et al. v. Microsoft, 2004-2007
United States District Court for the District of Maryland, No. 1332
Testifying expert for plaintiffs

The Service Source v. Office Depot, 2004-2005
United States District Court Eastern District of Michigan Southern Division, No. 02-73361
Project director

Joe Comes et al. v. Microsoft, 2002-2008
Iowa District Court for Polk County, No. CL82311
Testifying expert for plaintiffs
Deposed July 2006, November 2006

Charles Cox et al. v. Microsoft, 2002-2006
Supreme Court of the State of New York County of New York, No. 105193/00
Testifying expert for plaintiffs

Daniel Gordon et al. v. Microsoft, 2002-2004
State of Minnesota District Court County of Hennepin Fourth Judicial District, No. 00-5994
Testifying expert for plaintiffs
Deposed September 2003

Morelock Enterprises, Inc. v. Weyerhaeuser Co., 2004-2008
United States District Court District of Oregon, No. 3:04-cv-00583-PA
Testifying expert for plaintiffs
Deposed October 2004, April 2005, October 2007
Testified in trial April 2008

Compuware v. IBM, 2002-2005
United States District Court for the Eastern District of Michigan, No. 02-70906
Project director

In re New Mexico Indirect Purchaser Microsoft Corp. Antitrust Litigation, 2002-2004
State of New Mexico First Judicial District, No. D-0101-CV-2000-1697
Testifying expert for plaintiffs

Charles Friedman et al. v. Microsoft, 2002-2004
Superior Court of the State of Arizona in and for the County of Maricopa, No. CV2000-000722 / CV2000-005872
Testifying expert for plaintiffs
Deposed September 2003

In re Massachusetts Consumer Protection Litigation, 2003-2004
Commonwealth of Massachusetts, Superior Court Department of the Trial Court Middlesex Division,
No. 00-2456
Consulting expert

Olson v. Microsoft, 2002
Montana First Judicial District Court Lewis & Clark County, No. CDV-2000-219
Consulting expert

Covad v. Bell Atlantic (Verizon), 2001-2004
United District Court for the District of Columbia, No. 99-1046
Project director

AMD, 2000-2004
Project director

Leckrone, et al. v. Premark International, Inc., et al., 2001
Testifying expert for plaintiffs

Ren, et al. v. EMI Music Distribution, Inc., 2001
State of Michigan in the Circuit Court of the County of Macomb, No. 00-2383-CZ
Testifying expert for plaintiffs

SBC, 2000
Staff economist

Lingo et al. v. Microsoft, 1999-2004
Superior Court of the State of California City and County of San Francisco, J.C.C.P. No. 4106
Project director

Gravity et al. v. Microsoft, 1999-2003
United States District Court for the District of Columbia, No. 1:99CV00363
Staff economist

City and County of San Francisco, 1999
Staff economist

Intergraph v. Intel, 1998-2001
United States District Court Appeals for the Federal District, No. 98-1308
Staff economist

Comm-Tract v. Northern Telecom, 1991-1997
United States District Court District of Massachusetts, No. 90-13088-WF
Project director

Systemcare, Inc. v. Wang Computer, 1991-1993
United States District Court for the District of Colorado, No. 89-B-1778
Staff economist

International Travel Arrangers v. Northwest Airlines, 1988-1989
Staff economist

EXHIBIT K

1 Joseph J. Tabacco, Jr. (Bar No. 75484)
2 Todd A. Seaver (Bar No. 271067)
3 Christopher T. Heffelfinger (Bar No. 118058)
4 Matthew D. Pearson (Bar No. 235339)
5 **BERMAN TABACCO**
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11 tseaver@bermantabacco.com
12 cheffelfinger@bermantabacco.com
13 mpearson@bermantabacco.com

14 *Attorneys for Plaintiffs*

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

**04/06/2022
Clerk of the Court**

**BY: ERNALYN BURA
Deputy Clerk**

15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SAN FRANCISCO**
18 **UNLIMITED JURISDICTION**

19 COORDINATION PROCEEDING SPECIAL)
20 TITLE (Cal. R. Ct. 1550(b)))

Judicial Council Coordination
Proceeding Nos. No. 4298 and 4303

21 AUTOMOBILE ANTITRUST CASES I, II)

CJC-03-004298 and CJC-03-004303

CLASS ACTION

22 _____)
23 This document relates to:)
24 All Actions)

**DECLARATION OF EDWARD A.
INFANTE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT WITH FORD CANADA**

Date: April 25, 2022

Time: 2:00 p.m.

Dept: 306

Judge: Honorable Anne-Christine Massullo

Date Complaint Filed: October 6, 2003
(Consolidated Amended Class Action
Complaint)

1 I, Edward A. Infante, declare as follows:

2 1. I served as the mediator in this action and have overseen settlement negotiations between
3 the parties over the last 7 months. I submit this declaration in support of preliminary approval of the
4 proposed class action settlement between Plaintiffs and defendant Ford Motor Company of Canada,
5 Limited (“Ford Canada”).

6 **Qualifications and Background**

7 2. I currently serve as a mediator with JAMS, the nation’s largest private provider of
8 alternative dispute resolution services. As a former Chief Magistrate Judge of the United States District
9 Court for the Northern District of California, I have more than 30 years of dispute resolution experience
10 and have conducted more than 3,000 settlement conferences, particular expertise in complex litigation,
11 including antitrust, consumer, securities fraud, and shareholder class actions. As relevant to the
12 settlement here, I have mediated and overseen the settlement of more than 100 class actions, including
13 antitrust cases. I make this statement in support of Plaintiffs’ Motion for Preliminary Approval of the
14 Settlement with Ford Canada, which seeks the Court’s approval of the settlement reached by the parties
15 on January 14, 2022. Except as otherwise noted, I have personal knowledge of the facts stated herein,
16 and if called upon as a witness, I could and would testify competently thereto.

17 3. I have successfully resolved numerous class actions involving claims of under federal and
18 state antitrust laws. While on the bench, I presided over hundreds of settlement conferences in complex
19 business disputes and class actions. I have been appointed as a Special Master by numerous federal
20 courts in complex civil proceedings. It is my understanding that I was selected by the parties to mediate
21 this important matter in part because of my extensive expertise resolving complex disputes of this kind.

22 **The Mediation Process**

23 4. The parties approached me to mediate this case, and I agreed. I understood that a past
24 attempt to mediate the case between the parties had failed. The parties agreed to a formal mediation on
25 June 22, 2021. Prior to the mediation, the parties exchanged significant information regarding the long
26 history of the litigation, the extensive discovery undertaken by the parties over several years, a summary
27 of the major motions decided by the Court, the results of the decisions made by the California Court of
28

1 Appeal, and the potential damages sought at trial. The parties' statements also outlined the strengths and
2 weaknesses of their respective positions. I also independently reviewed various pleadings related to the
3 litigation and was well informed about the strengths and weaknesses of the claims and defenses in
4 advance of the mediation.

5 5. On June 22, 2021, I held a mediation with representatives of both parties in-person in San
6 Francisco. The mediation was marked by strong advocacy on both sides, with Plaintiffs staking out their
7 position on the merits and value of their claims based on their view of the evidence, and Ford Canada
8 offering numerous and well considered defenses to both liability and damages. The parties were well-
9 prepared to discuss the applicable legal standards, the relative strengths and weaknesses of the parties'
10 positions, and the key issues to be addressed at mediation. Although the parties did not settle at the
11 mediation, the parties agreed to continue discussions and to have me continue to oversee the parties'
12 efforts to settle this case.

13 6. Over the next several months, I understand that the parties engaged in intensive efforts to
14 prepare for trial, including designating experts, compiling exhibit and trial lists, and designating
15 deposition testimony. I understand the parties also briefed important motions to exclude expert evidence,
16 a motion for judgment on the pleadings concerning whether the case would receive per se treatment
17 under the Cartwright Act, and a further motion for summary judgment meant to foreclose recovery for
18 purchasers of Ford, Nissan, and Honda vehicles. I further understand that the Court, after careful
19 consideration, ruled on all of these motions and others.

20 7. As the February 7, 2022 trial date approached, the parties reached out to me again to
21 schedule a further formal mediation session, which was scheduled for January 14, 2022. Prior to the
22 mediation, the parties provided me with confidential letters updating me on recent events in the case, the
23 Court's rulings, and their current respective views of the merits of the claims and defenses. In my view,
24 the parties had litigated, and the Court had ruled upon, virtually every remaining issue. The parties were
25 both well-prepared for trial. This was the last and best chance for the parties to reach a pretrial
26 resolution.

1 8. This second mediation session took place on January 14, 2022 via a Zoom conference
2 call. Present at the mediation were all the same individuals who participated in the June 2021
3 mediation. The mediation lasted the entire day, with strong advocacy on each side. Through intense
4 negotiations, the parties were able to narrow the gap between them. However, at the conclusion of the
5 mediation session, the parties were at an impasse and could not agree to the amount of monetary
6 consideration. I then made a double-blind mediator's proposal that the case should settle for
7 \$82,000,000, which was accepted by both parties.

8 9. Once reached, I was informed that the agreement-in-principle required approval by the
9 Boards of Directors of both Ford Canada and Ford Motor Company. I was informed a couple of weeks
10 later that Board approval had been obtained, subject to the parties negotiating a mutually acceptable
11 written settlement agreement.

12 10. In late February 2022, the parties informed me that they had reached an impasse
13 regarding certain terms of the written settlement agreement, and the parties requested my assistance. On
14 February 28, 2022, I oversaw a further mediation session via Zoom with representatives of the parties.
15 Prior to this mediation session, the parties provided me with confidential letters identifying the areas of
16 disagreement and their positions. Through this half-day session, counsel for both sides again showed
17 their steadfast advocacy on behalf of their clients. The parties, however, were able come to agreement
18 on certain language that would resolve their disputes, subject to final sign-off by Ford executives. The
19 agreed-to language represented a compromise by both parties to reach agreement.

20 11. The resulting settlement provides meaningful monetary benefits to the Class and provides
21 an excellent result to this long, difficult, and complex litigation. Both parties faced uncertainty and risk
22 at trial, especially given the unique challenges of trying a case concerning events that occurred 20 years
23 ago with virtually no live testimony from percipient witnesses.

24 12. Deciding the fairness of the settlement is a matter for this Court. I make this declaration
25 to provide the Court with my observations in my capacity as mediator during the extended negotiations
26 and overseeing the settlement of this case. The parties were well-represented by zealous and able
27 counsel. The negotiations were based on detailed analyses of the relevant facts and legal principles, and
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1 counsel for all parties negotiated at arm's length. There is no indication of collusion whatsoever in the
2 settlement negotiation process—to the contrary, the intensity of the advocacy on each side was well-
3 apparent during the mediation. I am strongly of the view that the settlement of this action reached at the
4 end of the mediation process represents a fair and practical resolution of what would likely be highly
5 uncertain trial. From a mediator's perspective, the settlement that has been reached is a compromise
6 reached after informed, hard-fought negotiations, and reflects the strength—and risks—of the claims
7 being resolved through intensive mediation.

8 I declare under penalty of perjury that the foregoing facts are true and correct and that this
9 declaration was executed this 24th day of March, 2022, at Newport Coast, California.

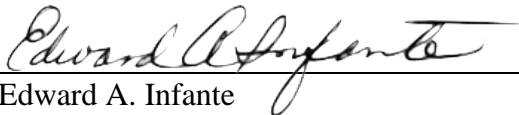
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12 _____
13 Edward A. Infante
14 Mediator
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EXHIBIT L

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

IN RE NEW MOTOR VEHICLES]
CANADIAN EXPORT ANTITRUST] **DOCKET No. 2:03-MD-1532-DBH**
LITIGATION]

**DECISION AND ORDER ON MOTIONS FOR AN AWARD OF
ATTORNEY FEES AND REIMBURSEMENT OF EXPENSES**

This has been an extremely hard-fought multidistrict antitrust class action lawsuit. It has been going on for 8-1/2 years in both this trial court and the Court of Appeals for the First Circuit. The plaintiffs secured settlement agreements early in the litigation with two defendants, Toyota Motor Sales USA Inc. (“Toyota”) and Canadian Automobile Dealers Association (“CADA”). The amounts totaled \$35.7 million and grew to \$37.3 million (in principal and interest as of October 31, 2010). The plaintiffs hoped to use those settlement proceeds in part to fund their further litigation against other defendants, so as to enlarge the total amount available to the class. But in fact, ultimately all other defendants either were dismissed or won summary judgment.

With respect to the settlement funds, I have certified settlement classes, approved the two settlement agreements and, after modification, recently approved a plan of allocation. Class counsel earlier sought expenses in the amount of \$6.27 million and fees in the amount of \$4.92 million for a total of \$11.19 million. Motion for an Award of Attorneys’ Fees and Reimbursement of Costs Advanced by Class Counsel (Docket Item 1131). At a fairness hearing on

February 18, 2011, objectors raised two objections to the plaintiffs' counsel's attorney fee request: first, that the settlement agreement contains a clear-sailing provision; second, that I should consider the fees and expenses together and find them too large in what they subtract from the class recovery. In turn, certain objectors have requested fees for the roles that they played at the fairness hearing.

Now that I am satisfied with the plan of allocation, I make this ruling approving and denying fees and expenses as follows. I consider first the two objections to the plaintiffs' requested fees, then conduct the independent review that is my responsibility under Fed. R. Civ. P. 23(h) for all the fee and expense requests.

A clear sailing provision is "one where the party paying the fee agrees not to contest the amount to be awarded by the fee-setting court so long as the award falls beneath a negotiated ceiling." Weinberger v. Great N. Nekoosa Corp., 925 F.2d 518, 520 n.1 (1st Cir. 1991). The challenged provision here¹ is

¹ The language in the Settlement Agreements that is challenged as a clear sailing provision provides:

Litigation Expenses From The Escrow Funds. After (a) the Settlement becomes Final and (b) the Toyota Defendants are dismissed from all State Actions, Plaintiffs may, without objection from TMS, but subject to the MDL Court's approval, withdraw monies from the Escrow Funds to defray the litigation expenses, including necessary expenses and expert fees, of prosecuting claims asserted against the Other Defendants. Except for TMS's payment of the Settlement Fund, no Releasee will be liable for any attorneys' fees, costs or expenses of the litigation of the Litigated Actions or of this Settlement, including but not limited to those (a) of any of Plaintiffs' experts, counsel, consultants, agents and representatives; (b) incurred in giving notice; or (c) incurred in administering the Settlement or distributing the Settlement Fund.

Toyota Settlement Agreement ¶ 19 (Docket Item 1043-1) (emphasis added); see also CADA Settlement Agreement ¶ 19 (Docket Item 1043-3).

not the classic clear sailing provision. Instead, it provides a way for the plaintiffs, with court approval, to draw down amounts that might have been needed to fund the litigation. In no way does its language address how to handle the ultimate request for fees and expenses. Even if it were a clear sailing provision, its effect is to counsel extra care in reviewing the attorney fees and expenses. I give that care regardless.

With respect to the second objection, certainly an important part of my review always considers what is taken away from the class recovery in any award I approve. But I do not simply lump fees and expenses together in assessing an award. Every lawsuit is different, and some justifiably create more expenses or more fees, or less of both or either, as the case may be.

I proceed then to my independent review of the requested fees and expenses.

The expense figure is undoubtedly large, but its size is not surprising, since class counsel spent it in their efforts to pursue the broader litigation against a large number of vehicle manufacturers, and the antitrust and economic issues were very complex. In fact, it is only 55% of the amounts that they actually have spent on the overall litigation, because they have allocated the rest of the expenses to the parallel state lawsuits that are pending (MDL counsel and state lawsuit counsel conducted joint discovery pursuant to a plan approved by California Superior Court Judge Richard A. Kramer and me). Joint Coordination Order (Docket Item 110). The attorney fee figure likewise is large in absolute numbers, but not in context. As a percentage of funds, it is

13.2%, below average for most litigation of this complexity. See Robert H. Lande & Joshua P. Davis, *Benefits from Private Antitrust Enforcement: An Analysis of Forty Cases*, 42 U.S.F. L. Rev. 879, Table 7A (July 2008) (Courts in the majority of antitrust class actions studied, which resulted in recoveries of less than \$100 million, awarded a contingent fee of 30% or more, median fee was 33.3% and the average 28.2%). It is far below the lodestar amount of \$45.9 million (reflecting the hours spent and hourly rates).² It is reasonable under the market-mimicking approach I set forth for attorney fees in Nilsen v. York County, 400 F. Supp. 2d 266 (D. Me. 2005).³ Overall, the fees and expenses amount to 30% of the settlement amounts, and the plaintiff class therefore will obtain 70% of the recovery.

Given the ultimate outcome of this litigation, the attorneys performed remarkably in obtaining these settlements, and both individual car purchasers and fleet purchasers will recover measurable amounts as a result, amounts they would never have pursued and recovered on their own. I conclude that the requested fees and expenses for class counsel are reasonable, considered separately and together, and I therefore **GRANT** the motion to approve them.

Objector Kevin Luke's Attorney Fee Request

Attorney John J. Pentz filed an objection to the plan of allocation and appeared at the final fairness hearing, representing a car buyer from Hawaii and arguing that Hawaii purchasers should have been included. Remarkably,

² Undoubtedly the amount is even higher now, given the demands I imposed in connection with altering the plan of allocation.

³ See Appendix.

he now seeks \$376,580 as a result, with no indication of time and expenses actually incurred and no indication of a fee agreement with his client. He claims that because of his argument, I enlarged the settlement class to include the jurisdictions of DC, Hawaii, North Carolina and Iowa, and that he expects car buyers in those jurisdictions will obtain \$2,852,878. Of that recovery he requests 13.2%, the amount that class counsel has requested against the entire settlement fund—*i.e.*, \$376,580 for his efforts. He seeks to have this amount subtracted from what class counsel would otherwise obtain, not to diminish the recovery of the class members.

I am tempted to reject the request outright, given how brazen it is—a request for \$376,580, with no fee agreement, and no statement of hours, rates, or expenses. Attorney Pentz was not responsible for creating the pie or enlarging the pie,⁴ only increasing the number who could consume it. He was never appointed to represent a class, and took only minimal risk, namely his time in writing his briefs and coming to Portland, Maine to argue. Although he now seeks credit for benefitting DC, North Carolina and Iowa, in fact his focus was only on Hawaii and he did not argue that the other three jurisdictions should be included until I raised that issue *sua sponte* in my Order of April 13, 2011. Thereafter, Attorneys General of those jurisdictions filed a response asserting their positions, and subsequently at my direction negotiated a modified notice program to enlarge the class coverage. Even as to Hawaii, the

⁴ By contrast, in my Order of April 13, 2011, I described how extraordinary class counsel's accomplishment was in obtaining the settlement funds here.

Pentz argument left much to be desired, failing initially to address the Hawaii Attorney General's supervisory role under the Hawaii statutes, and ignoring the significant difference between the migration of Canadian cars across a land border and across an ocean expanse. Attorney Pentz also provided no insight on how to correct notice and include the four additional jurisdictions in the claims process.

Nevertheless, Attorney Pentz accomplished one significant step in representing his client, Hawaii purchaser Kevin Luke. Without his bringing the issue to my attention, I would have missed the fact that certain jurisdictions that do not follow Illinois Brick⁵ but instead allow indirect purchaser recoveries were omitted from the list of states whose purchasers could obtain monetary recovery simply because class counsel had no clients from those states. That accomplishment does deserve recognition.

In the absence of any proof of a fee agreement, or any evidence of attorney time, rates and expenses, I conclude that \$10,000 is an adequate recompense for what Attorney Pentz did, without giving him a windfall for recoveries that he never sought. That amount will be subtracted from the fees and expenses of class counsel.

Objector Theodore H. Frank's Attorney Fee Request

On behalf of Theodore H. Frank, the Center for Class Action Fairness/Greenberg Legal Services challenged the cy pres portion of the proposed settlement allocation by filing legal memoranda and appearing at the

⁵ Illinois Brick v. Illinois, 431 U.S. 720 (1977).

fairness hearing. Ultimately I did reject the proposed cy pres proposal and assigned all the cash recovery directly to class members. Frank's lawyers say that in attacking the cy pres proposal, they had disbursements of \$973.80 and that their lodestar fees exceed \$35,600. They have discounted their fees to \$19,000,⁶ however, for a total request of \$19,973.80. Like Pentz/Luke, they seek payment of this amount from the fees otherwise to be awarded to class counsel.

Anticipating my reaction that I was already disposed to reject the cy pres portion of the settlement allocation without their assistance,⁷ Frank's lawyers cite a Seventh Circuit dictum that "objectors must decide whether to object without knowing what objections may be moot because they have already occurred to the judge." Reynolds v. Beneficial Nat'l Bank, 288 F.3d 277, 288 (7th Cir. 2002).⁸ The point is well-taken. Although I had several times signaled my concern about the cy pres proposal, Objector Frank could not be certain that I would reject it finally if no one objected to it. However, the significance of his efforts is sharply reduced under the circumstances, and the issue was neither complex nor subtle. I conclude that an award of \$10,000 is

⁶ Frank's lawyers made other arguments that were unsuccessful.

⁷ My decision rejecting the cy pres part of the settlement referred to several previous expressions of skepticism that I had uttered on the proposal. Decision and Order on Proposed Settlements and Plan of Allocation n.34 (Docket Item 1175).

⁸ The case is somewhat different from Reynolds in that there "[t]he judge denied a fee to the objectors in part on the ground that he had already decided, *without telling anybody*, not to accept the reversion." Reynolds, 288 F.3d at 288 (emphasis added). In this case, I had signaled my concern about the cy pres proposal several times. Nevertheless, the point remains: the objectors could not be sure that I would reject the cy pres proposal if no one stood up to support my concerns.

sufficient. Because it did enlarge the amount going to class members, it need not be subtracted from the fees I have awarded class counsel.

CONCLUSION

I find that reasonable and adequate notice of the maximum amount of attorney fees and expenses that the plaintiffs' attorneys would request was provided to Class Members, informing them of their right to object and appear at the Fairness Hearing.

Class Counsel, on behalf of all the plaintiffs' attorneys, are awarded attorneys' fees of \$4,910,000 (\$4,920,000 minus \$10,000), Kevin Luke is awarded attorney fees and expenses of \$10,000, and Theodore Frank is awarded attorney fees and expenses of \$10,000, all of which shall be paid out of the Combined Settlement Fund. The total attorney fees represent 13.2% of the gross settlement proceeds including interest earned by the Combined Settlement Fund as of October 31, 2010. Class Counsel, on behalf of all the plaintiffs' attorneys, are awarded reimbursement of expenses in the aggregate amount of \$6,270,000, which shall be paid out of the Combined Settlement Fund. These expenses are fair and reasonable, and were necessarily incurred in connection with the prosecution and settlement of the Litigated Actions.

The attorney fees and expenses approved by the Court in this order for class counsel are payable from the Combined Settlement Fund to the Chair of the MDL Executive Committee, Joseph J. Tabacco and Todd A. Seaver of Berman DeValerio, on behalf of all the plaintiffs' attorneys in the Litigated Actions, once the Settlements become Final as provided in Paragraph 9 of the

Settlement Agreements. The Chair of the MDL Executive Committee shall thereafter allocate the Fee and Expense Award to the plaintiffs' attorneys in a fair and equitable manner. In addition, once the Settlements become Final as provided in Paragraph 9 of the Settlement Agreements, Kevin Luke and Theodore Frank shall be paid their attorney fees and expenses directly from the Combined Settlement Fund.

The attorney fees and expenses approved by the Court shall be paid from the Toyota Settlement Fund and CADA Settlement Fund proportionally based on the original amounts deposited into each fund.

SO ORDERED.

DATED THIS 1ST DAY OF FEBRUARY, 2012

/s/D. Brock Hornby
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

Appendix

The market-mimicking approach tries to ascertain a market price for legal services “in light of the risk of nonpayment and the normal rate of compensation in the market at the time.” Nilsen v. York Cnty., 400 F. Supp. 2d 266, 278 (D. Me. 2005) (citation omitted). The plaintiffs offer contextual market information and conclusions drawn from several sources: (i) the case In re Merry-Go-Round Enterprises, Inc., 244 B.R. 327 (D. Md. 2000), where the court concluded that the “market price” for the legal services supported a 40% fee; (ii) evidence of judicial fee awards in two antitrust class actions where the “market approach” was used in part by the court to determine the contingent fee award; (iii) scaled medical malpractice contingency-fee practice; and (iv) conclusions from empirical studies that offer insight on contingent fees in both class actions and non-class actions.

The main inquiry for the market-mimicking approach is what a private plaintiff would have negotiated at arm’s length with the lawyers at the outset of the case. Nilsen, 400 F. Supp. 2d at 276. Of course it is impossible to know the outcome of this hypothetical bargain now, at the end of the case. But the market-mimicking method gives primacy to what “a court can learn about similar bargains.” In re Synthroid Mktg. Litig., 264 F.3d 712, 719 (7th Cir. 2001). Under the market-mimicking approach the court should assess the market price considering “the risk of nonpayment, quality of performance, the amount of work, and the stakes of the case.” Nilsen, 400 F. Supp. 2d at 276 (citation omitted). The plaintiffs cite In re Merry-Go-Round Enterprises, Inc.,

244 B.R. 327 (D. Md. 2000), where the risk of non-payment and the ensemble of services resembled those here and where the court concluded the “market price” for those services supported a 40% fee.

Another factor to consider when using the market-mimicking approach is “[o]ther judicial fee awards” inasmuch as they “affect the expectations of lawyers, and therefore, what they might agree to in a voluntary negotiation.” Nilsen, 400 F. Supp. 2d at 282-83. The plaintiff relies on two antitrust class actions where the court has used a market approach to determine the market price for the legal services. In both cases, the court concluded that a contingent fee of 30% to 40% is the “market rate.”

In In re Remeron Direct Purchaser Antitrust Litigation, No. 03-0085, 2005 U.S. Dist. LEXIS 27013 (D.N.J. Nov. 9, 2005), Judge Hochberg used a percentage-of-the-fund method, but required that the method “should approximate the fee which would be negotiated if the lawyer were offering his or her services in the private marketplace.” Id. at *44-45. Judge Hochberg also emphasized that the market rate had to take into account the risk of nonpayment, remarking on “the sometimes undesirable characteristics” of contingent-fee antitrust class actions. Id. at *39. Those include “the uncertain nature of the fee, the wholly contingent outlay of large out-of-pocket sums by plaintiffs, and the fact that the risk of failure and nonpayment in an antitrust case are extremely high.” Id. The court determined the “market rate” to be “between 30% and 40%.” Id. at *46.

In In re Insurance Brokerage Antitrust Litigation, MDL No. 1663, 2009 U.S. Dist. LEXIS 17755 (D.N.J. Feb. 17, 2009), Chief Judge Brown used a multi-factor test in evaluating a percentage-of-the-fund contingent fee request. When he came to the question “whether the requested fee is consistent with a privately negotiated contingent fee in the marketplace,” id. at *56-57 (citing 7th Circuit cases), Judge Brown concluded that the market price for privately-negotiated contingent fees is “between 30% and 40%” in non-class, commercial litigation. Id. at *58. Class counsel was seeking an award of 15.9% to 18.9%. Id. at *56. Consequently, the requested fee was below that market rate.¹

Finally, several academic and government reports are often relied upon by courts as a factor in determining the “market price” for class action contingent fees. See, e.g., In re Cabletron Sys., Inc. Sec. Litig., 239 F.R.D. 30, 40-42 (D.N.H. 2006) (relying on “comprehensive studies evaluating fee awards in class action cases” and collecting those studies). Most relevant here is the

¹ I have previously found medical malpractice limits also to be “instructive and persuasive” in some cases where evidence of market rates was slim. Nilsen, 400 F. Supp. 2d at 282. By statute in Maine, medical malpractice contingent fees are limited according to a sliding scale: 33.33% for the first \$100,000 of recovery, 25% for the next \$100,000, and 20% of any amount over \$200,000. Id. at 280. California limits contingency fees to a sliding scale of 40%, 33.33%, and so on. Cal. Bus. & Prof. Code § 6146 (West 2003). Tennessee limits them to 33 1/3%. Tenn. Code Ann. § 29-26-120 (2000). Wisconsin allows 33 1/3% of the first \$1,000,000 (or 25% of the first \$1,000,000 if liability is stipulated within 180 days) and 25% of any amount in excess of \$1,000,000. Wis. Stat. Ann. § 655.013 (West 2004).

The plaintiffs suggest that if the statutory medical malpractice fee caps in Maine or California were accepted as “market rates” but the recovery amounts scaled appropriately, they would translate to a blended contingent fee of 37.7% under California limits, and 30.5% under Maine limits. (With statutory caps appropriately scaled to this case, for example, California medical malpractice limits would yield the following: 40% of first \$25 million = \$10 million in fees; 33.33% of the next \$25 million (the \$12.4 million remainder) = \$4.1 million in fees. Total fees = \$14.1 million. Blended rate = 37.7%. Under the same scale, the Maine medical malpractice limits would yield the following: 33.33% of the first \$25 million = \$8.3 million in fees; 25% of the next \$25 million (the \$12.4 remainder) = \$3.1 million in fees. Total fees = \$11.4 million. Blended rate = 30.5%.) As a result, facets of medical malpractice contingency-fee practice also support a finding that the market-mimicking rate in this case is 30% to 40%.

study of forty antitrust class actions. See Robert H. Lande & Joshua P. Davis, *Benefits From Private Antitrust Enforcement: An Analysis of Forty Cases*, 42 U.S.F. L. Rev. 879 (July 2008). Courts in the majority of antitrust class actions resulting in recoveries of less than \$100 million awarded a contingent fee of 30% or more. The median fee was 33.3% and the average 28.2%. Id. at Table 7A.

All these sources support class counsel's request here.

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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION**

10 COORDINATION PROCEEDING SPECIAL)
11 TITLE (Cal. R. Ct. 1550(b)))

Judicial Council Coordination
Proceeding Nos. No. 4298 and 4303

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AUTOMOBILE ANTITRUST CASES I, II)

CJC-03-004298 and CJC-03-004303

CLASS ACTION

_____)
This document relates to:)
All Actions)

**EXHIBITS IN SUPPORT OF
DECLARATION OF TODD A. SEAVER
IN SUPPORT OF PLAINTIFFS':
(I) MOTION FOR FINAL APPROVAL
OF SETTLEMENT WITH FORD
CANADA; AND (II) MOTION FOR
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND PAYMENT OF SERVICE
AWARDS (VOL. 2 – EXHIBITS M-R)**

Date: October 5, 2022

Time: 10:00 a.m.

Dept: 306

Judge: Honorable Anne-Christine Massullo

Date Complaint Filed: October 6, 2003
(Consolidated Amended Class Action
Complaint)

EXHIBIT M

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

COORDINATION PROCEEDING SPECIAL TITLE (RULE 1550(b)))	Judicial Council Coordination Proceeding Nos. 4298 and 4303
AUTOMOBILE ANTITRUST CASES I AND II)	DECLARATION OF JOSEPH J. TABACCO, JR. OF BERMAN DEVALERIO IN SUPPORT OF PLAINTIFFS' APPLICATION FOR ATTORNEYS' FEES AND COSTS
This Document Relates to: All Actions)	
)	Date: January 5, 2012
)	Time: 9:30 a.m.
)	Dept.: 304
)	Honorable Richard A. Kramer Coordination Trial Judge
)	Trial Date: None Set

1 I declare as follows:

2 1. I am a partner at Berman DeValerio, Chair of the Plaintiffs' Executive Committee in
3 the federal multi-district litigation captioned *In re New Motor Vehicles Canadian Export Antitrust*
4 *Litigation*, MDL Docket No. 1532 ("MDL Action"). I am also associated as counsel for Plaintiffs in
5 this coordinated California proceeding ("California Action"). I submit this declaration in support of
6 Class Counsel's application for an award of attorneys' fees and costs.

7 2. Attached as Attachment A hereto is a true and correct copy of the declaration my firm
8 submitted in the MDL Action with an application for fees and costs made in connection with the
9 settlements with Toyota Motor Sales, U.S.A., Inc. and the Canadian Automobile Dealers'
10 Association. The previous declaration sets forth my firm's lodestar and expenses from inception to
11 November 30, 2010. I incorporate by reference the lodestar and expenses detailed in Attachment A.

12 3. My firm has expended extensive attorney time and expenses litigating on behalf of
13 Plaintiffs before this Court. The extensive efforts of Berman DeValerio in this California Action
14 include the following:

- 15 a. Playing a key role in drafting Plaintiffs' opposition to Defendants' motions for
16 summary judgment, including responding to over 1,000 statements of fact
17 filed by Defendants, drafting and filing over 1,000 additional statements of
18 fact, preparing legal briefs, and compiling evidence;
- 19 b. Preparing detailed written objections and restated objections to Defendants'
20 evidence, and legal briefing related to these objections;
- 21 c. Drafting comprehensive responses to hundreds of evidentiary objections
22 lodged by Defendants;
- 23 d. Leading oral argument before this Court in opposition to Defendants' multiple
24 motions for summary judgment and related evidentiary objections. These
25 hearings were held over four days during a five-month period and required
26 extensive preparation;
- 27 e. Negotiating with counsel for GMCL and coordinating with other Plaintiffs'
28 counsel to achieve the GMCL settlement;

- f. Drafting the settlement agreement and related documents; and
- g. Working closely with Gilardi & Co. LLC on devising a notice plan for the GMCL settlement, which involved substantial coordination with counsel in the four state actions.

4. My firm undertook most of the above efforts during the last year, and this time is not reflected in Attachment A. Specifically, my firm has expended additional attorney and paralegal time of 2,544.45 hours, totaling \$1,108,201.50 in additional lodestar. This additional time and lodestar is detailed in the chart below:

NAME	Hourly Rate	Add'l Hours	Add'l Lodestar
ATTORNEY			
Joseph J. Tabacco, Jr. (11)	\$ 750.00	274.00	\$ 205,500.00
Joseph J. Tabacco, Jr. (10)	\$ 730.00	6.40	\$ 4,672.00
Glen DeValerio (11)	\$ 750.00	4.50	\$ 3,375.00
Peter Pease (11)	\$ 750.00	1.10	\$ 825.00
Christopher Heffelfinger (11)	\$ 705.00	42.70	\$ 30,103.50
Christopher Heffelfinger (10)	\$ 670.00	2.20	\$ 1,474.00
Kathleen Donovan-Maher (11)	\$ 705.00	1.30	\$ 916.50
John Dominguez (11)	\$ 565.00	0.30	\$ 169.50
Todd Seaver (11)	\$ 565.00	681.30	\$ 384,934.50
Todd Seaver (10)	\$ 540.00	82.05	\$ 44,307.00
Daniel Barenbaum (11)	\$ 535.00	1.00	\$ 535.00
Matthew W. Ruan (11)	\$ 325.00	4.10	\$ 1,332.50
Matthew W. Ruan (10)	\$ 310.00	4.20	\$ 1,302.00
Matthew D. Pearson (11)	\$ 315.00	1088.20	\$ 342,783.00
Matthew D. Pearson (10)	\$ 300.00	75.00	\$ 22,500.00
Anthony D. Phillips (11)	\$ 300.00	0.50	\$ 150.00
Sarah Khorasanee (11)	\$ 300.00	30.50	\$ 9,150.00
Sub-Totals		2,299.35	\$ 1,054,029.50
PARALEGALS			
Stephen Wright (11)	\$ 240.00	3.50	\$ 840.00
Katie Umpierre (11)	\$ 230.00	39.90	\$ 9,177.00
Katie Umpierre (10)	\$ 220.00	0.90	\$ 198.00
Kirill Levashov (11)	\$ 220.00	96.70	\$ 21,274.00
Kirill Levashov (10)	\$ 210.00	21.90	\$ 4,599.00
Amber Eklof (11)	\$ 220.00	82.20	\$ 18,084.00
Sub-Totals		245.10	\$ 54,172.00

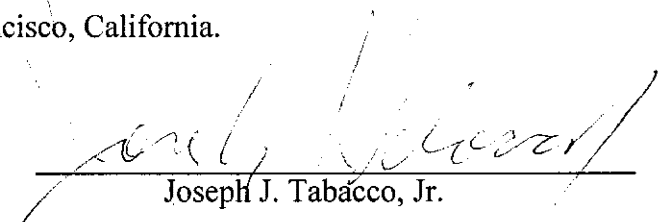
TOTALS		2,544.45	\$ 1,108,201.50
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5. Since submitting the attached declaration in the MDL Action, my firm has incurred additional expenses totaling \$78,517.08. These additional expenses are detailed in the chart below:

Additional Expense Description	Additional Expense Amount
Litigation Fund Assessment	\$40,000
Computer Research	\$12,983.93
Postage/Express Delivery/Messenger	\$613.91
Photocopying	\$7,487.57
Telephone/Facsimile	\$2,109.71
Travel/Meals/Lodging	\$15,261.96
Witness Fees	\$60.00
TOTAL ADDITIONAL EXPENSES	\$78,517.08

6. Accounting for the additional time and expenses discussed above, my firm's cumulative total lodestar is \$12,833,031.25 and cumulative total amount of expenses incurred is \$2,532,997.45. The time expended in preparation of the firm's fee and expense application in this matter is not included in this lodestar total.

7. I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of December, 2011, at San Francisco, California.



 Joseph J. Tabacco, Jr.

EXHIBIT N

Automobile Antitrust Cases I and II
Time and Lodestar Report
BERMAN TABACCO
Period: December 1, 2011 to June 30, 2022

NAME	Hourly Rate	Total Cumulative Hours	Total Cumulative Lodestar
PARTNERS			
Heffelfinger, Christopher (2022)	\$1,065.00	28.90	\$30,778.50
Pearson, Matthew (2022)	\$825.00	338.60	\$279,345.00
Seaver, Todd (2022)	\$970.00	216.50	\$210,005.00
Tabacco, Joseph (2022)	\$1,085.00	102.70	\$111,429.50
Buttacavoli, Steven (2021)	\$855.00	14.20	\$12,141.00
Heffelfinger, Christopher (2021)	\$1,015.00	102.40	\$103,936.00
Pearson, Matthew (2021)	\$770.00	733.90	\$565,103.00
Seaver, Todd (2021)	\$925.00	1,724.30	\$1,594,977.50
Tabacco, Joseph (2021)	\$1,035.00	281.30	\$291,145.50
Pearson, Matthew (2020)	\$735.00	35.60	\$26,166.00
Seaver, Todd (2020)	\$880.00	52.90	\$46,552.00
Tabacco, Joseph (2020)	\$985.00	27.40	\$26,989.00
Pearson, Matthew (2019)	\$700.00	27.10	\$18,970.00
Seaver, Todd (2019)	\$840.00	74.30	\$62,412.00
Tabacco, Joseph (2019)	\$940.00	22.10	\$20,774.00
Pearson, Matthew (2018)	\$670.00	191.40	\$128,238.00
Seaver, Todd (2018)	\$800.00	25.50	\$20,400.00
Tabacco, Joseph (2018)	\$895.00	18.90	\$16,915.50
Lavallee, Nicole (2017)	\$875.00	0.30	\$262.50
Pearson, Matthew (2017)	\$640.00	44.50	\$28,480.00
Seaver, Todd (2017)	\$760.00	382.90	\$291,004.00
Tabacco, Joseph (2017)	\$895.00	118.30	\$105,878.50
Barenbaum, Daniel (2016)	\$725.00	0.50	\$362.50
DeValerio, Kyle (2016)	\$610.00	1.50	\$915.00
Heffelfinger, Christopher (2016)	\$850.00	1.20	\$1,020.00
Pearson, Matthew (2016)	\$610.00	35.40	\$21,594.00
Seaver, Todd (2016)	\$725.00	40.80	\$29,580.00
Tabacco, Joseph (2016)	\$890.00	114.60	\$101,994.00
Pearson, Matthew (2015)	\$580.00	13.10	\$7,598.00
Tabacco, Joseph (2015)	\$875.00	6.40	\$5,600.00
Heffelfinger, Christopher (2014)	\$790.00	2.20	\$1,738.00
Pearson, Matthew (2014)	\$550.00	1.00	\$550.00

Automobile Antitrust Cases I and II
Time and Lodestar Report
BERMAN TABACCO
Period: December 1, 2011 to June 30, 2022

NAME	Hourly Rate	Total Cumulative Hours	Total Cumulative Lodestar
Tabacco, Joseph (2014)	\$835.00	0.60	\$501.00
Pearson, Matthew (2013)	\$525.00	74.20	\$38,955.00
Seaver, Todd (2013)	\$625.00	5.10	\$3,187.50
Tabacco, Joseph (2013)	\$795.00	2.80	\$2,226.00
Seaver, Todd (2012)	\$595.00	35.60	\$21,182.00
Tabacco, Joseph (2012)	\$780.00	6.00	\$4,680.00
Total Partners		4,905.00	4,233,585.50
ASSOCIATES			
Cleary, Colleen (2021)	\$450.00	7.50	\$3,375.00
Miles, Jeffrey (2021)	\$550.00	22.60	\$12,430.00
Cleary, Colleen (2020)	\$420.00	30.70	\$12,894.00
Hammarskjold, Carl (2019)	\$515.00	1.10	\$566.50
Moy, Jessica (2018)	\$500.00	0.70	\$350.00
Bass, William (2017)	\$360.00	7.10	\$2,556.00
Moy, Jessica (2017)	\$475.00	479.40	\$227,715.00
Elias, Victor (2016)	\$420.00	0.60	\$252.00
McGrath, Sarah (2016)	\$410.00	4.00	\$1,640.00
McGrath, Sarah (2015)	\$390.00	51.70	\$20,163.00
Pearson, Matthew (2012)	\$350.00	177.00	\$61,950.00
Total Associates		782.40	343,891.50
OF COUNSEL			
Wiebe, Richard (2022)	\$960.00	82.60	\$79,296.00
Wiebe, Richard (2021)	\$915.00	432.90	\$396,103.50
Wiebe, Richard (2020)	\$870.00	11.40	\$9,918.00
Wiebe, Richard (2019)	\$830.00	48.70	\$40,421.00
Wiebe, Richard (2018)	\$830.00	107.80	\$89,474.00
Wiebe, Richard (2017)	\$790.00	183.00	\$144,570.00
Eng, Jay (2016)	\$615.00	32.70	\$20,110.50
Wiebe, Richard (2016)	\$750.00	23.20	\$17,400.00
Total Other Attorneys		922.30	797,293.00
CONTRACT ATTORNEY			

Automobile Antitrust Cases I and II
Time and Lodestar Report
BERMAN TABACCO
Period: December 1, 2011 to June 30, 2022

NAME	Hourly Rate	Total Cumulative Hours	Total Cumulative Lodestar
Girard, Wyndham (2017)	\$350.00	6.00	\$2,100.00
Contract Attorney		6.00	2,100.00
INVESTIGATORS			
Houghton, James (2021)	\$595.00	11.00	\$6,545.00
Total Investigators		11.00	6,545.00
PARALEGALS			
			\$0.00
Becker, Kathy (2022)	\$410.00	19.70	\$8,077.00
Segura, Beto (2022)	\$380.00	66.30	\$25,194.00
Soboleva, Yelena (2022)	\$280.00	2.90	\$812.00
Becker, Kathy (2021)	\$410.00	230.10	\$94,341.00
Cuesta, Leslie (2021)	\$280.00	21.70	\$6,076.00
Segura, Beto (2021)	\$380.00	366.10	\$139,118.00
Soboleva, Yelena (2021)	\$280.00	48.20	\$13,496.00
Becker, Kathy (2020)	\$390.00	9.00	\$3,510.00
Segura, Beto (2019)	\$360.00	12.00	\$4,320.00
Becker, Kathy (2019)	\$370.00	14.00	\$5,180.00
Segura, Beto (2019)	\$345.00	3.40	\$1,173.00
Becker, Kathy (2018)	\$350.00	5.30	\$1,855.00
Raney, Stephanie (2018)	\$345.00	60.10	\$20,734.50
Becker, Kathy (2017)	\$350.00	121.40	\$42,490.00
Donegan, Sean (2017)	\$285.00	4.50	\$1,282.50
Raney, Stephanie (2017)	\$330.00	34.00	\$11,220.00
Becker, Kathy (2016)	\$335.00	13.10	\$4,388.50
Bernardoni, Andrea (2016)	\$290.00	18.30	\$5,307.00
Raney, Stephanie (2016)	\$315.00	0.30	\$94.50
Becker, Kathy (2015)	\$320.00	9.90	\$3,168.00
Becker, Kathy (2014)	\$305.00	0.20	\$61.00
Becker, Kathy (2013)	\$290.00	0.40	\$116.00
Lugo, William (2013)	\$250.00	0.30	\$75.00
Banks, Scarlett (2012)	\$255.00	0.80	\$204.00
Eklof, Amber (2012)	\$230.00	1.90	\$437.00
Becker, Kathy (2012)	\$275.00	1.00	\$275.00
Total Paralegals		1,064.90	393,005.00
TOTALS			
		7,691.60	\$5,776,420.00

EXHIBIT O

Automobile Antitrust Cases I and II
Expense Report
BERMAN TABACCO

Period: December 1, 2011 to July 31, 2022

Expense Description	Cumulative Expenses
Litigation Fund Assessment	\$415,000.00
Computer Research	\$11,234.74
Court Fees	\$4,174.70
Court Reporters/Transcripts/Videographer	\$21,259.60
Expert Fees	\$215,954.70
Mediation	\$4,161.47
Miscellaneous (Video Deposition Hosting)	\$636.44
Postage/Express Delivery/Messenger	\$5,136.65
Photocopying	\$15,971.65
Video Deposition Disc Recovery	\$9,695.49
Telephone/Facsimile	\$1,371.38
TOTAL EXPENSES	\$704,596.82

EXHIBIT P

FILED
San Francisco County Superior Court
JAN 13 2012
CLERK OF THE COURT
BY: *[Signature]*
Deputy Clerk

FILED
San Francisco County Superior Court
JAN 13 2012
CLERK OF THE COURT
BY: *[Signature]*
Deputy Clerk

1 Joseph J. Tabacco, Jr. (SBN 75484)
Todd A. Seaver (SBN 271067)
2 Matthew D. Pearson (SBN 235339)
BERMAN DEVALERIO
3 One California Street, Suite 900
San Francisco, CA 94111
4 Telephone: (415) 433-3200
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5 Email: jtabacco@bermandevalerio.com
Email: tseaver@bermandevalerio.com
6 Email: mpearson@bermandevalerio.com
7 Attorneys for Plaintiffs

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 CITY AND COUNTY OF SAN FRANCISCO
11 UNLIMITED JURISDICTION

12 COORDINATION PROCEEDING SPECIAL)
13 TITLE (RULE 1550(b)))

Judicial Council Coordination
Proceeding Nos. 4298 and 4303

14 AUTOMOBILE ANTITRUST CASES I)
15 AND II)

**SUPPLEMENTAL DECLARATION OF
JOSEPH J. TABACCO, JR. IN SUPPORT
OF PLAINTIFFS' APPLICATION FOR
ATTORNEYS' FEES, EXPENSES AND
INCENTIVE AWARDS**

16 This Document Relates to:
All Actions

Date: N/A
Time: N/A
Dept.: 304
Honorable Richard A. Kramer
Coordination Trial Judge

Trial Date: None Set

1 I, Joseph J. Tabacco, Jr., declare as follows:

2 1. I am a member of the firm Berman DeValerio, Chair of the MDL Plaintiffs'
3 Executive Committee in the related federal action, *In re New Motor Vehicles Canadian Export*
4 *Antitrust Litigation*, MDL Docket No. 03-1532, in the United States District Court for the District of
5 Maine ("MDL Action"). I am the managing partner of Berman DeValerio's San Francisco office. In
6 addition, my firm appeared for Plaintiffs in these coordinated California proceedings ("California
7 Action"); subsequently my firm and I have assumed major responsibilities for many aspects of this
8 litigation in California.

9 2. I submit this supplemental declaration in support of Plaintiffs' application for an
10 award of attorneys' fees, expenses and incentive awards. Pursuant to this Court's instructions at the
11 January 5, 2012 fairness hearing, this supplemental declaration provides (a) reduced lodestar totals
12 based on revised attorney fee rates, as directed by this Court; and (b) further detail on Plaintiffs'
13 request for reimbursement of costs, including a compilation of costs by category. This supplemental
14 declaration is restricted to a discussion of lodestar and costs for MDL Action firms. Information
15 concerning lodestar and costs for California Action firms and non-California State Action firms can
16 be found in the concurrently filed supplemental declaration of Craig C. Corbitt ("Corbitt Suppl.
17 Decl.") and supplemental declaration of J. Douglas Richards ("Richards Suppl. Decl."), respectively.

18 3. My firm was also responsible for maintaining the litigation fund for the entire
19 litigation for both MDL Action counsel and State Action counsel. Thus, I provide below a
20 description of litigation costs jointly incurred and accounted for in the litigation fund.

21 **REVISED LODESTAR FOR MDL ACTION FIRMS**

22 4. Attached hereto as Exhibit A are a series of charts showing revised lodestar for MDL
23 Action firms based on maximum billing rates of \$650 for senior partners and \$600 for "second-
24 level" partners. After accounting for the hourly rate adjustments detailed in the charts, the revised
25 total lodestar for MDL Action counsel is \$27,534,185.10, reflecting a downward adjustment of
26 \$133,786.25 from the previous lodestar figure reported.

27 5. Based on figures reported herein and in the accompanying supplemental Corbitt and
28 Richards declarations, the revised total lodestar for Plaintiffs' counsel is \$54,270,974.02, reflecting a

1 downward adjustment of \$1,324,717.25 from the previous total figure reported. (See Paragraph 4,
2 *supra*; Corbitt Suppl. Decl. ¶ 3; Richards Suppl. Decl. ¶ 3.)

3 LITIGATION COSTS BY CATEGORY FOR MDL ACTION FIRMS

4 6. Attached hereto as Exhibit B is a chart setting forth the litigation expenses incurred
5 and paid directly by MDL Action firms, by category (not including contributions to the litigation
6 fund). MDL Action firms directly incurred \$991,720.14 in expenses. The figures represented in
7 Exhibit B are based on the fee declarations submitted by each MDL Action firm, which are attached
8 as Exhibits 2 through 36 to my December 5, 2011 declaration.

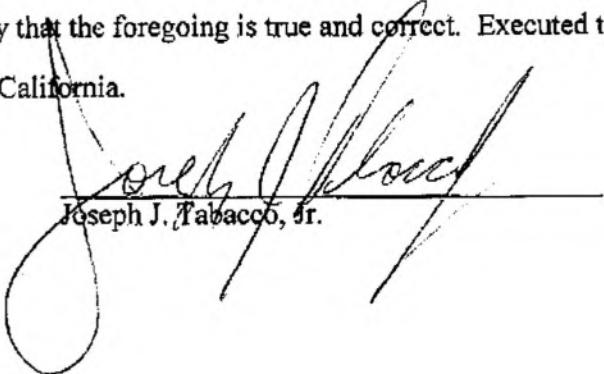
9 LITIGATION FUND EXPENSES

10 7. Attached hereto as Exhibit C is a chart setting forth the expenses incurred and
11 accounted for in the joint litigation fund administered by my firm. The litigation fund was funded by
12 contributions from MDL Action counsel, California Action counsel, and non-California State Action
13 counsel. The expenses set forth in Exhibit C represent the expenses jointly incurred and funded for
14 the entire coordinated litigation, including both the federal MDL Action and the various State
15 Actions. By far the largest expense incurred was for expert fees for testifying and consulting experts,
16 with total fees incurred of approximately \$8.8 million. The other significant categories of litigation
17 fund expenses were: costs to maintain a document database that facilitated review of over a million
18 pages of documents, costs for outside Canadian counsel to enforce letters rogatory in Canadian
19 courts to obtain non-party foreign discovery, and costs for court reporters and transcripts incurred in
20 taking and defendant over 130 depositions during coordinated discovery. Total costs jointly incurred
21 and accounted for in the litigation fund were \$9,934,414.14. Virtually all of the contributions to the
22 litigation fund received by Plaintiffs' counsel have already been spent to pay for litigation expenses,
23 and the remainder is allocated to certain outstanding invoices. The cost figures in Exhibit C include
24 both paid and outstanding litigation expenses.

25 8. Attached as Exhibit D is a chart setting forth the calculation of \$11,965,173.32 for
26 total expenses incurred by Plaintiffs' counsel based on figures reported herein and in the
27 accompanying supplemental Corbitt and Richards declarations. (See Paragraphs 6-7, *supra*; Corbitt
28 Suppl. Decl. ¶ 4; Richards Suppl. Decl. ¶ 4.) Although this figure is \$69,503.36 less than the total

1 figure reported in my December 5, 2011 declaration, this discrepancy, which is apparently due to
2 inadvertent double-counting of certain litigation fund contributions, is immaterial because Plaintiffs'
3 counsel only request reimbursement of \$11.47 million in costs (\$5.2 million from the GMCL
4 Settlement here, and \$6.27 from the Toyota and CADA Settlements pending in the MDL Action)—
5 far less than the revised figure of \$11.97 million in actual costs incurred.

6 I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th
7 day of January, 2012, at San Francisco, California.

8 
9 _____
10 Joseph J. Tabacco, Sr.

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Ex A

REVISED LODESTAR - MDL ACTION COUNSEL

(Only attorneys whose hourly rates were subject to adjustment per this Court's instructions are included in the charts below.)

Firm: BERMAN DEVALERIO

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
Joseph J. Tabacco, Jr. (2011)	274.00	\$ 750.00	\$ 205,500.00	\$ 650.00	\$ 178,100.00
Joseph J. Tabacco, Jr. (2010)	139.80	\$ 730.00	\$ 102,054.00	\$ 650.00	\$ 90,870.00
Joseph J. Tabacco, Jr. (2009)	177.80	\$ 695.00	\$ 123,571.00	\$ 650.00	\$ 115,570.00
Joseph J. Tabacco, Jr. (2008)	228.00	\$ 690.00	\$ 157,320.00	\$ 650.00	\$ 148,200.00
Joseph J. Tabacco, Jr. (2007)	321.70	\$ 655.00	\$ 210,713.50	\$ 650.00	\$ 209,105.00
Glen DeValerio (2011)	4.50	\$ 750.00	\$ 3,375.00	\$ 650.00	\$ 2,925.00
Glen DeValerio (2008)	1.80	\$ 690.00	\$ 1,242.00	\$ 650.00	\$ 1,170.00
Glen DeValerio (2007)	21.90	\$ 655.00	\$ 14,344.50	\$ 650.00	\$ 14,235.00
Michael Pucillo (2009)	0.50	\$ 695.00	\$ 347.50	\$ 650.00	\$ 325.00
Michael Pucillo (2008)	1.25	\$ 690.00	\$ 862.50	\$ 650.00	\$ 812.50
Michael Pucillo (2007)	3.25	\$ 655.00	\$ 2,128.75	\$ 650.00	\$ 2,112.50
Oliver Burt (2007)	2.00	\$ 695.00	\$ 1,390.00	\$ 650.00	\$ 1,300.00
Oliver Burt (2006)	0.50	\$ 655.00	\$ 327.50	\$ 650.00	\$ 325.00
Norman Berman (2010)	0.20	\$ 730.00	\$ 146.00	\$ 650.00	\$ 130.00
Norman Berman (2009)	0.80	\$ 695.00	\$ 556.00	\$ 650.00	\$ 520.00
Norman Berman (2008)	1.00	\$ 690.00	\$ 690.00	\$ 650.00	\$ 650.00
Norman Berman (2007)	2.70	\$ 655.00	\$ 1,768.50	\$ 650.00	\$ 1,755.00
Peter Pease (2011)	1.10	\$ 750.00	\$ 825.00	\$ 650.00	\$ 715.00
Peter Pease (2010)	2.00	\$ 730.00	\$ 1,460.00	\$ 650.00	\$ 1,300.00
Peter Pease (2009)	9.90	\$ 695.00	\$ 6,880.50	\$ 650.00	\$ 6,435.00
Peter Pease (2008)	3.00	\$ 690.00	\$ 2,070.00	\$ 650.00	\$ 1,950.00
Peter Pease (2007)	24.40	\$ 655.00	\$ 15,982.00	\$ 650.00	\$ 15,860.00
C. Heffelfinger (2011)	42.70	\$ 705.00	\$ 30,103.50	\$ 600.00	\$ 25,620.00
C. Heffelfinger (2010)	2.20	\$ 670.00	\$ 1,474.00	\$ 600.00	\$ 1,320.00
C. Heffelfinger (2009)	4.40	\$ 640.00	\$ 2,816.00	\$ 600.00	\$ 2,640.00
C. Heffelfinger (2008)	3.40	\$ 610.00	\$ 2,074.00	\$ 600.00	\$ 2,040.00
K. Donovan-Maher (2011)	1.30	\$ 705.00	\$ 916.50	\$ 600.00	\$ 780.00
K. Donovan-Maher (2008)	1.50	\$ 610.00	\$ 915.00	\$ 600.00	\$ 900.00
Totals	1277.60	n/a	\$ 891,853.25	n/a	\$ 827,665.00
Lodestar Difference	\$ (64,188.25)				

Firm: CAFFERTY FAUCHER

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
Patrick Cafferty	50.10	\$ 675.00	\$ 33,817.50	\$ 650.00	\$ 32,565.00
Totals	50.10	n/a	\$ 33,817.50	n/a	\$ 32,565.00

Lodestar Difference	\$ (1,252.50)
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Firm: GUSTAFSON GLUEK

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
Daniel E. Gustafson (2009)	1.50	\$ 700.00	\$ 1,050.00	\$ 650.00	\$ 975.00
Totals	1.50	n/a	\$ 1,050.00	n/a	\$ 975.00

Lodestar Difference	\$ (75.00)
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Firm: HEINS MILLS & OLSON

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
David Woodward	36.75	\$ 665.00	\$ 24,438.75	\$ 650.00	\$ 23,887.50
David Woodward	86.00	\$ 665.00	\$ 57,190.00	\$ 650.00	\$ 55,900.00
Totals	122.75	n/a	\$ 81,628.75	n/a	\$ 79,787.50

Lodestar Difference	\$ (1,841.25)
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Firm: LABATON SUCHAROW

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
Persky, B. (2011)	9.40	\$ 860.00	\$ 8,084.00	\$ 650.00	\$ 6,110.00
Persky, B. (2010)	5.60	\$ 840.00	\$ 4,704.00	\$ 650.00	\$ 3,640.00
Persky, B. (2009)	7.60	\$ 825.00	\$ 6,270.00	\$ 650.00	\$ 4,940.00
Persky, B. (2008)	17.10	\$ 800.00	\$ 13,680.00	\$ 650.00	\$ 11,115.00
Persky, B. (2007)	27.90	\$ 700.00	\$ 19,530.00	\$ 650.00	\$ 18,135.00
Salzman, H. (2009)	1.00	\$ 675.00	\$ 675.00	\$ 650.00	\$ 650.00
Bernstein, J. (2008)	2.60	\$ 800.00	\$ 2,080.00	\$ 650.00	\$ 1,690.00
Bernstein, J. (2007)	0.90	\$ 700.00	\$ 630.00	\$ 650.00	\$ 585.00
Sucharow, L. (2006)	0.30	\$ 675.00	\$ 202.50	\$ 650.00	\$ 195.00
Totals	72.40	n/a	\$ 55,855.50	n/a	\$ 47,060.00

Lodestar Difference	\$ (8,795.50)
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Firm: LOWEY DANNENBERG COHEN & HART

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
R. Cohen (2011)	5.50	\$ 775.00	\$ 4,262.50	\$ 650.00	\$ 3,575.00
R. Cohen (late 2010)	0.40	\$ 775.00	\$ 310.00	\$ 650.00	\$ 260.00
R. Cohen (2010)	2.50	\$ 700.00	\$ 1,750.00	\$ 650.00	\$ 1,625.00
R. Cohen (2009)	15.30	\$ 675.00	\$ 10,327.50	\$ 650.00	\$ 9,945.00
R. Cohen (2008)	20.40	\$ 675.00	\$ 13,770.00	\$ 650.00	\$ 13,260.00
R. Cohen (2007)	24.95	\$ 675.00	\$ 16,841.25	\$ 650.00	\$ 16,217.50
R. Bemporad (2007)	1.00	\$ 725.00	\$ 725.00	\$ 650.00	\$ 650.00
S. Lowey (2006)	0.50	\$ 695.00	\$ 347.50	\$ 650.00	\$ 325.00
N. Selinger (2006)	0.50	\$ 675.00	\$ 337.50	\$ 650.00	\$ 325.00
P. St. Phillip (2011)	7.20	\$ 650.00	\$ 4,680.00	\$ 600.00	\$ 4,320.00
P. St. Phillip (late 2010)	0.50	\$ 650.00	\$ 325.00	\$ 600.00	\$ 300.00
Totals	78.75	n/a	\$ 53,676.25	n/a	\$ 50,802.50

Lodestar Difference	\$ (2,873.75)
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Firm: MILBERG LLP

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
Richard J. Douglas (2006)	24.75	\$ 660.00	\$ 16,335.00	\$ 650.00	\$ 16,087.50
Totals	24.75	n/a	\$ 16,335.00	n/a	\$ 16,087.50

Lodestar Difference	\$ (247.50)
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Firm: MILLER LAW LLC

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
Marvin A. Miller (2007)	5.60	\$ 675.00	\$ 3,780.00	\$ 650.00	\$ 3,640.00
Totals	5.60	n/a	\$ 3,780.00	n/a	\$ 3,640.00

Lodestar Difference	\$ (140.00)
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Firm: POMERANTZ HAUDEK GROSSMAN & GROSS LLP

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
Buchman, Michael M. (2011)	95.50	\$ 730.00	\$ 69,715.00	\$ 650.00	\$ 62,075.00
Buchman, Michael M. (2010)	14.50	\$ 700.00	\$ 10,150.00	\$ 650.00	\$ 9,425.00
Gross, Marc I. (2011)	0.30	\$ 885.00	\$ 265.50	\$ 650.00	\$ 195.00
Gross, Marc I. (2010)	0.30	\$ 825.00	\$ 247.50	\$ 650.00	\$ 195.00
Richard J. Douglas (2007)	292.05	\$ 685.00	\$ 200,054.25	\$ 650.00	\$ 189,832.50
Richard J. Douglas (2008)	449.75	\$ 710.00	\$ 319,322.50	\$ 650.00	\$ 292,337.50
Rushd, Shaheen (2009)	0.15	\$ 740.00	\$ 111.00	\$ 650.00	\$ 97.50
Totals	852.55	n/a	\$ 599,865.75	n/a	\$ 554,157.50

Lodestar Difference	\$ (45,708.25)
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Firm: SEEGER WEISS LLP

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
Stephen A. Weiss (2010)	2.40	\$ 750.00	\$ 1,800.00	\$ 650.00	\$ 1,560.00
Totals	2.40	n/a	\$ 1,800.00	n/a	\$ 1,560.00

Lodestar Difference	\$ (240.00)
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Firm: STAMELL & SCHAGER, LLP

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
Jared B. Stamell	61.80	\$ 725.00	\$ 44,805.00	\$ 650.00	\$ 40,170.00
Richard J. Schager, Jr.	3.40	\$ 695.00	\$ 2,363.00	\$ 650.00	\$ 2,210.00
Totals	65.20	n/a	\$ 47,168.00	n/a	\$ 42,380.00

Lodestar Difference	\$ (4,788.00)
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Firm: TRUMP ALIOTO TRUMP & PRESCOTT LLP

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
Mario N. Alioto (2006)	22.50	\$ 695.00	\$ 15,637.50	\$ 650.00	\$ 14,625.00
Mario N. Alioto (2007)	11.50	\$ 695.00	\$ 7,992.50	\$ 650.00	\$ 7,475.00
Mario N. Alioto (2008)	7.75	\$ 725.00	\$ 5,618.75	\$ 650.00	\$ 5,037.50
Mario N. Alioto (2009)	3.75	\$ 750.00	\$ 2,812.50	\$ 650.00	\$ 2,437.50
Totals	45.50	n/a	\$ 32,061.25	n/a	\$ 29,575.00

Lodestar Difference	\$ (2,486.25)
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Firm: WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

Attorney Name	Hours	Previous Hourly Rate	Previous Lodestar	Revised Hourly Rate	Revised Lodestar
Fred Isquith	1.50	\$ 785.00	\$ 1,177.50	\$ 650.00	\$ 975.00
Fred Isquith	1.50	\$ 775.00	\$ 1,162.50	\$ 650.00	\$ 975.00
Fred Isquith	1.40	\$ 725.00	\$ 1,015.00	\$ 650.00	\$ 910.00
Fred Isquith	16.50	\$ 680.00	\$ 11,220.00	\$ 650.00	\$ 10,725.00
Fred Isquith	2.70	\$ 660.00	\$ 1,782.00	\$ 650.00	\$ 1,755.00
Daniel Krasner	1.70	\$ 700.00	\$ 1,190.00	\$ 650.00	\$ 1,105.00
Daniel Krasner	1.60	\$ 680.00	\$ 1,088.00	\$ 650.00	\$ 1,040.00
Totals	26.90	n/a	\$ 18,635.00	n/a	\$ 17,485.00

Lodestar Difference	\$ (1,150.00)
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Previous Total Lodestar - MDL firms	\$ 27,667,971.35
Total Lodestar Difference - MDL firms	\$ (133,786.25)
Revised Total Lodestar - MDL firms	\$ 27,534,185.10

E + B

EXPENSES PAID DIRECTLY BY MDL ACTION FIRMS (not including contributions to Litigation Fund)

Expense Category	Amounts
Computer Research	\$ 210,012.28
Court Fees	\$ 7,569.53
Court Reporters/Transcripts/Videographer	\$ 6,593.10
Miscellaneous	\$ 11,271.60
Postage/Express Delivery/Messenger	\$ 32,404.98
Photocopying	\$ 161,702.03
Service of Process Fees	\$ 16,237.30
Telephone/Facsimile	\$ 38,980.78
Travel/Meals/Lodging	\$ 494,488.35
Witness Fees	\$ 141.00
Industry Consultant Fees	\$ 10,000.00
Outside Counsel Fees	\$ 2,319.19
TOTAL	\$ 991,720.14

Ex C

LITIGATION FUND EXPENSES SUMMARY

Expense Category	Amounts Incurred	Description
Expert/Consulting Fees	\$ 8,849,697.30	E.g., Professor Hall, Cornerstone Research
Computer Database/Research	\$ 404,346.96	E.g., LextraNet document database, LEXIS
Outside Counsel Fees	\$ 304,017.49	E.g., Canadian Counsel re: Letters Rogatory
Court Fees	\$ -	
Court Reporters/Transcripts/Videographer	\$ 252,588.12	E.g., Merits Depositions
Miscellaneous	\$ 139.00	Subscription to <i>Automotive News</i>
Postage/Express Delivery/Messenger	\$ -	
Photocopying	\$ 18,523.33	E.g., Outside Photocopying or Printing
Service of Process Fees	\$ 1,737.00	
Telephone/Facsimile	\$ 13,479.38	
Travel/Meals/Lodging	\$ -	
California Action Notice Costs	\$ 89,885.56	Published Notice of Pendency in California Action
Witness Fees	\$ -	
TOTAL	\$ 9,934,414.14	

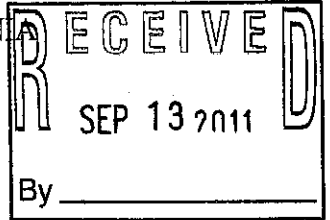
Ex D

TOTAL EXPENSES INCURRED BY PLAINTIFFS' COUNSEL

Litigation Fund Expenses	\$	9,934,414.14
MDL Counsel Firm-specific Costs	\$	991,720.14
Cal. Counsel Firm-specific Costs	\$	534,834.30
Non-Cal. Counsel Firm-specific Costs	\$	504,204.74
TOTAL CUMULATIVE EXPENSES	\$	11,965,173.32

EXHIBIT Q

1
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 CITY AND COUNTY OF SAN FRANCISCO
4 UNLIMITED JURISDICTION



5 COORDINATION PROCEEDING SPECIAL)
6 TITLE (RULE 1550(b)))

Judicial Council Coordination
Proceeding Nos. 4298 and 4303

7 AUTOMOBILE ANTITRUST CASES I)
8 AND II)

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
PROPOSED SETTLEMENT,
CONDITIONAL CLASS CERTIFICATION
AND DIRECTING DISSEMINATION OF
NOTICE TO CALIFORNIA CLASS**

9 This Document Relates to:
10 All Actions)

Date: September 20, 2011
Time: 9:30 a.m.
Dept.: 304
Honorable Richard A. Kramer
Coordination Trial Judge

11)
12)
13)
14)
15)
16)
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19)
20)
21)
22)
23)
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25)
26)
27)
28)
Trial Date: None Set

FILED
Superior Court of California
County of San Francisco

SEP 28 2011

CLERK OF THE COURT

BY: _____ Deputy Clerk

18 WHEREAS, Plaintiffs' Motion for Preliminary Approval of Proposed Settlement came on for
19 hearing on September 20, 2011 before the Honorable Richard A. Kramer of the San Francisco
20 Superior Court;

21 WHEREAS, the Court has presided over the proceedings in the above-captioned action and
22 has reviewed the pleadings, records and papers on file in this action;

23 WHEREAS, plaintiffs and defendant General Motors of Canada, Limited ("GMCL") have
24 entered into a Settlement Agreement dated September 6, 2011. The Settlement Agreement, which is
25 incorporated herein by this reference, sets the terms and conditions for a proposed settlement and
26 dismissal of this action as to GMCL. The Court also has before it Plaintiffs' Motion for Preliminary
27 Approval along with the forms of proposed class notice;

1 WHEREAS, the Court has reviewed the Settlement Agreement, which has been filed and is
2 attached to the Declaration of Craig C. Corbitt in Support of Motion for Preliminary Approval of
3 Class Action Settlement as Exhibit 1, and has conducted a hearing respecting the reasonableness of
4 proceeding with this proposed settlement, and good cause appearing,

5 **IT IS HEREBY ORDERED:**

6 1. The terms used in this Order have the meanings assigned to them in the
7 Settlement Agreement. The proposed settlement described in the Settlement Agreement is hereby
8 preliminarily approved. The Court finds that the proposed settlement is sufficiently within the range
9 of reasonableness and that notice of the settlement shall be given to the California Class as provided
10 below.

11 2. For purposes of holding a hearing on final approval of the proposed
12 settlement, this action is determined to be properly maintained as a class action pursuant to Section
13 382 of the California Code of Civil Procedure and California Rule of Court 3.769, with a California
14 Class consisting of:

15 All persons and entities (excluding government entities,
16 Defendants, and their parents, subsidiaries, affiliates, officers, and
17 directors) who purchased or leased a New Motor Vehicle
18 (passenger car, light-duty truck, or sport utility vehicle)
19 manufactured or distributed by a Defendant,* from an Authorized
20 Dealer in California, during the period January 1, 2001 through
21 April 30, 2003.

22 *The vehicle makes manufactured or distributed by a Defendant
23 that are covered by the settlement are: Acura, Audi, BMW, Buick,
24 Cadillac, Chevrolet, Chrysler, Dodge, Ford, GMC, Honda,
25 Hummer, Infiniti, Jaguar, Jeep, Land Rover, Lexus, Lincoln,
26 Mazda, Mercedes, Mercury, Mini, Nissan, Oldsmobile, Plymouth,
27 Pontiac, Saab, Saturn, Toyota, Volkswagen, and Volvo.

28 For purposes of the settlement with GMCL, the class definition above supersedes
the definition of the class certified by this Court by order dated May 18, 2009.

 3. The Court has considered the pleadings and arguments of Class Counsel in
support of the motion for preliminary approval of class action settlement with GMCL, and finds that

1 law and fact which are common to the California Class and those common questions predominate
2 over individual questions; (d) the plaintiffs' claims are typical of the claims of absent members of the
3 California Class; and (e) plaintiffs and Class Counsel will fairly and adequately represent the
4 interests of the absent members of the California Class.

5 5. Certification of the California Class is proper. Members of the California
6 Class will have the right to opt out of the California Class to pursue individual litigation, or remain
7 in the California Class and object to or otherwise comment upon the settlement, should they choose
8 to do so.

9 6. The Court preliminarily approves plaintiffs' settlement with GMCL and finds
10 that the settlement is within the range of possible final approval so as to justify sending notice to the
11 California Class. Furthermore, the proposed settlement appears to be the product of arm's length,
12 serious, informed and non-collusive negotiations between experienced and knowledgeable counsel
13 who have actively prosecuted and contested this litigation.

14 7. GMCL shall be entitled to a return of the Settlement Fund in accordance with
15 this paragraph in the event that the Settlement does not become Final or the Settlement Agreement is
16 rescinded, terminated, or voided for any reason, whether by reason of disapproval by an Approving
17 State Court, the Tennessee Court, or otherwise. In such event, and upon the Escrow Agent's receipt
18 of either (i) written notice from GMCL and Class Escrow Counsel and Tennessee Class Escrow
19 Counsel or (ii) an order from any Approving State Court or the Tennessee Court so directing, the
20 Escrow Agent will arrange the return of the Settlement Fund forthwith to GMCL in an amount equal
21 to its Settlement Fund payment, together with all interest paid or accrued upon it, minus
22 disbursements described in paragraph 15 of the Settlement Agreement.

23 8. The Court appoints Gilardi & Co. LLC, 3301 Kerner Boulevard, 3rd Floor,
24 San Rafael, CA, 94901 as the Settlement Claims Administrator.

25 9. Class Notice shall be given via publication, on or before November 4, 2011,
26 substantially in the form of Exhibit A attached hereto, once in the following newspapers:
27 *Bakersfield Californian, Eureka Times Standard, Fresno Bee, Los Angeles Times, Modesto Bee,*
28

1 *Orange County Register, Riverside Press Enterprise, Sacramento Bee, San Diego Union Tribune,*
2 *San Francisco Chronicle, San Jose Mercury News, Stockton Record, San Mateo Times, Santa Rosa*
3 *Press Democrat, Monterey County Herald, Santa Barbara News-Press, Vallejo Times-Herald,*
4 *Visalia Times-Delta/Tulare Advance-Register, Santa Cruz County Sentinel, San Bernardino Sun,*
5 *Oakland Tribune, Contra Costa Times, and Ventura County Star.* The shortened version of the
6 summary notice shall also be published once in the nationwide edition of *USA Today*, substantially
7 in the form as that attached as Exhibit B hereto.

8 10. The summary notice shall also be mailed in postcard form to fleet purchasers
9 in California for which Class Counsel has addresses. Such mailing shall begin no later than
10 November 4, 2011.

11 11. Class notice shall also be made available online at a website which shall also
12 include a copy of the Settlement Agreement.

13 12. The Settlement Claims Administrator shall establish and maintain a website,
14 www._____.com, which shall be functional before the date of publication of the
15 notice. The website shall contain a more detailed Notice, substantially in the form of Exhibit C
16 attached hereto. The website will also provide any relevant orders, notices and claim forms for Class
17 Members to download. The website shall refer to a toll-free number that is maintained by the
18 Settlement Claims Administrator. The Settlement Claims Administrator's website shall also provide
19 a link to the San Francisco Superior Court's website, www.sftc.org, where a complete docket of all
20 the pleadings and opinions in the litigation are maintained.

21 13. Class Counsel shall file with the Court and serve upon GMCL no later than
22 ten (10) days prior to the final approval hearing an affidavit or declaration stating the notices have
23 been published in accordance with the terms of this Order. The cost of notice shall be paid from the
24 settlement proceeds as provided in the Settlement Agreement. Dissemination of the Notice is
25 authorized and approved, and satisfies the notice requirements of Section 382 of the California Code
26 of Civil Procedure, the laws of the State of California, due process and any other applicable rules of
27 the Court.

1 14. A hearing is appropriate for final approval of the settlement, at which time the
2 Court will hear all evidence and argument necessary to evaluate the proposed settlement. A final
3 approval hearing shall be held at 9:30 a.m. on January 5, 2012, a date that will allow adequate time
4 for members of the California Class, and their counsel, to prepare briefs in support or opposition to
5 the Settlement Agreement, and for Class Members to opt out of the Class, if they so desire.

6 15. Any member of the California Class may, upon request, be excluded from the
7 settlement. Any such person can visit **www._____ .com** and fill out a request to be
8 excluded, which must then be printed and mailed to the Automobile Antitrust Settlement
9 Administrator, P.O. Box 8060, San Rafael, CA 94912-8060, postmarked on or before December 19,
10 2011. Alternatively, a member of the class may request exclusion by first class mailed letter to the
11 same address. A letter request for exclusion must refer to the name and number of this litigation,
12 *Automobile Antitrust Cases*, J.C.C.P. Nos. 4298 & 4303. Such letter request shall state the name,
13 address and telephone number of the member of the California Class requesting exclusion and that
14 such Class Member elects to be excluded from the California Class and from any judgment entered
15 pursuant to this settlement. It must also include the make, model and month and year of purchase or
16 lease for the vehicle purchased or leased. The Class Member must sign the letter request for
17 exclusion personally. Any Class Member who chooses to be excluded and who provides the
18 requested information will not be bound by any judgment entered in connection with this settlement.
19 Class Members who do not elect to be excluded in this manner will be bound by the terms of the
20 Settlement Agreement, if the settlement becomes Final as set forth in paragraph 9 of the Settlement
21 Agreement. Copies of any exclusion received by Class Counsel pursuant to this paragraph shall be
22 provided to counsel for GMCL, as provided in the Settlement Agreement.

23 16. Any member of the California Class who does not elect to be excluded from
24 the Class may, but need not, enter an appearance in these coordinated actions through that Class
25 Member's own attorney. Class Members who do not enter an appearance through their own
26 attorneys will be represented by the class representatives and Class Counsel, whose fees and costs
27
28

1 will be paid out of the Settlement Fund, as provided by Court order and under the terms of the
2 Settlement Agreement.

3 17. At the final approval hearing, the Court will determine whether the proposed
4 settlement, on the terms and conditions set forth in the Settlement Agreement, is fair, reasonable and
5 adequate; whether the Plan of Distribution is fair, reasonable and adequate; whether the California
6 Class should be enjoined and prohibited from asserting, pursuing or prosecuting any Released
7 Claims against the GMCL if the settlement is approved; whether the attorneys' fees and costs sought
8 by Class Counsel are appropriate; whether the requested Class representative incentive awards are
9 proper; whether the settlement should be finally approved by the Court and the claims against GMCL
10 be dismissed on the merits, with prejudice and without costs, except as provided in the Settlement
11 Agreement. This hearing may be continued from time to time without further notice to the Class.

12 18. Briefs in support of final approval shall be filed on or before December 5,
13 2011. Any reply briefs in support of final approval shall be filed on or before December 30, 2011.

14 19. Any member of the California Class who has not timely requested exclusion
15 may appear at the final approval hearing and show cause why the Court should not approve the
16 settlement, and dismiss the actions, with prejudice, as to GMCL. Class Members may also object to
17 Class Counsel's request for an award of attorneys' fees, reimbursement of litigation costs, and
18 incentive awards to be paid to class representatives. For a member of the California Class to have
19 any objections considered at the hearing, the Class Member must file with the Court and mail to the
20 Automobile Antitrust Settlement Administrator, P.O. Box 8060, San Rafael, CA 91912-8060, a
21 statement in writing, postmarked not later than December 19, 2011, which shall include: (1) the
22 name of this case, and the case number; (2) the Class Member's complete name, address and phone
23 number (giving the address of any lawyer who represents the Class Member is not sufficient); (3) the
24 make and model of the vehicle the Class Member purchased or leased; (4) the month, year and
25 location of the Class Member's purchase or lease;; (5) a statement that the Class Member objects,
26 and each reason for such objection(s); and (6) the Class Member's signature. Copies of any
27 objections received by the Settlement Claims Administrator pursuant to this paragraph shall be
28

1 provided to GMCL's counsel within ten (10) business days after the final objection date. The filing
2 of any objection shall not extend the time within which a Class Member may file a request for
3 exclusion from this settlement.

4 20. A hearing on attorneys' fees, reimbursement of litigation expenses, incentive
5 awards and costs to be awarded to Class Counsel will be held in the Courtroom of the undersigned
6 on January 5, 2012, at 9:30 a.m. in the Superior Court of the State of California, City and County of
7 San Francisco, Department 304, San Francisco Superior Court, 400 McAllister Street, San Francisco,
8 California 94102-4512. This hearing may be continued from time to time without further notice.

9 21. Class Counsel shall file with the Court any application(s) for attorneys' fees,
10 reimbursement of litigation expenses, incentive awards and costs on or before December 5, 2011.
11 Any reply briefs in support of Class Counsel's fees and costs application shall be filed on or before
12 December 30, 2011.

13 22. All members of the California Class who wish to file a claim for payment
14 from the settlement must submit a claim online at www._____.com no later than 11:59
15 p.m. Pacific time on February 2, 2012. Class members who purchased or leased vehicles using a
16 fleet account number provided by an automaker must file their claims online. All other class
17 members may file their claims online or may submit a paper Consumer Claim Form substantially in
18 the form as that attached hereto as Exhibit D. The Consumer Claim Form must be sent by first-class
19 mail, postmarked no later than February 2, 2012, to: Automobile Antitrust Settlement
20 Administrator, P.O. Box 8060, San Rafael, CA 94912-8060.

21 23. All litigation-related proceedings in this action are hereby stayed as to GMCL
22 until further order of the Court. This stay shall toll the period provided for trial in Cal. Code of Civ.
23 P. Section 583.310.

24
25
26 Dated: 9-26-11

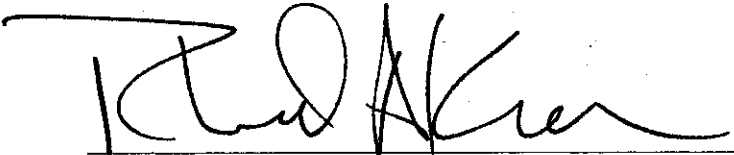

27 Honorable Richard A. Kramer
28 Coordination Trial Judge

EXHIBIT A

If you bought or leased a new car or truck in California, Florida, New Mexico or Wisconsin during Jan. 1, 2001 to April 30, 2003, you could get a payment from a class action settlement.

A settlement resolves claims against General Motors Canada, Limited ("GMCL") in related lawsuits currently pending in California, Florida, New Mexico and Wisconsin. The lawsuits are about an alleged conspiracy among several automakers to keep Canadian new car exports out of the U.S. The settlement will provide \$20.15 million to pay claims of Class Members (defined below). If you qualify, you may submit a claim form to get a payment, or you can exclude yourself from the settlement, or object to it.

Who Is Included as a Class Member?

You are a Class Member and could get a payment from the settlement if you purchased or leased a passenger car, light truck or SUV manufactured by one of the following automakers from an authorized dealer in California, Florida, New Mexico or Wisconsin during January 1, 2001 through April 30, 2003:

<i>Acura</i>	<i>GMC</i>	<i>Lincoln</i>	<i>Pontiac</i>
<i>Audi</i>	<i>Honda</i>	<i>Mazda</i>	<i>Saab</i>
<i>BMW</i>	<i>Hummer</i>	<i>Mercedes</i>	<i>Saturn</i>
<i>Cadillac</i>	<i>Infiniti</i>	<i>Mercury</i>	<i>Toyota</i>
<i>Chevrolet</i>	<i>Jaguar</i>	<i>Mini</i>	<i>VW</i>
<i>Chrysler</i>	<i>Jeep</i>	<i>Nissan</i>	<i>Volvo</i>
<i>Dodge</i>	<i>Land Rover</i>	<i>Oldsmobile</i>	
<i>Ford</i>	<i>Lexus</i>	<i>Plymouth</i>	

What Are the Lawsuits About?

These lawsuits claim that several automakers conspired with each other to prevent cheaper, but virtually identical, new cars from being exported from Canada to the U.S. The lawsuits allege that this violated state antitrust and consumer protection laws and caused new vehicle prices in the U.S. to be higher than they should have been. GMCL asserts that it has acted lawfully and independently and that there is no legal or factual basis for these lawsuits. This is just a summary—for more information and to view a detailed Notice, visit www._____com.

What Does the Settlement Provide?

GMCL has agreed to create a fund of \$20.15 million to be divided among Class Members who submit valid claims. A Settlement Agreement, available at the website below, describes all of the details about the proposed settlement. Your share of the fund will depend on how many valid claims are submitted, what vehicle you bought, and when you bought it.

How Do You Ask for a Payment?

To get a payment, you must submit a claim, which you should do online. The website contains all the information you need to submit a claim. **You must submit your claim by February 2, 2012.**

If you do not have Internet access, please call 1-800-XXX-XXXX for more info and to learn how to submit a claim by mail.

What Are Your Other Options?

If you don't want to be legally bound by the settlement, you must exclude yourself by **December 19, 2011**, or you won't be able to sue, or continue to sue, GMCL about the legal claims in this case. If you exclude yourself, you can't get any money from this settlement. If you stay in the settlement, you may object to it by **December 19, 2011**. The detailed Notice explains how to exclude yourself or object.

If you bought or leased a car in California, the California Superior Court for the County of San Francisco will hold a hearing on **January 5, 2012 at 9:30 a.m.** to decide whether to approve the settlement of the case pending in California. The hearing will be at San Francisco Superior Court, 400 McAllister Street, San Francisco, CA 94102, in Judge Kramer's Courtroom, Courtroom 304, 3rd floor. The Court will also consider whether to approve payment of attorneys' fees of up to 33.3% of the settlement fund and reimbursement of litigation costs of up to \$5.2 million, as requested by the attorneys for the Class, for litigating the case for 8 years and negotiating the settlement. You may object to the request for attorneys' fees and costs, in writing, by **December 19, 2011**.

FOR MORE DETAILED INFORMATION VISIT www._____com

If you bought a car in Florida, New Mexico or Wisconsin, the courts in each of those states will also hold hearings to decide whether to approve the settlement and any payment of attorneys' fees and costs. For the dates, times and locations of those hearings, please visit www._____.com or call toll free at 1-800-XXX-XXX.

EXHIBIT B

Did you buy or lease a new car or truck in California, Florida, New Mexico or Wisconsin from January 1, 2001 through April 30, 2003 that was manufactured by any of the following automakers?

<i>Acura</i>	<i>Chevrolet</i>	<i>Honda</i>	<i>Land Rover</i>	<i>Mercury</i>	<i>Pontiac</i>
<i>Audi</i>	<i>Chrysler</i>	<i>Hummer</i>	<i>Lexus</i>	<i>Mini</i>	<i>Saab</i>
<i>BMW</i>	<i>Dodge</i>	<i>Infiniti</i>	<i>Lincoln</i>	<i>Nissan</i>	<i>Saturn</i>
<i>Buick</i>	<i>Ford</i>	<i>Jaguar</i>	<i>Mazda</i>	<i>Oldsmobile</i>	<i>Toyota</i>
<i>Cadillac</i>	<i>GMC</i>	<i>Jeep</i>	<i>Mercedes</i>	<i>Plymouth</i>	<i>Volkswagen</i>
					<i>Volvo</i>

If so, a class action settlement may affect your legal rights and you may receive a payment.

**PLEASE VISIT WWW.CALIFORNIAAUTOCLAIMS.COM OR CALL 1-888-XXX-XXXX
TO SEE IF THE SETTLEMENT AFFECTS YOU
AND TO LEARN HOW TO MAKE A CLAIM FOR A PAYMENT
*The deadline to file a claim is February 2, 2012***

EXHIBIT C

LEGAL NOTICE

Did you buy or lease a new car or truck in California, Florida, New Mexico or Wisconsin from January 1, 2001 through April 30, 2003 that was manufactured by any of the following automakers?

<i>Acura</i>	<i>Chevrolet</i>	<i>Honda</i>	<i>Land Rover</i>	<i>Mercury</i>	<i>Pontiac</i>
<i>Audi</i>	<i>Chrysler</i>	<i>Hummer</i>	<i>Lexus</i>	<i>Mini</i>	<i>Saab</i>
<i>BMW</i>	<i>Dodge</i>	<i>Infiniti</i>	<i>Lincoln</i>	<i>Nissan</i>	<i>Saturn</i>
<i>Buick</i>	<i>Ford</i>	<i>Jaguar</i>	<i>Mazda</i>	<i>Oldsmobile</i>	<i>Toyota</i>
<i>Cadillac</i>	<i>GMC</i>	<i>Jeep</i>	<i>Mercedes</i>	<i>Plymouth</i>	<i>Volkswagen</i>
					<i>Volvo</i>

If so, a class action settlement may affect your legal rights and you may receive a payment.

A court has authorized this Notice. This is not a solicitation from a lawyer.

- This Notice describes a proposed partial settlement of several class action lawsuits that allege certain automakers and trade associations conspired in violation of state antitrust and consumer protection laws to prevent virtually identical, but cheaper, new cars from being exported to the United States from Canada, making new vehicle prices higher for U.S. consumers.
- One of the defendants, General Motors of Canada, Limited ("GMCL"), has agreed to settle the claims against it. GMCL has agreed to pay \$20.15 million for the benefit of a Class of people or businesses who bought or leased a new vehicle from January 1, 2001 to April 30, 2003. GMCL asserts that it has acted lawfully and independently and that there is no legal or factual basis for these lawsuits.
- This settlement covers the claims of individuals and businesses who purchased or leased new cars or trucks from authorized dealers in California, Florida, New Mexico and Wisconsin (the "Eligible States"). If you bought or leased a new car in one of the Eligible States between January 1, 2001 and April 30, 2003, you may be able to receive a payment from this settlement.
- Courts in each of the Eligible States will hold hearings on whether to approve the proposed settlement, as well as Class Counsel's request for attorneys' fees and unreimbursed costs. The dates, times and locations of these hearings are set forth in Paragraph 17. Class Counsel have litigated these cases for eight years without payment, incurring in excess of \$45 million in attorneys' fees and approximately \$11.5 million in out-of-pocket costs. Notwithstanding this large investment, Class Counsel will seek attorneys' fees in an amount not to exceed 33.3% of the \$20.15 million settlement proceeds, plus reimbursement of up to \$5.2 million in out-of-pocket costs.

YOUR LEGAL RIGHTS AND OPTIONS IN THESE SETTLEMENTS:

Submit a Claim (by Feb. 2, 2012)	This is the only way to get a payment. You can only submit a claim if you do not exclude yourself. You may submit a claim online, but only if you bought from a dealer in one of the Eligible States and made an eligible purchase (see details below).
Object (by Dec. 19, 2011)	If you wish to object, you must write to the appropriate Court about why you don't like the proposed settlements.
Exclude Yourself (by Dec. 19, 2011)	If you exclude yourself, you will get no payment. Excluding yourself is the only option that allows you to bring your own lawsuit against GMCL about the same legal claims involved in these lawsuits.
Go to a Hearing	You may ask to speak in court about the proposed settlements.
Do Nothing	If you do nothing, you will get no payment. You will give up your rights against GMCL to sue it about the same legal claims involved in these lawsuits.

These rights and options – **and the deadlines to exercise them** – are explained in this Notice. The Court overseeing the California case, after hearing any objections which may be filed, still has to decide whether to give final approval to the settlement of the California case.

WHAT THIS NOTICE CONTAINS

WHAT IS THIS NOTICE ABOUT?

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1. Why has this Notice been issued?
2. What are the lawsuits about and where are they located?
3. Who are or were the Defendants in these cases?
4. Why is this lawsuit a class action lawsuit?
5. Why did the parties agree to these settlement?

WHO IS INCLUDED IN THE SETTLEMENT?

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6. How do I know if I am part of this settlement?
7. What if I still do not know whether I am included in the proposed settlement class?

WHAT THE SETTLEMENT MEANS TO YOU

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8. What does the GMCL settlement provide?
9. How much money will I receive?

HOW TO GET A PAYMENT – SUBMITTING A CLAIM

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10. How can I get a payment?
11. When can I expect to get my payment?

EXCLUDING YOURSELF FROM THE SETTLEMENT

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12. How do I get out of the settlement?

THE LAWYERS REPRESENTING YOU

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13. Do I have a lawyer in this case?
14. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT OR REQUEST FOR ATTORNEYS' FEES/COSTS

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15. If I do not like the settlement, or the request for award of attorneys' fees and costs, how do I tell the Court?
16. What is the difference between objecting and excluding?

THE COURT'S FAIRNESS HEARING

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17. When and where will the Court decide whether to approve the settlement?
18. Do I have to come to the hearing in my State?
19. May I speak at the hearing in my State?

IF YOU TAKE NO ACTION

Page x

20. What happens if I do nothing at all? What is the Release of Claims?

GETTING MORE INFORMATION

Page x

21. How can I get more information on the settlement?

WHAT IS THIS NOTICE ABOUT?

1. Why has this Notice been issued?

You have a right to know about a proposed partial settlement of several class action lawsuits, and about all of your options, before the Court decides whether to approve this settlement with GMCL.

This Notice is being made available to everyone who bought or leased a new motor vehicle manufactured by one of the defendant automakers during the period January 1, 2001 to April 30, 2003, in one of the Eligible States. A more detailed description of the persons benefited by the settlement is contained in the section below entitled "Who is included in the settlement?".

This Notice explains the lawsuits, the settlement with GMCL, your legal rights, what benefits were obtained for the car and truck buyers in the Class, who is eligible to receive money from the settlement, and how to receive a payment.

2. What are the lawsuits about and where are they located?

The four lawsuits that are the subject of the proposed settlement each allege that several large automakers conspired with each other to prevent virtually identical, but cheaper, new cars from being exported to the United States from Canada. The lawsuits further allege that by conspiring to prevent this cheaper supply of cars from entering the U.S. market, the automakers kept prices of new cars in the United States higher than they should have been. The lawsuits seek compensation from the automakers under state antitrust statutes, consumer protection laws and common law.

The four Eligible States where the lawsuits are pending are: California, Florida, New Mexico and Wisconsin.

The California case is pending in the California Superior Court for the County of San Francisco and is called *Automobile Antitrust Cases I and II*, case numbers JCCP 4298 and 4303. Defendants in the California case include GMCL, Ford Motor Co. and Ford Motor Company of Canada, Ltd. ("Ford Canada").*

The Florida case is pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida and is called *Humberto Beckford et al. v. General Motors Corp. et al.*, No. 03-6443 CA 10. Defendants in the Florida case include Ford Motor Co., Ford Canada, GMCL, Chrysler Canada Inc., Daimler AG, Mercedes-Benz USA, LLC, and Mercedes-Benz Canada Inc.*

The New Mexico case is pending in the First Judicial District Court, County of Santa Fe, New Mexico and is called *Emanuele Corso v. General Motors Corp. et al.*, No. D-0101-CV-2003-00668. Defendants in the New Mexico case include American Honda Motor Co., Inc., Honda Canada

Inc., Ford Motor Co., Ford Canada, GMCL, Chrysler Canada Inc., Mercedes-Benz Canada Inc. and Nissan Canada Inc.*

The Wisconsin case is pending in the Circuit Court for Milwaukee, Wisconsin, and is called *Rasmussen et al. v. General Motors Corp. et al.*, No. 03-CV-001828. Defendants in the Wisconsin case include GMCL, Ford Motor Co., Ford Canada and Chrysler Canada Inc.*

If the settlement with GMCL is approved, GMCL will be dismissed, and the cases will continue against the remaining defendants.

There is a related case in federal court called *In re New Motor Vehicles Canadian Export Antitrust Litigation*, MDL Docket No. 1532, in the United States District Court for the District of Maine (the "MDL Action"). GMCL was a defendant in the MDL Action. But after six years of litigation, GMCL and other Defendants (GM, Ford, Chrysler, Honda and Nissan) were successful in winning summary judgment and were dismissed from the case. Two defendants, Toyota Motor Sales, U.S.A., Inc., and the Canadian Automobile Dealers' Association ("CADA"), entered settlement agreements and agreed to pay a combined \$35.7 million to settle the claims against them. If you bought a car in California, New Mexico or Wisconsin, you may have been eligible to file a claim for payment from those settlements, but that claims filing deadline has passed.

There is also a related case in Tennessee state court called *Destine Johnson et al. v. General Motors Corp et al.*, CA No. 35028, pending in the Chancery Court for Washington County at Johnson City, Tennessee. GMCL has entered into a separate settlement agreement with the plaintiffs in the Tennessee case, agreeing to resolve the claims in that case for \$1.2 million.

The settlement will not become final, and you will not receive a payment, until the \$20.15 million settlement is approved by the California, Florida, New Mexico and Wisconsin courts, **and** the separate \$1.2 million Tennessee settlement is approved by the Tennessee court.

*Note: Certain Toyota entities, CADA, General Motors Corp. and Chrysler LLC may also be listed as defendants in the four state cases. The cases are stayed, or inactive, as to Toyota and CADA pending approval of a settlement reached in the federal case (discussed above). General Motors Corp. and Chrysler LLC entered bankruptcy, which effectively ends the cases as to them.

3. Who are or were the Defendants in these cases?

As defined in the Settlement Agreement and for purposes of determining whether you are a Class Member, "Defendants" includes: General Motors of Canada, Limited, General Motors Corporation, now known as Motors Liquidation Company, Saturn Corporation, Ford Motor Company, Ford Motor Company of Canada, Ltd., American Honda Motor Company, Inc., Honda Canada Inc., Honda Motor Company, Ltd., DaimlerChrysler Corporation, DaimlerChrysler Canada Inc., DaimlerChrysler Motors Co., LLC, DaimlerChrysler Aktiengesellschaft, Mercedes-Benz USA, LLC, Mercedes-Benz Canada, Inc., Nissan North America, Inc., Nissan Canada Inc., Nissan Motor Company, Ltd., Canadian Automobile Dealers' Association, National Automobile

Dealers Association, Toyota Motor Sales, U.S.A., Inc., Toyota Motor Corporation, Toyota Canada Inc., Volkswagen AG, Volkswagen of America, Inc., Volkswagen Canada, Inc., Audi of America, Inc., Audi Canada, Volvo Cars of North America, LLC, Volvo Cars of Canada, Ltd., BMW AG, BMW Canada Inc. and BMW of North America, LLC.

This list includes automakers who are no longer involved in the lawsuits but are still considered "Defendants" for purposes of the GMCL Settlement Agreement only. See Paragraph 2 above for information on which automakers and other entities remain defendants in the California, Florida, New Mexico and Wisconsin cases.

4. Why is this lawsuit a class action lawsuit?

In a class action, one or more people called Class Representatives sue on behalf of people who have similar legal claims. All of these people make up the Class and are called Class Members. One Court then resolves the issues for all Class Members, except for those who exclude themselves from the Class.

5. Why did the parties agree to this settlement?

When GMCL entered into these settlements, the courts in California, Florida, New Mexico and Wisconsin had not decided in favor of Plaintiffs or GMCL. GMCL agreed to settle the lawsuits so it could avoid the risks and costs of litigating the lawsuits, and so the lawsuits could be resolved. **GMCL asserts, however, that it has acted lawfully and independently and that there is no legal or factual basis for these lawsuits.**

The Class Representatives agreed to settle so that Class Members could receive some compensation, given the risks of litigating the case against GMCL. The Class Representatives and their attorneys believe that the proposed settlements are fair and benefit all Class Members.

WHO IS INCLUDED IN THE SETTLEMENT?

6. How do I know if I am part of this settlement?

You are a Class Member for the settlement if you meet all of the following requirements:

- a. You purchased or leased a new motor vehicle (passenger car, light truck or sport utility vehicle ("SUV")) during the period **January 1, 2001 to April 20, 2003** (the "Class Period");
- b. You purchased or leased your vehicle from an authorized automobile dealer in California, Florida, New Mexico or Wisconsin; and

c. The vehicle you purchased or leased was one of the following makes: *Acura, Audi, BMW, Buick, Cadillac, Chevrolet, Chrysler, Dodge, Ford, GMC, Honda, Hummer, Infiniti, Jaguar, Jeep, Land Rover, Lexus, Lincoln, Mazda, Mercedes, Mercury, Mini, Nissan, Oldsmobile, Plymouth, Pontiac, Saab, Saturn, Toyota, Volkswagen or Volvo.*

Those who meet these requirements are "Class Members" affected by the settlement.

You are not a Class Member if you are, or at the time of your vehicle purchase were, a government entity, a Defendant, a Defendant's parent, subsidiary or affiliate, or an officer or director of a Defendant, even if you bought or leased a new motor vehicle during the Class Period.

7. What if I still do not know whether I am included in the proposed settlement classes?

If you still do not know whether you are included in the Class, please review answers to frequently asked questions at www._____.com, or call 1-_____.

WHAT THE SETTLEMENT MEANS TO YOU

8. What does the GMCL settlement provide?

GMCL has agreed to pay \$20.15 million for the benefit of the Class. In exchange, Class Members give up all rights against GMCL to sue it about the same legal claims involved in these cases.

9. How much money will I receive?

The settlement funds from the GMCL settlement total \$20.15 million (the "Settlement Fund"). Deducted from the Settlement Fund prior to distribution will be attorneys' fees totaling no more than 33.3% of the Settlement Fund, up to \$5.2 million in unreimbursed litigation costs, notice costs, administration costs (which depend on how many claims are filed), and incentive awards to named plaintiffs of \$750 each. (See Paragraph 14 below for more on attorneys' fees, costs and incentive awards.) After these deductions, the Net Settlement Fund will be distributed on a weighted *pro rata* basis to Class Members based upon their new vehicle purchases and leases during the Class Period, as explained below.

Your share of the Net Settlement Fund will depend on several factors, including the make and model of the vehicle you purchased and the date you purchased the vehicle. Here's how it works: Plaintiffs' expert economist conducted an analysis that is meant to estimate how much new car prices were allegedly elevated in the United States due to defendants' alleged conspiracy during the Class Period. In Plaintiffs' expert's opinion, this amount varied depending on the type of vehicle (make and model) and the time the purchase or lease was made. Therefore, the payment you may receive will be based on these same factors.

Defendants, including GMCL, deny that they conspired or that prices of new cars in the U.S. were elevated due to any alleged conspiracy. Defendants also disagree with Plaintiffs' expert's analysis. Plaintiffs are using their expert's analysis here for the purpose of fairly allocating the settlement money to Class Members.

Your share also depends on the total number of valid claims submitted by Class Members. The greater the number of claims submitted, the less each individual Class Member's share will be. Costs to process claims also increase as the number of claims increases, and these administrative costs will be deducted from the Settlement Fund prior to distribution. For more specific information on how your payment will be calculated, please visit www._____.

If your share of the settlement funds is less than \$5.00, you will not receive a payment. This minimum check amount is applied per claimant, not per purchase. For example, if you bought two cars during the Class Period, and your payment as to one car would be \$2.00, and as to the other car your payment would be \$4.00, your total payment would be \$6.00. In that case, you would be eligible to receive a payment. Claims below \$5.00 will be added to the money available for claimants whose payments are \$5.00 or greater.

HOW TO GET A PAYMENT – SUBMITTING A CLAIM

10. How can I get a payment?

If you are a Class Member (see Paragraph 6), you must submit a claim in order to receive a payment. You are ***strongly encouraged to submit your claim online*** at the following website: www._____.com. Read the instructions on the website carefully, fill out the online form, include all information the form requires, and submit the claim no later than **February 2, 2012** by 11:59 p.m. Pacific Time. **If you do not submit a claim by the deadline, you will not receive a payment.**

There are separate online claim forms for consumers and fleet purchasers. Fleet purchasers are businesses that purchased or leased new vehicles using a fleet account number issued by an automaker. **Fleet purchasers must submit their claims online.**

If you are a consumer and are unable to submit your claim online at the settlement website, you may submit your claim by mail. Please call 1-_____ to request a paper claim form be mailed to you. Read the instructions carefully, fill out the form, include all information the form requires, and mail the completed claim form by first-class mail, postmarked no later than **February 2, 2012**, to the following address:

Automobile Antitrust Settlement Administrator
P. O. Box 8060
San Rafael, CA 94912-8060

11. When can I expect to get my payment?

The courts in the California, Florida, New Mexico and Wisconsin cases will all hold hearings on whether to approve the settlement. (See Paragraph 17 below for the dates, times and locations of these hearings.) All four of these courts must all approve the settlement, and the Tennessee court must also approve the separate Tennessee settlement. If all of the courts approve the settlement, there may still be appeals after that. It's always uncertain whether these appeals, if any, can be resolved, and resolving them can take time. Only after the courts approve the settlement and all the appeals, if any, are resolved can the settlement money be paid out to Class Members. Thank you in advance for your patience.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to be a member of the Class, then you must take steps to remove yourself from the Class. This is called "excluding yourself" and sometimes is referred to as "opting out" of the Class.

12. How do I get out of the settlement?

To exclude yourself, you have two options. First, you can visit www.automobileantitrust.com and fill out the form available when you click the "Exclude Yourself" button from the left menu. You must fill out all of the required fields on the form. Once you have filled out the form and submitted your information online, **you must then print out and mail the completed form with your signature, by first-class mail, postmarked no later than December 19, 2011, to:**

Automobile Antitrust Settlement Administrator
P. O. Box 8060
San Rafael, CA 94912-8060

Your second option is to send a letter by first-class mail clearly stating that you want to be excluded from the *Automobile Antitrust GMCL Settlement*. Be sure to include your name, address, telephone number and signature. You must also include the make, model and month and year of purchase or lease for the vehicle you purchased or leased during the class period (January 1, 2001 to April 30, 2003). You are not required to hire an attorney to exclude yourself. If you hire an attorney, submitting only the name and address of your attorney in your exclusion request is not sufficient. You must mail your exclusion request postmarked no later than **December 19, 2011**, to the same address listed immediately above.

You cannot exclude yourself by telephone or e-mail.

If you ask to be excluded from the settlement, you will not be entitled to receive any money.

In addition, if you ask to be excluded, you cannot object to the settlement, and you will not be bound by the terms of the settlement, including the release of claims discussed in Paragraph 20 below.

If you wish to remain in the GMCL Settlement Class, you don't have to do anything at this time. But, if you meet the requirements in Paragraph 6, you must submit a claim to receive payment.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The courts in each of the four Eligible States have approved several law firms (called "Plaintiffs' Counsel" or "attorneys for the Class Representatives" or "attorneys for the Class") to collectively represent you. You will not be directly charged for the services of these attorneys in litigating this case and negotiating this settlement. If you want to be represented by your own lawyer, and have that lawyer enter an appearance on your behalf, you may hire one at your own expense.

14. How will the lawyers be paid?

Plaintiffs' Counsel, who have undertaken this litigation on a contingent fee basis, will request reimbursement of out-of-pocket costs and payment of attorneys' fees to be paid from the GMCL Settlement Fund. Plaintiffs' Counsel have litigated these cases for over eight years, incurred more than \$45 million in attorneys' fees and incurred approximately \$11.5 million in out-of-pocket litigation expenses. The vast majority of the \$11.5 million in litigation costs was to pay for expert consulting and witness fees. Plaintiffs' Counsel, however, are limiting their request for an award of attorneys' fees to no more than 33.3% of the Settlement Fund, plus their unreimbursed costs of up to \$5.2 million.

The Courts in California, Florida, New Mexico and Wisconsin will consider the detailed application for fees and costs, which will be submitted by Plaintiffs' Counsel, and the Courts have the power to approve or deny the request in whole or in part.

Plaintiffs' Counsel will also ask the Courts to approve the payment of incentive awards of \$750 to each of the named plaintiffs who agreed to represent the Class. This money would come from the Settlement Fund.

OBJECTING TO THE SETTLEMENT OR REQUEST FOR ATTORNEYS' FEES/COSTS

15. If I do not like the settlement, or the request for award of attorneys' fees and costs, how do I tell the Court?

If you are a Class Member, and choose to remain one, you can object to the settlement if you do not like any part of it. You may also object to Plaintiffs' Counsel's request for attorneys' fees and costs or the incentive awards to be paid to the named plaintiffs. You must give the reasons why you think that the Court should not approve the settlement or requests for attorneys' fees, costs or incentive awards. A mere statement that "I object" will not be a sufficient reason or objection. To object, you must send a letter to the proper Court and to the Administrator that includes your name, address and telephone number; your signature; the make and model of the vehicle you purchased or leased; the month, year and location of your purchase or lease; a statement that you object to the settlement or to the request for attorneys' fees, costs or incentive awards; and the reasons you are objecting. In addition, you must include the additional information described below and mail the letter to the appropriate court:

a. If you bought or leased a vehicle in California:

Your objection letter must also contain the name of the California case (*Automobile Antitrust Cases*) and the case number (JCCP Nos. 4298 & 4303). You must mail the letter to both the Court and the Administrator at the addresses listed below, postmarked no later than **December 19, 2011**:

COURT	ADMINISTRATOR
Clerk of the Court San Francisco Superior Court 400 McAllister Street San Francisco, CA 94102	Automobile Antitrust Settlement Administrator P. O. Box 8060 San Rafael, CA 94912-8060

b. If you bought or leased a vehicle in Florida:

Your objection letter must also contain the name of the Florida case (*Beckford v. General Motors Corp.*) and the case number (No. 03-6443 CA 10). You must mail the letter to both the Court and the Administrator at the addresses listed below, postmarked no later than **December 19, 2011**:

COURT	ADMINISTRATOR
Clerk of the Court Eleventh Judicial Circuit Court	Automobile Antitrust Settlement Administrator

Dade County Courthouse 73 West Flagler Street Miami, Florida 33130	P. O. Box 8060 San Rafael, CA 94912-8060
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c. If you bought or leased a vehicle in New Mexico:

Your objection letter must also contain the name of the New Mexico case (*Corso v. General Motors Corp.*) and the case number (No. D-0101-CV-2003-00668). You must mail the letter to both the Court and the Administrator at the addresses listed below, postmarked no later than **December 19, 2011**:

COURT	ADMINISTRATOR
Clerk of the Court First Judicial District Court P.O. Box 2268 Santa Fe, NM 87504-2268	Automobile Antitrust Settlement Administrator P. O. Box 8060 San Rafael, CA 94912-8060

d. If you bought or leased a vehicle in Wisconsin:

Your objection letter must also contain the name of the Wisconsin case (*Rasmussen v. General Motors Corp.*) and the case number (No. 03-CV-001828). You must mail the letter to both the Court and the Administrator at the addresses listed below, postmarked no later than **December 19, 2011**:

COURT	ADMINISTRATOR
Clerk of the Circuit Court Milwaukee County Courthouse Room 104 901 North 9th Street Milwaukee, WI 53233	Automobile Antitrust Settlement Administrator P. O. Box 8060 San Rafael, CA 94912-8060

16. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you do not exclude yourself from the Class. Excluding yourself is telling the Court that you do not want to be part of the Class and the settlement. If you exclude yourself, you have no basis to object because the settlement no longer affects you.

THE COURTS' FAIRNESS HEARINGS

The Courts in the Eligible States will each hold a hearing to decide whether to approve the settlement and to consider the requests for attorneys' fees, costs and incentive awards. You may attend the hearing in the State where you purchased or leased your vehicle, but you are not required to. You may speak at the hearing, but only if you have submitted your comments or objections, as provided in Paragraph 15 of this Notice, and have clearly written "Intention to Appear" on your written objection letter. If there are any objections, the Courts will consider them. After the hearings, each Court will decide whether to approve the settlement and whether to grant the request for attorneys' fees, costs and incentive awards. We do not know how long these decisions will take.

17. When and where will the Court decide whether to approve the settlement?

The locations, dates and times of the hearings are as follows:

California: The California Court will hold a fairness hearing on January 5, 2012 at 9:30 a.m. at the San Francisco Superior Court, Department 304, 400 McAllister Street, San Francisco, California 94102.

Florida: The Florida Court will hold a fairness hearing on _____, 2012 at _____ [a.m./p.m.] at [location to be inserted].

New Mexico: The New Mexico Court will hold a fairness hearing on _____, 2012 at _____ [a.m./p.m.] at [location to be inserted].

Wisconsin: The Wisconsin Court will hold a fairness hearing on _____, 2012 at _____ [a.m./p.m.] at [location to be inserted].

These hearings may be continued to a later date without further notice to the Class.

18. Do I have to come to the hearing in my State?

No. Plaintiffs' Counsel will answer any questions the Courts may have. However, you may come at your own expense. If you send a written objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, following the instructions in Paragraph 15 of this Notice, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

19. May I speak at the hearing in my State?

You will not be heard unless you have submitted your objection as provided in Paragraph 15 of this Notice and have written "Intention to Appear" on your written objection letter.

You cannot speak at the hearing if you exclude yourself.

IF YOU TAKE NO ACTION

20. What happens if I do nothing at all? What is the Release of Claims?

If you do nothing, you will receive no payment and your rights will be affected. You will be bound by the terms of the settlement and you will be agreeing to the Release and Waiver of Rights contained in Paragraphs 10 and 11 of the GMCL Settlement Agreement, available at www._____.com. By agreeing to the Release and Waiver of Rights, you will be giving up your rights against GMCL to sue it about the same legal claims at issue in this lawsuit.

GETTING MORE INFORMATION

21. How can I get more information on the settlement?

This Notice merely summarizes the proposed settlement with GMCL. You can download a copy of the settlement agreement and additional court documents, as well as review answers to frequently asked questions, by visiting www._____.com, or you may call toll-free, 1-_____.

EXHIBIT D

CONSUMER CLAIM FORM

Deadline to Submit Consumer Claim Form: February 2, 2012

- This is the form that you may submit if you want to share in the settlement money received from General Motors of Canada, Ltd. You may only submit this form if you meet the requirements listed under "Can I Submit This Consumer Claim Form?" below.
- Use This Form Only If You Are a Consumer and NOT a Fleet Purchaser. If you purchased or leased vehicles using a fleet account number issued by an automobile manufacturer, then you must go to www._____.com and submit your claim online as a fleet purchaser.
- Throughout this Consumer Claim Form, the term "you" means the person or business that purchased or leased the vehicle(s) listed in this form.

Can I Submit This Consumer Claim Form?

You are only eligible to submit this Consumer Claim Form if all of the following apply to you:

1. You purchased or leased a new motor vehicle (passenger car, light truck or sport utility vehicle ("SUV")) during the period January 1, 2001 to April 30, 2003 ("Eligible Claims Period");
2. You purchased or leased the new motor vehicle from an automobile dealer located in California, Florida, New Mexico or Wisconsin;
3. The vehicle you purchased or leased was one of the following makes: Acura, Audi, BMW, Buick, Cadillac, Chevrolet, Chrysler, Dodge, Ford, GMC, Honda, Hummer, Infiniti, Jaguar, Jeep, Land Rover, Lexus, Lincoln, Mazda, Mercedes, Mercury, Mini, Nissan, Oldsmobile, Plymouth, Pontiac, Saab, Saturn, Toyota, Volkswagen or Volvo.

If you need any help determining whether you are eligible to submit a consumer claim, please go to www._____.com.

How Do I Fill Out and Submit This Consumer Claim Form?

If you believe you are eligible and you would like to submit a claim, you have two options: (1) complete and submit the online Consumer Claim Form at www._____.com, or (2) complete this paper Consumer Claim Form and send it by first-class mail to: Automobile Antitrust Settlement Administrator, P.O. Box 8060, San Rafael, CA 94912-8060. **Your claim must be submitted online, or post-marked, by February 2, 2012.**

Please read and follow these instructions carefully. Please do not omit any information asked for. Failure to provide complete and accurate information may result in a delay in the processing of your Consumer Claim Form.

INSTRUCTIONS:

Section 1 – Claimant Information

- Please provide all required contact information of the person or business that purchased or leased the vehicle(s). This is you, the "Claimant".

Section 2 – Authorized Representative Information

- If the Claimant listed in Section 1 is a business, please fill in Section 2 with information about the person signing this Consumer Claim Form.
- The person signing below must be authorized by the Claimant to submit this form.

Section 3 – Purchase or Lease Information

- Please provide all the information requested about the vehicle(s) you purchased or leased, including make, model, year, and date of purchase (month and year).
- Please indicate the state where you purchased the vehicle.
- List only purchases or leases you made during the Eligible Claims Period (January 1, 2001 to April 30, 2003).
- List only purchases or leases of new passenger cars, light trucks or SUVs of the following makes: Acura, Audi, BMW, Buick, Cadillac, Chevrolet, Chrysler, Dodge, Ford, GMC, Honda, Hummer, Infiniti, Jaguar, Jeep, Land Rover, Lexus, Lincoln, Mazda, Mercedes, Mercury, Mini, Nissan, Oldsmobile, Plymouth, Pontiac, Saab, Saturn, Toyota, Volkswagen or Volvo.
- List only purchases or leases you made from a dealer located in California, Florida, New Mexico or Wisconsin. Please indicate the dealer's name, if known.

Section 4 – Claimant Signature and Certification

Please read, date and sign the statement. Submit the Consumer Claim Form online or send the completed paper Consumer Claim Form by first-class mail to:

Automobile Antitrust Settlement Administrator

c/o Gilardi & Co. LLC
P.O. Box 8060
San Rafael, CA 94912-80601

Your claim must be submitted or post-marked on or before February 2, 2012.

Do I Need to Attach Any Documents to the Consumer Claim Form?

No. At this time, you do not need to submit any documents other than this Consumer Claim Form. But, by signing in Section 4 of this form and submitting your claim, you are verifying under penalty of perjury that you purchased or leased the vehicle(s) you list on this form. You may be asked by Plaintiffs' Counsel, the Claims Administrator or the Court for documents showing that you made the purchases you list on this form.

**Please Remember to Provide your Signature
Under Penalty of Perjury on Page 4 of this Claim Form**

Official Office
Use Only



Must be Submitted on
or before
February 2, 2012

CONSUMER CLAIM FORM

[CODE]

Section 1 – Claimant Information

Name of Person or Business That Purchased or Leased the Vehicle(s):

Last Name

First Name:

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Company or Business Name:

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Current Address (Primary Residence or Principal Place of Business):

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Current Address (Line 2):

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City:

State:

Zip Code:

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Telephone Number (Work):

Telephone Number (Home):

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E-mail Address:

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Section 2 – Authorized Representative

If the Claimant listed in Section 1 is a business, please provide information concerning the person signing and submitting this Consumer Claim Form on the Claimant's behalf. The person signing below must be authorized by the Claimant to file this form on the Claimant's behalf. If the Claimant listed in Section 1 is not a business, leave Section 2 blank and proceed to Section 3.

Last Name:

First Name:

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Relationship to Claimant (Owner or Officer):

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Title:

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Current Mailing Address (if different from Claimant):

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City:

State:

Zip Code:

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Telephone Number (Work):

Telephone Number (Home):

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FOR CLAIMS
PROCESSING
ONLY

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AP

Section 3 – Purchase Information

Proof may be requested by the Claims Administrator at any time.

Make of Vehicle:

Year of Vehicle:

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Model of Vehicle:

Date of Vehicle Purchase or Lease Activation

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Name of Dealer (if known):

State Where Dealer Was Located:

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If you purchased or leased more than one new vehicle during the Eligible Claims Period, make photo copies of this page and complete one page per vehicle. Sign your name on each additional page.

**IF YOUR SHARE OF THE SETTLEMENT MONEY IS LESS THAN \$5,
YOU WILL NOT RECEIVE A PAYMENT.**

Section 4 – Signature and Certification of Claimant

I am the Claimant listed in Section 1, or I am authorized to submit this Consumer Claim Form on behalf of the Claimant.

I understand that I may be asked to provide documents or other records to the Claims Administrator, upon request, that support the information I provided in this Consumer Claim Form.

I declare under penalty of perjury under the laws of the United States that the information provided in this Consumer Claim Form is true and correct.

Signature: _____


Date: _____

EXHIBIT R

Zelle Hofmann Voelbel & Mason LLP
44 Montgomery Street - Suite 3400
San Francisco, CA 94104

1 Craig C. Corbitt (SBN 83251)
2 Jiangxiao Athena Hou (SBN 215256)
3 Judith A. Zahid (SBN 215418)
4 Michael S. Christian (SBN 212716)
5 ZELLE HOFMANN VOELBEL & MASON LLP
6 44 Montgomery Street, Suite 3400
7 San Francisco, California 94104
8 Telephone: (415) 693-0700
9 Facsimile: (415) 693-0770

6 *California Action Liaison Counsel*

FILED
San Francisco County Superior Court
DEC 05 2011
CLERK OF THE COURT
BY:  Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 CITY AND COUNTY OF SAN FRANCISCO
11 UNLIMITED JURISDICTION

12 COORDINATION PROCEEDING SPECIAL)
13 TITLE (Rule 1550(b)))

Judicial Council Coordination
Proceeding Nos. 4298 and 4303

14 AUTOMOBILE ANTITRUST CASES I)
15 AND II)

CLASS ACTION

16 This Document Relates to:)
17 All Actions)

**DECLARATION OF CRAIG C. CORBITT
IN SUPPORT OF PLAINTIFFS'
APPLICATION FOR ATTORNEYS' FEES,
EXPENSES AND INCENTIVE AWARDS**

Date: January 5, 2012
Time: 9:30 a.m.
Dept.: 304
Hon. Richard A. Kramer
Coordination Trial Judge

26 **VOLUME 1 OF 3**

1 I, Craig C. Corbitt, declare as follows:

2 1. I am an attorney-at-law licensed to practice before the courts of the State of
3 California, and a partner in the law firm Zelle Hofmann Voelbel & Mason LLP, attorneys for
4 Plaintiffs. I have personal knowledge of the facts stated in this declaration and, if called as a witness,
5 I could and would testify competently to them. I make this declaration in support of Plaintiffs'
6 Application for Attorneys' Fees, Expenses and Incentive Awards.

7 2. My firm represents named plaintiffs George Bell and United Food & Commercial
8 Workers, Local 588, and unnamed plaintiffs Luz Maria Pena, Patrick Sheehan, and Brian Toups in
9 this California state action (*Automobile Antitrust Cases I and II*, San Francisco Super. Ct., J.C.C.P.
10 Nos. 4298 and 4303). A brief description of my firm is attached as Exhibit 1 and incorporated herein
11 by reference.

12 3. I and my firm are the court-appointed Liason Counsel and Class Counsel in this
13 California state Action. I am also a member of the Plaintiffs' Coordinating Committee, which
14 determines the plaintiffs' overall strategy in the federal MDL and the various state cases. The time
15 and expenses reported by my firm were incurred for the benefit of the California class.

16 4. During the course of this litigation, my firm has been involved in the following
17 activities on behalf of the plaintiffs, among others:

- 18 • We filed the initial complaints in this action in March 2003. After many more cases had
19 been filed in various California state courts, the cases were coordinated and assigned to
20 this Court for pretrial and trial. My firm subsequently organized and hosted a meeting of
21 all plaintiffs' counsel to discuss organization and strategy, as a result of which an agreed
22 organizational pretrial order, establishing an Executive Committee and designating my
23 firm as Liaison Counsel, was submitted to and entered by the Court on August 21, 2003.
- 24 • We participated in the briefing and argument on the defendants' demurrer (motion to
25 dismiss) and motion to strike the Consolidated Amended Complaint, which were
26 overruled by the Court on April 28, 2004.
- 27
- 28

- 1 • We presented the position of the California plaintiffs on coordination of discovery
2 between the state and MDL cases to both the California and MDL courts. The Joint
3 Coordination Order signed by Judge Hornby and this Court was entered in this case on
4 June 18, 2004.
- 5
- 6 • We negotiated and entered into a cooperation agreement with the MDL Plaintiffs' counsel
7 (described more fully in Mr. Tabacco's submission), as a result of which we became a
8 member of Plaintiffs' Coordinating Committee. We worked closely with MDL Lead
9 Counsel on all aspects of this case, including coordinating overall strategy. We
10 participated fully in joint discovery, including the review of millions of documents and
11 responses to contention interrogatories. We were principally responsible for discovery
12 from Honda, and also participated extensively in discovery from Chrysler. We were
13 directly involved in working with plaintiffs' experts, and defended several days of the
14 deposition of Dr. Hall, plaintiffs' expert in this case. We directly participated in
15 responding to the Defendants' summary judgment motions in the MDL Action. We also
16 participated directly in the settlement negotiations with Toyota, and signed the MDL
17 settlement agreement on behalf of the California class.
- 18
- 19 • We successfully briefed and argued the motion for class certification in this case, which
20 was granted by the Court after a two-day hearing, and entered by written order on May 19,
21 2009. We successfully briefed the opposition to the defendants' petition for a writ of
22 mandamus on this issue to the California Court of Appeal, which denied the petition by
23 order dated August 19, 2009.
- 24
- 25 • We coordinated and took an active role in drafting the opposition briefing to the
26 Defendants' California motions for summary judgment on the issue of conspiracy and the
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1 motion to strike expert testimony. The conspiracy summary judgment briefing was
2 voluminous and involved hundreds of responses to factual assertions and significant
3 evidentiary briefing.

- 4 • We participated in the settlement negotiations with General Motors of Canada, Ltd., and
5 signed that settlement agreement on behalf of the California Plaintiffs.
6

7 5. The schedule attached as Exhibit 2, and incorporated herein, is a detailed summary of
8 the amount of time spent by my firm's partners, attorneys and professional support staff who were
9 involved in this litigation. The lodestar calculation is based on my firm's billing rates in effect at the
10 time services were performed. Exhibit 2 was prepared from contemporaneous time records regularly
11 prepared and maintained by my firm. The hourly rates for my firm's partners, attorneys and
12 professional support staff included in Exhibit 2 are or were at the time the usual and customary
13 hourly rates charged for their services in similar complex class actions.

14 6. The total number of hours expended on the California litigation by my firm from
15 inception to October 31, 2011 is 11,220.25 hours. The total lodestar for my firm is \$4,863,913.75.

16 7. My firm's lodestar is based on the firm's historical billing rates, which do not include
17 charges for expense items. Expense items are billed separately and are not duplicated in my firm's
18 lodestar.

19 8. My firm expended a total of \$688,295.50 in unreimbursed expenses necessary in
20 connection with the prosecution of this litigation. Of this amount, \$471,000 was for assessment
21 payments, and an additional \$217,295.50 was for non-common expenses incurred by my firm, such
22 as travel, copying, telephone, etc. These expenses are described in Exhibit 3, which is attached
23 hereto and incorporated herein.

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

27 10. Attached hereto as Exhibits 4 to 34 are the unaudited fee-and-cost declarations of the
28

1 following California Counsel:

2	EXHIBIT	FIRM
3	4	The Alioto Law Firm
4	5	Amamgbo & Associates
5	6	Blumenthal & Nordrehaug
6	7	Law Offices of John H. Boone
7	8	Bramson, Plutzik, Mahler & Birkhaeuser
8	9	Chimicles & Tikellis LLP
9	10	Cooper & Kirkham, P.C.
10	11	Law Offices of Kyle Crenshaw
11	12	Davis Cowell & Bowe
12	13	Law Offices of James M. Dombroski
13	14	The Ekenna Law Firm, apc
14	15	Finkelstein Thompson LLP
15	16	The Furth Firm LLP
16	17	Glancy Binkow & Goldberg LLP
17	18	Gordon-Creed, Kelley, Holl & Sugerman, LLP
18	19	Green Welling LLP
19	20	Gross Belsky Alonso LLP
20	21	Hausfeld LLP
21	22	Lieff, Cabraser, Heimann & Bernstein LLP
22	23	The Mogin Law Firm, P.C.
23	24	Morris & Associates
24	25	Law Offices of Lawrence G. Papale
25	26	Law Offices of Jeffery K. Perkins
26	27	Reich & Radcliffe LLP
27	28	Saveri & Saveri, Inc.
28	29	Law Offices of Francis O. Scarpulla
	30	Law Office of Alexander M. Schack
	31	Schubert Jonckheer & Kolbe LLP
	32	Terrell Law Group
	33	Trump Alioto Trump & Prescott, LLP
	34	Zwerling, Schachter & Zwerling, LLP

Zelle Hofmann Voelbel & Mason LLP
44 Montgomery Street - Suite 3400
San Francisco, CA 94104

1 11. Many of the above firms submitted declarations in December 2010 and January 2011
2 in connection with the motion for an award of fees and reimbursement of expenses in the federal
3 MDL Action, which was filed on January 7, 2011. Some of the firms that submitted declarations for
4 the MDL fee motion have not incurred any new fees or costs subsequent to the preparation of their
5 MDL declaration. Therefore, a number of the declarations submitted as Exhibits 4 to 34 are
6 declarations that were prepared for the MDL fee motion.

7 11. The total lodestar submitted by all California Counsel whose declarations are attached
8 hereto and my law firm is \$19,434,205.17, based on a total of 43,294.91 hours expended. Plaintiffs
9 have prosecuted this case on a wholly contingent basis, undertaking significant financial risk with no
10 guarantee of recovery.

11 12. The total unreimbursed expenses submitted by all California Counsel whose
12 declarations are attached hereto and my law firm are \$2,826,834.30.

13 13. Attached hereto as Exhibit 35 is a true and correct copy of the Declaration of Zelle
14 Hofmann Voelbel & Mason LLP in Support of Application for Award of Attorneys' Fees,
15 Reimbursement of Expenses, and Provision of Incentive Awards. I signed the declaration on
16 December 30, 2010 and it was filed in the MDL Action on January 7, 2011.

17 15. In this case, the named California class representatives have fully satisfied their
18 duties. During the many years this litigation has been ongoing, each named representative devoted
19 time working with counsel to monitor the progress of the litigation, and to respond to the discovery
20 propounded by Defendants.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct. Executed this 5th day of December, 2011, in Miami, Florida.

23 
24 _____
25 Craig C. Corbitt

26
27 3226186

1 Joseph J. Tabacco, Jr. (Bar No. 75484)
Todd A. Seaver (Bar No. 271067)
2 Matthew D. Pearson (Bar No. 235339)
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7 *Attorneys for Plaintiffs*

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION**

10 COORDINATION PROCEEDING SPECIAL)
11 TITLE (Cal. R. Ct. 1550(b)))

Judicial Council Coordination
Proceeding Nos. No. 4298 and 4303

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AUTOMOBILE ANTITRUST CASES I, II)

CJC-03-004298 and CJC-03-004303

CLASS ACTION

_____)
This document relates to:)
All Actions)

**EXHIBITS IN SUPPORT OF
DECLARATION OF TODD A. SEAVER
IN SUPPORT OF PLAINTIFFS':
(I) MOTION FOR FINAL APPROVAL
OF SETTLEMENT WITH FORD
CANADA; AND (II) MOTION FOR
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND PAYMENT OF SERVICE
AWARDS (VOL. 3 – EXHIBITS S-W)**

Date: October 5, 2022
Time: 10:00 a.m.
Dept: 306
Judge: Honorable Anne-Christine Massullo

Date Complaint Filed: October 6, 2003
(Consolidated Amended Class Action
Complaint)

EXHIBIT S

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7 Attorneys for Plaintiff

FILED
San Francisco County Superior Court

DEC 05 2011

CLERK OF THE COURT

BY:  Deputy Clerk

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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CITY AND COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION

13 COORDINATION PROCEEDING SPECIAL)
14 TITLE (RULE 1550(b)))

15 AUTOMOBILE ANTITRUST CASES I)
16 AND II)

17 This Document Relates to:)
18 All Actions)

Judicial Council Coordination
Proceeding Nos. 4298 and 4303

**DECLARATION OF JOSEPH J.
TABACCO, JR. IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ALLOCATION
PLAN AND APPLICATION FOR
ATTORNEYS' FEES, EXPENSES AND
INCENTIVE AWARDS**

Date: January 5, 2012
Time: 9:30 a.m.
Dept.: 304
Honorable Richard A. Kramer
Coordination Trial Judge

Trial Date: None Set

25
26 **VOLUME 1 OF 3**

1 I, Joseph J. Tabacco, Jr., declare as follows:

2 1. I am a member of the firm Berman DeValerio, Chair of the MDL Plaintiffs' Executive
3 Committee in the related federal action, *In re New Motor Vehicles Canadian Export Antitrust Litigation*,
4 MDL Docket No. 03-1532, in the United States District Court for the District of Maine ("MDL
5 Action"). I am the managing partner of Berman DeValerio's San Francisco office. In addition, my firm
6 appeared for Plaintiffs in these coordinated California proceedings ("California Action"); subsequently
7 my firm and I have assumed major responsibilities for many aspects of this litigation in California. I
8 respectfully refer the Court to my accompanying declaration on behalf of my firm that details Berman
9 DeValerio's efforts in the California Action (attached hereto as Exhibit 3).

10 2. I submit this declaration in support of Plaintiffs' motion for final approval of the
11 settlement with General Motors of Canada, Limited ("GMCL") and approval of the allocation plan, and
12 plaintiffs' application for an award of attorneys' fees, expenses and incentive awards. I have personal
13 knowledge of the conversations discussed below in which I participated. Specifically, this declaration
14 focuses on settlement negotiations, summarizes key aspects of the settlement before the Court, and
15 attaches the declarations of MDL Action counsel reporting their respective fees and expenses incurred
16 during the course of this coordinated litigation.

17 **SETTLEMENT NEGOTIATIONS WITH GMCL**

18 3. Negotiations with GMCL commenced in late autumn of 2010 when Plaintiffs were in
19 communication with GMCL's counsel about a possible settlement of all of the pending state court cases.
20 I was the primary negotiator for Plaintiffs in consultation with Plaintiffs' Coordinating Committee,
21 comprised of counsel in the California Action and other pending state court actions. There were
22 extensive and intensive discussions.

23 4. The negotiations occurred over an extended period of time while GMCL's motion for
24 summary judgment, though fully briefed, was still subject to further oral argument on substance and
25 evidence. My firm, firms on the Coordinating Committee, and other counsel for Plaintiffs in the other
26 state court actions, in addition to numerous counsel in the MDL Action, have actively litigated these
27 cases for the past eight years. These firms are also among the most experienced class action litigators in

1 the nation. This combined experience no doubt greatly aided the settlement process, which was
2 accomplished without aid of a professional mediator, who are often employed in complex litigations
3 such as this one. These extensive negotiations resulted in the GMCL Settlement Agreement (“GMCL
4 Agreement”) now before the Court.

5 **THE GMCL SETTLEMENT**

6 5. Originally, the negotiations resulted in an agreement in principal to settle the claims
7 asserted in related cases in five jurisdictions—California, New Mexico, Wisconsin, Florida and
8 Tennessee—with GMCL agreeing to pay a total of \$21,350,000. Subsequently, this agreement was
9 modified and resulted in a final agreement to settle the related cases in California, New Mexico,
10 Wisconsin and Florida (“Settling States”), on behalf of classes defined for each of those states, for a total
11 sum of \$20,150,000. A separate parallel agreement was reached between GMCL and counsel for the
12 plaintiff in the related Tennessee state action, with GMCL agreeing to pay a total of \$1,200,000 to settle
13 that case. The key provisions of the GMCL Agreement are summarized below. The GMCL Agreement
14 dated September 6, 2011 is attached as Exhibit 1 to the Declaration of Craig C. Corbitt in Support of
15 Motion for Final Approval of Class Action Settlement (“Corbitt Final Approval Declaration”), filed
16 concurrently herewith.

17 6. The GMCL Settlement before this Court is contingent on the courts in all four of the
18 Settling States granting final approval to this Settlement, and the Tennessee court granting final approval
19 to the separate Tennessee settlement. *See* GMCL Agreement ¶ 9. This Settlement and the Tennessee
20 settlement must become “Final,” as that term is used in the parallel provisions of the settlement
21 agreements. *Id.* On November 14, 2011, the Tennessee court granted final approval to the separate
22 Tennessee settlement. *See* Final Judgment & Order Approving Settlement, attached as Exhibit 1 hereto.

23 7. The GMCL Settlement was entered on behalf of four settlement classes, which are
24 identical in scope for each of the four Settling States. The California Class, per this Court’s October 12,
25 2011 Order preliminarily approving the Settlement, is defined as follows:

26 All persons and entities (excluding government entities, Defendants, and
27 their parents, subsidiaries, affiliates, officers, and directors) who purchased
or leased a New Motor Vehicle (passenger car, light-duty truck, or sport

1 utility vehicle) manufactured or distributed by a Defendant,* from an
2 Authorized Dealer in California, during the period January 1, 2001 through
April 30, 2003.

3 *The vehicle makes manufactured or distributed by a Defendant that are
4 covered by the settlement are: Acura, Audi, BMW, Buick, Cadillac,
5 Chevrolet, Chrysler, Dodge, Ford, GMC, Honda, Hummer, Infiniti, Jaguar,
6 Jeep, Land Rover, Lexus, Lincoln, Mazda, Mercedes, Mercury Mini, Nissan,
Oldsmobile, Plymouth, Pontiac, Saab, Saturn, Toyota, Volkswagen, and
Volvo.

7 8. GMCL has already paid into an interest bearing escrow account maintained at City
8 National Bank the sum of \$20,150,000, and such escrow account will be administered jointly by counsel
9 in the four state actions. The Settlement contemplates that GMCL will be entitled to a “bar order”
10 barring claims for contribution or indemnification. *See* GMCL Agreement ¶ 24. The Settlement, as
11 noted, is conditioned on each of the approving courts in the Settling States granting final approval to the
12 Settlement and the Tennessee court approving the separate Tennessee settlement.

13 9. Each of the courts in the Settling States has already entered an order, or is expected to
14 imminently enter such an order, granting preliminary approval to the settlement, approving the content,
15 form and plan for dissemination of notice to class members, and setting dates for final settlement
16 approval hearings.¹ The last final approval hearing is scheduled for March 9, 2012, in New Mexico state
17 court. Notice to California class members has already been disseminated in accordance with the notice
18 plan approved by this Court. *See* Declaration of Alan Vasquez re: Notice to California Class of GMCL
19 Settlement, filed concurrently herewith.

20 10. Because the GMCL Settlement was reached at such a late stage in the litigation based
21 upon a fully developed record, the terms of Settlement provide benefits to the settlement classes which
22 are monetary in nature, namely \$20,150,000.

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26 ¹ The New Mexico court has calendared a final approval hearing date and requested counsel to submit a
27 proposed order. I am informed that local New Mexico counsel has submitted a proposed order, and we
expect the New Mexico court to formally enter the order preliminarily approving the settlement soon.

1 **PLAN OF ALLOCATION**

2 11. Plaintiffs here have fashioned a plan of allocation of the net settlement fund that mirrors
3 the plan proposed to Judge Hornby in connection with settlements earlier reached with Toyota Motor
4 Sales, U.S.A., Inc. and the Canadian Automobile Dealers' Association. Plaintiffs' plan of allocation
5 aims to provide monetary recovery to all class members who file valid and timely proofs of claim.

6 12. Specifically, each eligible claimant's purchases of new motor vehicles will be assigned a
7 claims weight (called a "Recognized Claim Amount") based on the make, model and month and year of
8 the purchase or lease. The Recognized Claim Amounts are based on the overcharges calculated using an
9 economic damages model carefully built during the litigation with empirical data and other evidence by
10 Plaintiffs' expert, Professor Robert E. Hall, Ph.D., of Stanford University's Hoover Institution.
11 Professor Hall, aided by economic consultants Cornerstone Research, estimated damages using a
12 benchmark analysis that accounted for price gaps between new vehicles sold in Canada versus those sold
13 in the United States, prevailing monetary exchange rates, and other relevant factors, and involved
14 analyzing vast amounts of pricing and incentive data produced by Defendants, exporter costs, and other
15 data and evidence. The overcharges Professor Hall calculated varied depending on vehicle model and
16 date of purchase. Thus, the Recognized Claim Amount assigned to the eligible claimant's purchase or
17 lease will be assigned based on the make, model and month and year of the purchase or lease. For
18 example, under the Plaintiffs' damages model, a consumer who purchased a Ford Taurus in February of
19 2002 would be assigned a Recognized Claim Amount of \$133, which corresponds to the overcharge that
20 Professor Hall estimated for that particular vehicle purchased from any dealer anywhere in the United
21 States. Appendix B to the long-form Settlement Notice provides a list of all Recognized Claim Amounts
22 upon which claims will be weighted. Appendix A to the Settlement Notice provides a detailed
23 explanation of how each eligible claimant's payment will be calculated. The Settlement Notice, with
24 appendices, is available on the Settlement website and is also attached as Exhibit C to this Court's
25 preliminary approval order dated October 12, 2011. For the Court's convenience, the Notice and
26 appendices are attached as Exhibit 4 to the accompanying Corbitt Final Approval Declaration.

1 13. Plaintiffs' counsel believe that this plan of allocation, which makes no differentiation
2 between claims based on residence in any one of the four Settling States, provides the most accurate and
3 fair allocation of settlement proceeds to each eligible claimant. The claims of each eligible class
4 member will follow the contours of the economic evidence prepared by Professor Hall based upon
5 analysis of hundreds of thousands of data sets produced by Defendants during coordinated discovery.

6 14. Further, claims of eligible claimants will largely be processed through the settlement
7 website. Eligible claimants are able to submit their claims by filling out and submitting an on-line claim
8 form. Eligible claimants who do not have access to a computer can request a paper form be mailed to
9 them by calling a toll-free number. Plaintiffs sought to encourage on-line claims submission, which
10 greatly reduces administrative costs and provides greater recovery to eligible claimants overall.

11 15. Fleet purchasers are required to submit their claims on-line, but they will be required to
12 declare under penalty of perjury that they have documentation to support their claim and will provide
13 such documentation upon request. As a measure to prevent fraudulent claims, fleet purchasers are
14 required to provide a Vehicle Identification Number for each vehicle claimed. Fleet purchasers claiming
15 more than 25 vehicles may upload a spreadsheet containing their vehicle purchase information.

16 **APPLICATION FOR ATTORNEYS' FEES AND COSTS**

17 16. From early on in this litigation, counsel in the MDL Action worked closely with counsel
18 in the California Action and other state actions. The MDL Executive Committee, of which my firm is
19 Chair, led the day-to-day litigation efforts in the MDL Action. Coordination between the MDL Action
20 and the related state actions was through a joint Coordination Committee made up of lead counsel for
21 the various actions. MDL Action counsel and state action counsel entered into a joint prosecution
22 agreement to govern the sharing of resources as well as fees and expenses ("Coordinating Committee
23 Agreement"). Because discovery between the MDL Action and the state actions was coordinated,
24 plaintiffs' counsel in the MDL Action worked closely with plaintiffs' counsel in the state actions
25 throughout the litigation. To the greatest extent possible, resources and obligations were fairly
26 apportioned among MDL and state counsel to maximize efficiency and minimize duplication of effort.
27 However, lead counsel in the state actions were responsible for the management of the law firms in those

1 state actions, including work assignments, assessments and record-keeping requirements. These joint
2 efforts prevented duplication of effort and ensured that Plaintiffs had the resources to litigate effectively
3 on behalf of the class. The GMCL Settlement would not have been possible without the efforts of all
4 plaintiffs' counsel, including MDL Action counsel. The accompanying Declaration of Matthew D.
5 Pearson ("Pearson Declaration") details the extensive efforts of counsel in the MDL Action through the
6 course of this litigation.

7 17. MDL and state action plaintiffs' counsel set up a joint litigation fund, which my firm
8 maintained. The joint litigation fund was used to pay for such important expenses as expert witness
9 fees, consulting experts' fees, court reporter and deposition transcript fees, and others. Through the
10 Coordinating Committee Agreement, MDL plaintiffs' counsel committed to contribute 55 percent of the
11 litigation fund, and state counsel committed to contribute the remaining 45 percent. Accordingly, work
12 and expenses were shared, as much as possible, based on this 55% / 45% split.

13 18. In connection with Plaintiffs' motion for an award of attorneys' fees and reimbursement
14 of expenses, I am attaching fee declarations from the various MDL Action counsel that report the time
15 and expenses they incurred during the course of this coordinated litigation. These declarations are
16 attached hereto as Exhibits 2 to 36. The declarations report total lodestar of \$27,667,971.35, based on
17 77,539.24 hours expended, and total expenses of \$5,234,273.50 incurred by MDL Action counsel.

18 19. The declarations attached as exhibits to the Corbitt Fee Declaration² and the Richards
19 Declaration³ report the expenses incurred by state action counsel. When combined with the expenses
20 reported by MDL Action counsel and expenses jointly incurred and accounted for in the litigation fund,
21 the total amount of expenses reported by plaintiffs' counsel totals \$12,034,676.68.

22 20. By far the most substantial costs incurred and paid out of the joint litigation fund are
23 those concerning plaintiffs' testifying and consulting experts. Plaintiffs' counsel incurred \$8,849,587.30

24 ² The "Corbitt Fee Declaration" refers to the Declaration of Craig C. Corbitt in Support of Plaintiffs'
25 Application for Attorneys' Fees, Expenses and Incentive Awards, filed concurrently herewith.

26 ³ The "Richards Declaration" refers to the Declaration of Cohen Milstein Sellers & Toll PLLC in
27 Support of Application for Award of Attorneys' Fees, Reimbursement of Expenses, and Provision of
Incentive Awards, executed by J. Douglas Richards.

1 in costs for testifying and non-testifying expert or consulting fees, whose efforts were absolutely crucial
2 to the prosecution of the MDL and state actions, especially given that defendants served over a dozen
3 reports from eleven separate expert witnesses to critique plaintiffs' testifying expert, Professor Robert
4 Hall. The vast and important work undertaken by plaintiffs' experts is detailed in Pearson Declaration.

5 **CONCLUSION**

6 21. The Settlement with GMCL is the result of hard-fought, arm's-length negotiations that
7 took place after years of litigation on a fully developed record. The \$20,150,000 recovered for class
8 members represents an excellent recovery, especially in light of this Court's recent grant of summary
9 judgment to all of the non-settling defendants. In sum, Plaintiffs' Counsel believe the GMCL Settlement
10 is exceedingly fair, reasonable, and adequate.

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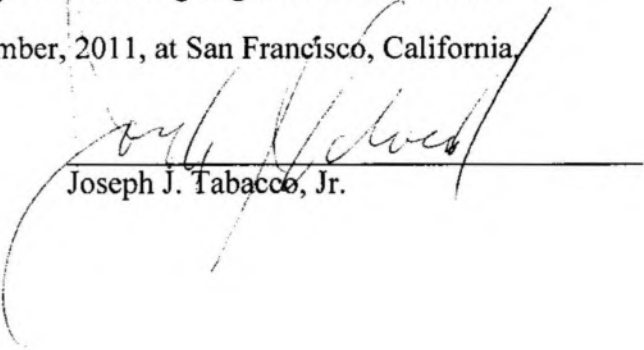
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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of December, 2011, at San Francisco, California.



Handwritten signature of Joseph J. Tabacco, Jr. in cursive script, written over a horizontal line.

Joseph J. Tabacco, Jr.

EXHIBIT T

1 Joseph J. Tabacco, Jr. (Bar No. 75484)
2 Todd A. Seaver (Bar No. 271067)
3 Christopher T. Heffelfinger (Bar No. 118058)
4 Matthew D. Pearson (Bar No. 235339)

5 **BERMAN TABACCO**

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14 *Attorneys for Plaintiffs*

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

**04/06/2022
Clerk of the Court**

**BY: ERNALYN BURA
Deputy Clerk**

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SAN FRANCISCO**
17 **UNLIMITED JURISDICTION**

18 COORDINATION PROCEEDING SPECIAL)
19 TITLE (Cal. R. Ct. 1550(b)))

Judicial Council Coordination
Proceeding Nos. No. 4298 and 4303

20 AUTOMOBILE ANTITRUST CASES I, II)

CJC-03-004298 and CJC-03-004303

CLASS ACTION

21 _____)
22 This document relates to:)
23 All Actions)

**DECLARATION OF JOSEPH J.
TABACCO, JR. IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT WITH FORD CANADA,
WITH EXHIBIT A**

Date: April 25, 2022
Time: 2:00 p.m.
Dept: 306
Judge: Honorable Anne-Christine Massullo

Date Complaint Filed: October 6, 2003
(Consolidated Amended Class Action
Complaint)

1 I, Joseph J. Tabacco, Jr., declare and state as follows:

2 1. I am an attorney licensed to practice law in the State of California and am a partner in the
3 San Francisco office of Berman Tabacco. I have been one of the principal lawyers leading this
4 litigation since its inception in 2003. I have been involved in or supervised virtually every phase of this
5 Action as well as in the related multidistrict litigation, *In re New Motor Vehicles Canadian Export*
6 *Antitrust Litigation*, MDL No. 1532, in the U.S. District Court for the District of Maine. I make this
7 declaration based on my personal knowledge, except where stated on information and belief, and could
8 competently testify as to these matters if called upon to do so.

9 2. The settlement reached by Plaintiffs with Ford Motor Company of Canada, Limited
10 (“Ford Canada”), the sole remaining defendant, was unquestionably the result of extensive and intensive
11 arm’s-length negotiations. After more than 18 years of litigation, following a final all-day mediation
12 session, an agreement in principle was reached just three weeks prior to the start of trial. The final
13 settlement negotiations took place largely as a result of the efforts of a very experienced, nationally
14 recognized, and highly respected mediator, the Honorable Edward A. Infante (Ret.), a former federal
15 magistrate judge with decades of experience mediating high stakes complex litigation. I direct the
16 Court’s attention to the declaration submitted by Judge Infante in support of preliminary approval of the
17 settlement for a summary of his credentials and experience.

18 3. Plaintiffs and Ford Canada first attempted mediation in 2012 with the assistance of
19 mediator Martin Quinn, Esq. of JAMS. That mediation occurred while the Court’s order granting
20 summary judgment in favor of Ford Canada was on appeal. The parties were unable to reach a
21 resolution at that time. Plaintiffs’ appeal was ultimately successful, and the case continued forward in
22 this Court.

23 4. More recently, Plaintiffs and Ford Canada conducted a total of three mediation sessions
24 during the period June 2021 to February 2022. I oversaw the settlement negotiations for Plaintiffs and
25 the Class, along with partners Todd A. Seaver and Matthew D. Pearson from my firm and a number of
26 highly skilled and experienced antitrust litigators who make up Plaintiffs’ Steering Committee,
27 including William Bernstein and Eric Fastiff of Lieff Cabraser Heimann & Bernstein, LLP, R.

1 Alexander Saveri of Saveri & Saveri, Inc., and Tracy Kirkham of Cooper & Kirkham, P.C. These
2 attorneys, like me, have decades of experience litigating complex antitrust class actions and negotiating
3 landmark settlements on behalf of aggrieved consumers and businesses. Biographies of attorneys who
4 participated in the settlement negotiations are attached hereto as Exhibit A. All of these attorneys have
5 been involved in this Action and/or the related federal multidistrict action from day one and are
6 intimately familiar with the facts, the claims asserted, and the legal and factual issues present in this
7 case.

8 5. Similarly, Ford Canada was represented in the settlement negotiations by highly
9 experienced and exceptionally qualified counsel at O'Melveny & Myers LLP, including
10 Michael Tubach, Anna Pletcher, and Randall Edwards. I am informed and believe that these attorneys
11 enjoy a national reputation for excellence and have decades of experience litigating antitrust class
12 actions and other complex litigation, including representing Ford in the past.

13 6. The first mediation session took place on June 22, 2021. The attorneys mentioned above
14 met in person in San Francisco with Judge Infante. Also present was Craig Halseth, a highly ranked in-
15 house counsel at Ford. Prior to this first session, the parties each prepared, exchanged, and presented to
16 Judge Infante detailed and comprehensive mediation briefs setting forth the factual background, the key
17 issues, the parties' respective views of the evidence and the law, and other relevant matters. The first
18 mediation session, however, proved to be unsuccessful and no resolution was reached at that time.

19 7. During the next few months, as detailed in the accompanying Declaration of Todd A.
20 Seaver, the parties engaged in intense litigation as they prepared their cases for trial. The parties
21 disclosed and deposed experts, exchanged witness and exhibit lists, briefed and argued motions in
22 limine, briefed and argued *Sargon* motions to exclude expert testimony, compiled and exchanged
23 deposition testimony designations and counter-designations from dozens of witnesses, and drafted,
24 exchanged, and filed proposed jury instructions. The parties also briefed and argued a further motion for
25 summary judgment made by Ford Canada and a motion for judgment on the pleadings made by
26 Plaintiffs. With the exception of ruling on the parties competing proposals on jury instructions, the
27 Court had ruled on every outstanding motion or issue. At the end of this busy period from summer
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1 through fall of 2021, the parties had litigated nearly every conceivable legal and evidentiary issue that
2 could be resolved prior to trial.

3 8. The parties agreed to hold a further mediation session before Judge Infante on
4 January 14, 2022. The parties prepared and presented to Judge Infante confidential letters updating him
5 on the proceedings and their current respective views of the case. The same attorneys and Ford
6 representative from the prior session attended this session as well. Intense negotiations lasted nearly the
7 full day, with the parties narrowing their positions as far as they could. At that point, the parties agreed
8 to permit Judge Infante to make a mediator's proposal. Judge Infante made his proposal, which the
9 parties ultimately accepted. The parties drafted and signed a term sheet that day reflecting the
10 agreement-in-principle, which provided for payment by Ford Canada of \$82 million for the benefit of
11 the Class. I was informed, however, that the agreement in principle was subject to approval by the
12 Board of Directors of Ford Canada as well as the Board of Directors of Ford Motor Company.

13 9. On February 1, 2022, I was informed by Ford Canada's counsel that the respective
14 Boards of Ford Canada and Ford Motor Company had approved the agreement-in-principle and had
15 authorized Ford Canada's counsel to negotiate a mutually acceptable written settlement agreement.

16 10. The parties spent the next few weeks spending substantial time and effort negotiating the
17 written settlement agreement. The parties reached an impasse on the language of several provisions in
18 the agreement. These disagreements required a further mediation session before Judge Infante, which
19 took place on February 28, 2022. With Judge Infante's assistance, the parties were able to resolve the
20 remaining issues and reach agreement on language for the settlement agreement that is now before the
21 Court for preliminary approval

22 11. Overall, at the time the settlement was reached, the parties and their counsel could not
23 have been more informed of the facts and the legal issues present in this case. By the time the
24 settlement was reached, the parties had engaged in years of extensive discovery involving depositions of
25 over a hundred witnesses and review of millions of pages of documents. Over a dozen experts were
26 retained by the parties in this case, each of whom was deposed, often multiple times. The parties
27 litigated class certification in federal and state court, three rounds of summary judgment motions, and
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1 multiple additional dispositive motions. The parties also briefed and argued matters in the appellate
2 courts, including two trips through the California appellate courts on dispositive motions. No stone was
3 left unturned during 18+ years of litigation, and no issues were left untested or unvetted.

4 12. In my view, the settlement is an excellent result for the Class. Any trial has significant
5 risks for both sides and this case is no exception. While Plaintiffs have been confident, and indeed
6 dogged, in their pursuit of a positive result for Plaintiffs and the Class, they have also seen the
7 difficulties of taking and winning a protracted antitrust case at trial. Had the settlement not been
8 reached, my Firm and the trial team of highly experienced antitrust litigators were prepared to try the
9 case. Putting aside the complications presented with trial in a Covid-19 environment, there were unique
10 challenges presented by the sheer age of the case. Most evidence was in the form of documents or video
11 recorded deposition testimony taken in some instances over 15 years ago, before the widely used rollout
12 of high-definition television. Similarly, Plaintiffs' chief economist, who had worked on the case since
13 inception, simply was unable due to age and health reasons to testify at trial, requiring Plaintiffs to retain
14 a new expert and expert team. Fortunately, we were able to retain a highly acclaimed academician,
15 Dr. Janet Netz, formerly at Purdue University. I am informed and believe that Ford Canada faced
16 similar issues with regard to a lack of live witnesses being available who had firsthand knowledge of the
17 facts relating to the alleged conspiracy going back before 2001. Suffice it to say, for these reasons and
18 the other significant risk factors highlighted in the accompanying declaration of my partner, Todd A.
19 Seaver, we believe this settlement of \$82 million is a very positive result for the Class and is
20 significantly larger than the settlements previously paid by Toyota and General Motors of Canada,
21 which settled larger classes.

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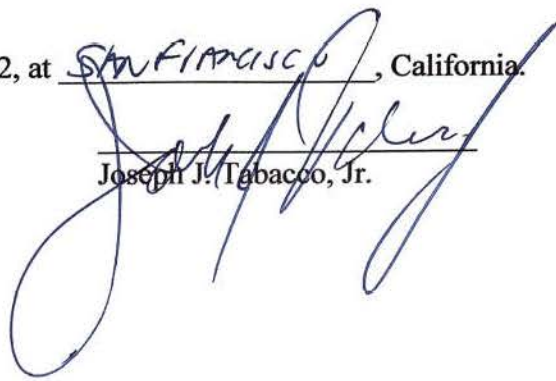
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13. Thus, for the reasons set forth in our moving papers and accompanying declarations, we request the Court issue the proposed Order of Preliminary Approval and allow notice to go out to the Class leading to a final settlement approval hearing.

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

Executed this 21st Day of March 2022, at SAN FRANCISCO, California.



Handwritten signature of Joseph J. Tabacco, Jr. in blue ink, written over a horizontal line.

Joseph J. Tabacco, Jr.

EXHIBIT A

JOSEPH J. TABACCO, JR.



Joseph J. Tabacco, Jr., the founding member of Berman Tabacco's San Francisco office and member of the firm's Executive Committee, actively litigates antitrust, securities fraud, commercial high tech and intellectual property matters.

Prior to 1981, Mr. Tabacco served as senior trial attorney for the U.S. Department of Justice, Antitrust Division in both the Central District of California and the Southern District of New York. In that capacity, he had major responsibility for several criminal and civil matters, including the antitrust trial of *United States v. IBM*. Since entering private practice in the early 1980s, Mr. Tabacco has served as trial or lead counsel in numerous antitrust and securities cases and has been involved in all aspects of state and federal litigation. In private practice, Mr. Tabacco has also tried a number of securities cases, each of which resolved successfully at various points during or after trial, including *In re MetLife Demutualization Litigation* (settled after jury empaneled), *Gutman v. Howard Savings Bank* (plaintiffs' verdict after six-week trial), *In re Equitec Securities Litigation* (settled after six months of trial) and *In re Ramtek Securities Litigation*.

Mr. Tabacco currently oversees the firm's class action litigation teams in the firm's price-fixing/market manipulation cases alleging that major banks colluded to fix the prices of derivatives and other financial instruments by manipulating numerous financial benchmark rates. This includes representing California State Teachers' Retirement System, one of the country's largest public pension funds, in (i) *Sullivan v. Barclays PLC et al.*, No. 13-cv-2811 (S.D.N.Y.), a class action against numerous Wall Street banks for price-fixing financial instruments tied to the Euro Interbank Offered Rate (the "Euribor"), which has total approved settlements in the amount of \$491.5 million; and (ii) *Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y), two related class actions against numerous financial institutions for price-fixing financial instruments tied to the London Interbank Offered Rate ("LIBOR") for the Japanese Yen and the Euroyen Tokyo Interbank Offered Rate ("TIBOR"), which have total approved settlements in the amount of \$307 million.

Mr. Tabacco was one of the firm's lead attorneys representing the Wyoming State Treasurer and Wyoming Retirement System in the *In re IndyMac Mortgage-Backed Securities Litigation* in which the firm achieved settlements totaling \$346 million. He also oversaw *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.), the pioneering case that held credit rating agencies (Standard & Poor's and Moody's) financially responsible for their negligence in rating structured investment vehicles. After settling with both McGraw Hill Companies and Moody's, California Public Employees' Retirement System' total recovery for the case was \$255 million. Over the decades, Mr. Tabacco has prosecuted numerous securities fraud and antitrust cases against both domestic and international companies.

Mr. Tabacco recently oversaw *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), which achieved settlements in the total amount of \$139.3 million for a class of direct purchasers of lithium-ion rechargeable batteries (final approval on the last three settlements was granted on May 16, 2018). The lawsuit alleged that defendants, including LG, Panasonic, Sony, Hitachi and Samsung,

participated in a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries are used and which the defendants sell.

Since 2008, Mr. Tabacco has served as an independent member of the Board of Directors of Overstock.com, a publicly traded company internet retailer. He is Chair of the Board's Nominating & Corporate Governance Committee and also serves as a member of the Board's Audit and Compensation Committees. He has also served as a member of the American Antitrust Institute Advisory Board since 2008. He also frequently lectures and authors articles on securities and antitrust law issues and is a member of the Advisory Board of the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law and the Advisory Board of the Center for Law, Economics & Finance at the George Washington School of Law. Mr. Tabacco is also a former teaching fellow of the Attorney General's Advocacy Institute in Washington, D.C., and has served on the faculty of ALI-ABA on programs about U.S.-Canadian business litigation and trial of complex securities cases.

For 15 consecutive years, he has been among the top U.S. securities litigators ranked by *Chambers USA* (2007-2021) and is also AV Preeminent® rated by *Martindale-Hubbell*®. Mr. Tabacco has been featured by the *Daily Journal* as one of the *Top Antitrust Lawyers in California* in 2020, as one of the *Top Plaintiffs Lawyers in California* in 2017, and as one of California's top 30 securities litigators, a group chosen from both the plaintiff and defense bars. He was also recognized by *Global Competition Review's Who's Who Legal: Competition*, most recently in 2021 – a designation he has received for the past 8 years since the creation of the publication's Plaintiffs section. Additionally, for 18 consecutive years, Mr. Tabacco has been named a *Super Lawyer* by *Northern California Super Lawyers Magazine*, which features the top 5% of attorneys in the region (2004-2021). Additionally, in 2019 and 2020, Mr. Tabacco was ranked in the *Top 100 list* of attorneys in California in the *Northern California Super Lawyers Magazine*. He has been ranked by *The Legal 500* as a *Recommended Attorney in Securities Litigation* (2017-2019, 2021) and *Antitrust* (2019-2021) and was ranked by *Benchmark Litigation* as a *California State Litigation Star* (2019-2022), *San Francisco Local Litigation Star* (2017-2022), *Noted Star in Plaintiff Work* (2020-2021), and *Noted Star in Antitrust, Intellectual Property, and Securities* (2019-2020). *The Best Lawyers in America*® recognized Joe as *Lawyer of the Year* in *Litigation-Securities* for 2022. He has further been recognized by *The Best Lawyers in America*® for *Litigation-Antitrust* (2018-2022) and for *Litigation-Securities* (2019-2022). He was also selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021). Mr. Tabacco has also been singled out by a top defense attorney for exemplifying "the finest tradition of the trial bar." In 2019, *Chambers USA* hailed Mr. Tabacco as "a formidable plaintiff-side litigator, with a wealth of experience handling securities class actions. A market source describes him as 'a master of orchestrating lawsuits and striking settlements,' adding: 'He strikes fear in the heart of defendants.'" *Chambers* has previously noted a client's praise for Mr. Tabacco: "His legal knowledge and skills are at the highest level. His combined intelligence and experience results in well-reasoned and thoughtful arguments to further our case."

Mr. Tabacco earned a J.D., *with honors*, from George Washington School of Law in 1974, and a B.A. in Government from University of Massachusetts-Amherst in 1971.

Mr. Tabacco is a member in good standing in the states of California and New York, and the Commonwealth of Massachusetts, as well as the U.S. District Courts for all districts in California, the District of Massachusetts, the District of Colorado (currently inactive), Eastern District of Michigan, the Southern and Eastern Districts of New York, the District of Columbia (currently inactive), the First, Second, Third, Sixth and Ninth Circuits of the U.S. Courts of Appeal and the U.S. Supreme Court.

TODD A. SEAVER



A partner in the San Francisco office, Todd A. Seaver litigates both antitrust and investment-related matters, with a primary focus on developing and litigating antitrust cases. He has led the day-to-day management of one of the largest antitrust class actions in history, and has litigated antitrust cases involving varied industries of high-tech, pharmaceuticals, autos, chemicals, consumer electronics, biotech, diamonds and online retailing. He is a leader of the firm's antitrust practice group, marshalling the firm's extensive investigative resources and then litigating the cases.

Currently, Mr. Seaver is co-lead counsel for consumer plaintiffs in an antitrust class action against American Express, *Oliver v. American Express Co.*, No. 1:19-cv-00566-NGG (E.D.N.Y.). The action is at the forefront of the payments industry and is now shaped by the landmark ruling in *Ohio v. American Express Co.*, 138 S. Ct. 2274 (2018), in which the U.S. Supreme Court articulated a new analytical framework for so-called "two-sided" markets.

Mr. Seaver is also presently counsel for plaintiffs and represents California State Teachers' Retirement System (CalSTRS) in the Euribor (*Sullivan v. Barclays PLC, et al.*, No. 13-cv-2811 (S.D.N.Y.)) and Yen Libor (*Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.)), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y.) antitrust cases involving Wall Street banks' manipulation of interest rate benchmarks and bid-ask spread price fixing on interest rate derivatives. He also currently represents Orange County Employees' Retirement System (OCERS) in an ongoing antitrust class action (*Dennis v. JP Morgan Chase & Co.*, No. 16-cv-06496-LAK (S.D.N.Y.)) alleging that U.S., European, and Australian banks manipulated the interest rate benchmark used to price derivatives that were denominated in Australian dollars and sold to U.S. investors. He also currently represents Fresno County Employees' Retirement Association (FCERA) in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-07789 (S.D.N.Y.), an antitrust class action against Wall Street banks for manipulating a foreign currency exchange rate benchmark and fixing bid-ask spreads on trillions of dollars of foreign currency exchange transactions.

He also leads plaintiffs' efforts in *In re New Motor Vehicles Canadian Export Antitrust Litigation*, in which Berman Tabacco is lead counsel. The case alleges that major auto manufacturers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States for use or resale. The case has partially settled with Toyota Motor Sales U.S.A. for \$35 million and with General Motors of Canada for \$20.15 million. The litigation is ongoing in California state court, with the California Court of Appeal having recently reversed the trial court's grant of summary judgment in favor of defendant Ford Canada.

Mr. Seaver recently had a leading role in several cases, including, *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), where the firm was co-lead counsel for direct purchaser plaintiffs. Settlements were reached totaling \$139.3 million for the direct purchaser class (final approval on the last three settlements was granted on May 16, 2018). The lawsuit alleged that defendants, including LG, Panasonic, Sony, Hitachi and Samsung, participated in a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries were used and which the defendants sold. Mr. Seaver argued and defeated motions to dismiss

and deposed fact witnesses and defendants' expert economist and made the oral argument in opposition to defendants' *Daubert* motions to exclude plaintiffs' expert economist's opinions at class certification.

Mr. Seaver led efforts for the firm in an action against Netflix and Wal-Mart, *In re Online DVD Rental Antitrust Litigation*, in which Berman Tabacco was among lead counsel. He was responsible for managing many aspects of discovery, class certification and summary judgment, as well as for achieving partial settlement with defendant Wal-Mart. He successfully argued in Ninth Circuit Court of Appeals for that case on an issue of first impression regarding the Class Action Fairness Act and settlements involving a mix of cash consideration and electronic store gift cards. He was also one of the lead counsel in *In re Optical Disk Drive Antitrust Litigation* and also worked on a number of the firm's high-profile cases including *Cardizem CD*, still the leading generic drug competition case, which settled in 2003 for \$80 million. In the *Cardizem CD* case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action and obtained a pioneering ruling in the federal court of appeals regarding the "reverse payment" by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer's payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a per se unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

Mr. Seaver spearheaded the landmark case against the major credit rating agencies (Standard & Poor's and Moody's), *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.). The case, filed on behalf of the nation's largest state pension fund, the California Public Employees' Retirement System (CalPERS), was groundbreaking litigation that held the rating agencies financially responsible for negligent misrepresentations in rating structured investment vehicles. Moody's and Standard & Poor's agreed to pay a total of \$255 million (\$130 million and \$125 million, respectively) to settle CalPERS' claim that "Aaa" ratings on three SIVs were negligent misrepresentations under California law. This case was groundbreaking in that (i) the settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages; and (ii) it resulted in a published appellate court opinion finding that rating agencies can, contrary to decades of jurisprudence, be liable for negligent misrepresentations under California law for their ratings of privately-placed securities.

Mr. Seaver was previously associated with the law firm Devine, Millimet & Branch, P.A., where he practiced commercial litigation. He was an adjunct Professor of Law with the New England School of Law in 2003, teaching Appellate Advocacy.

Mr. Seaver is a member of the American Bar Association's Antitrust Section and served a two-year term as a Director for the San Francisco Bar Association's Antitrust Committee in 2012-2013.

Mr. Seaver was ranked by *The Legal 500* as a *Recommended Attorney* in *Securities Litigation* (2017-2018) and *Antitrust* (2019-2021), which noted in the 2020 release that Mr. Seaver "displays deep knowledge of specialized finance." He was also named a *Super Lawyer* by *Northern California Super Lawyers Magazine* (2017-2020), and has been recognized by *Global Competition Review's Who's Who Legal: Competition* (2017-2019). *Who's Who Legal* has also named Mr. Seaver a *Thought Leader* in *Competition* (2019-2020). He was also ranked by *Benchmark Litigation* as a *California Litigation Star* (2022), *Local Litigation Star* (2019-2020, 2022), *California Future Star* (2020-2021), and *Noted Star* (2019-2021) in *Plaintiff Work*

and *Securities*. He was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021).

Mr. Seaver graduated *magna cum laude* from Boston University in 1994 with a B.A. in International Relations. He earned a M.Sc. from the London School of Economics in 1995 and graduated *cum laude* from the American University Washington College of Law in 1999. While in law school, Mr. Seaver served as a law clerk at the Federal Trade Commission's Bureau of Competition and as a judicial extern for the Honorable Ricardo M. Urbina, U.S. District Court for the District of Columbia.

Mr. Seaver is a member in good standing in the Commonwealth of Massachusetts, the states of California and New Hampshire, as well as the U.S. District Courts for the District of Massachusetts, the District of New Hampshire, and the Northern, Eastern, Central and Southern Districts of California.

MATTHEW D. PEARSON



A partner in the firm's San Francisco office, Matthew D. Pearson focuses his practice on securities, antitrust and consumer protection litigation. Mr. Pearson is an integral member of the firm's New Case Investigations Team and devotes a substantial amount of his time to evaluating and investigating potential new cases. Mr. Pearson also monitors foreign securities litigation, tracks developments in foreign class action and securities law, and assists clients interested in litigating abroad.

Since joining the firm in 2005, Mr. Pearson has served in key roles on a number of the firm's leading securities and antitrust cases. On the securities side, Mr. Pearson was part of the litigation team in *In re The Bear Stearns Cos. Inc. Securities, Derivative and ERISA Litigation*, Master File No. 08-MDL No. 1963 (S.D.N.Y.), which resulted in settlements totaling \$294.9 million for aggrieved investors.

In his antitrust practice, Mr. Pearson was a prominent member of the firm's team leading the *In re New Motor Vehicles Canadian Export Antitrust Litigation*, No. 03-md-1532 (D. Me.), involving allegations that major automakers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States. Mr. Pearson was involved in all aspects of this nationwide, multi-jurisdictional litigation, including discovery, class certification, extensive expert reports, summary judgment, appeals in multiple courts, and settlement. The federal case ended in 2009. Mr. Pearson currently represents car buyers in a related litigation in California state court, captioned *In re Automobile Antitrust Cases I and II*, JCCP Nos. 4298 and 4303 (San Francisco Superior Court), which continues against one remaining automaker defendant. To date, the firm has achieved settlements totaling over \$55 million for class members in the federal and California actions.

Mr. Pearson also assisted in the firm's efforts to achieve a historic \$295 million settlement with De Beers, where the firm represented a class of diamond resellers alleging De Beers unlawfully monopolized the worldwide supply of diamonds. The settlement was significant because, in addition to the \$295 million cash payment, the settlement included an agreement by De Beers to submit to the jurisdiction of the U.S. court to enforce the terms of the settlement and a comprehensive injunction limiting De Beers' ability to restrict the worldwide supply of diamonds in the future. The firm's work in this case – believed to be the first successful prosecution of De Beers under U.S. antitrust laws – serves as a template for corralling foreign monopolists.

Mr. Pearson co-authored an amicus brief submitted to the California Supreme Court on behalf of three unions in the Kwikset case, involving products falsely labeled as "Made in the USA." The California Supreme Court's ultimate opinion (*Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011)), was highly favorable to our clients' interests and became one of the leading opinions regarding standing under California's Unfair Competition Law.

In 2021, Mr. Pearson was selected as a *Super Lawyer* by *Northern California Super Lawyers* magazine.

Mr. Pearson received his law degree in 2004 from the University of California, Davis, School of Law, where he completed the King Hall Public Service Law Program. He completed his undergraduate studies at the

University of California, Los Angeles, earning a Bachelor of Arts in Political Science, with an International Relations concentration.

Mr. Pearson is a member in good standing in the state bar of California, and the United States District Courts for the Northern, Central and Southern Districts of California.

**Lieff
Cabraser
Heimann &
Bernstein**
Attorneys at Law

William Bernstein

PARTNER

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A Leader In The Plaintiffs' Bar

William Bernstein has practiced law for more than three decades. Who's Who Legal called him, "a leader in the plaintiffs' bar in the fields of complex civil litigation, antitrust, and consumer protection law."

Notable cases Bill has litigated include price-fixing suits against pharmaceutical companies on behalf of retail pharmacies, consumer claims against the world's largest vitamin manufacturers for crafting a global "vitamins cartel," charges against natural gas and energy companies for manipulating the price of natural gas and electricity in California during the California energy crisis of 2000-2001, and qui tam claims against the Sutter hospital system for anesthesia service overcharges. These cases, in total, resulted in over \$1.3 billion in settlements for consumers and businesses.

Bill also oversaw negotiations in the landmark settlement and injunction against De Beers for monopolizing the trade of rough diamonds in the U.S. for nearly 60 years. As featured in the 2008 Plaintiffs Hot List, The National Law Journal wrote,

"The plaintiffs' firms' pluck, and some luck, resulted in a \$295 million settlement for De Beers' customers [and] secured De Beers' pledge to abide by federal and state antitrust laws and accept court oversight to ensure compliance."

Bill teaches settlement law as an Adjunct Professor of Law at the University of San Francisco. Bill has been repeatedly recognized as a "Super Lawyer for Northern California" by Super Lawyers magazine.

Areas of Practice

Antitrust, Consumer Protection, Securities, Qui Tam

Education

University of San Francisco School of Law, San Francisco, California, J.D. - 1975

Law Review: San Francisco Law Review, 1974 - 1975

University of Pennsylvania, Philadelphia, Pennsylvania, B.A. - 1972

Honors: General Honors

Bar Admissions

California, 1975

New York, 1985

U.S. Supreme Court, 1985

U.S. Court of Appeals 3rd Circuit, 2008

U.S. Court of Appeals 9th Circuit, 1987

U.S. District Court Northern District of California, 1975

U.S. District Court Central District of California, 1991

U.S. District Court Eastern District of California, 1991

U.S. District Court Southern District of California, 1992

Professional Associations and Memberships

Association of Business Trial Lawyers (Board of Governors, 2005 - Present)

Bar Association of San Francisco

Marin County Bar Association (Admin. of Justice Committee, 1988)

State Bar of California

Published Works

"The Rise and Fall of Enron's One-To-Many Trading Platform," American Bar Association Antitrust Law Section, Annual Spring Meeting, 2005

"Effective Use of Class Action Procedures in California Toxic Tort Litigation," Hastings West-Northwest Journal of Environmental and Toxic Torts Law and Policy, No. 3, Spring 1996

Classes/Seminars

Law of Settlements, University of San Francisco, School of Law, 2006 - Present

Honors and Awards

AV Preeminent Peer Review Rated, Martindale-Hubbell

"California Litigation Star," Benchmark Plaintiff (ranked as one of California's leading litigators in antitrust law)

Selected for inclusion by peers in The Best Lawyers in America in the fields of "Litigation - Antitrust," 2013 - 2021

"Super Lawyer for Northern California," Super Lawyers, 2004 - 2020

"Consumer Attorney of the Year Finalist," CAOC, 2014

"Top Attorneys In Antitrust Law," Super Lawyers Corporate Counsel Edition, 2010, 2012

"Lawdragon Finalist," Lawdragon, 2009 - 2011

Princeton Premier Registry, Business Leaders and Professionals, 2008 - 2009

"Top 100 Trial Lawyers in California," American Trial Lawyers Association, 2008

Who's Who Legal, 2007

Unsung Hero Award, Appleseed, 2006

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A Determined Advocate for Fair Competition

Eric B. Fastiff has practiced commercial litigation for the past 25 years, working on numerous cases involving the drug, food, technology, finance, and natural resource industries. He also represents businesses in commercial disputes with their suppliers and competitors. His clients include governments, Native American tribes and their health providers, businesses, individuals, and consumer groups.

Eric currently represents numerous Native American tribes and health providers seeking to recover damages the tribes suffered as a result of the Opioids and Juul epidemics.

Eric served as co-lead counsel in the California Cipro litigation, representing California consumers and third party payors in a state court class action lawsuit charging Bayer, Barr Labs, and other generic prescription drug manufacturers with a conspiracy to restrain competition in the sale of Bayer's blockbuster antibiotic drug Ciprofloxacin, sold as Cipro. The 17-year litigation ultimately resulted in settlements totaling \$399 million, a result the trial court described as "extraordinary." Eric and the LCHB team's work on the Cipro case led to recognition by California Lawyer and the Daily Journal as 2016 California Lawyers of the Year and receipt of the American Antitrust Institute's 2017 award for Outstanding Private Practice Antitrust Achievement.

Eric also represents The Charles Schwab Corporation in a suit against several major banks for allegedly manipulating the London Interbank Offered Rate (LIBOR), and successfully led the prosecution of a two week arbitration on behalf of a client that alleged both intellectual property and breach of contract claims. Eric's notable successes include representing businesses that purchased TFT-LCD panels and products in litigation charging that the world's leading TFT-LCD manufacturers conspired to fix prices. The litigation resulted in settlements totaling over \$470 million.

Areas of Practice

Antitrust & Intellectual Property, Commercial Litigation

Education

Cornell Law School, Ithaca, New York

J.D. - 1995

Law Journal: Cornell International Law Journal, Editor-in-Chief

London School of Economics, London, England

M.Sc.(Econ.) - 1991

Tufts University, Medford/Somerville, Massachusetts

B.A. (Political Science; History) - 1990

Honors: Cum Laude; Magno Cum Honore in Thesi

Bar Admissions

California, 1996

District of Columbia, 1997

U.S. Court of Appeals Federal Circuit, 2007

U.S. Court of Federal Claims, 1996

U.S. Court of Appeals 3rd Circuit, 2008

U.S. Court of Appeals 9th Circuit, 1996

U.S. District Court Central District of California

U.S. District Court Eastern District of California, 2004

U.S. District Court Northern District of California, 1997

U.S. District Court Southern District of California, 2004

U.S. District Court of the District of Columbia, 1999

U.S. District Court Eastern District of Wisconsin, 2010

Professional Associations and Memberships

American Antitrust Institute, Advisory Board, 2012 - Present

Bar Association of San Francisco

Children's Day School, Board of Trustees

Committee to Support the Antitrust Laws, President, 2017

District of Columbia Bar Association

Journal of Generic Medicines, Editorial Board, 2003 - Present

State Bar of California

U.S. Court of Federal Claims Bar Association

Published Works

General Editor, California Class Actions Practice and Procedures, 2003 - 2009

Coordinating Editor and Co-Author, California section of the ABA State Class Action Survey, 2003 - 2008

"US Generic Drug Litigation Update," Journal of Generic Medicines 212, 2004

"The Proposed Hague Convention on the Recognition and Enforcement of Civil and Commercial Judgments: A Solution to Butch Reynolds's Jurisdiction and Enforcement Problems," 28 Cornell

Honors and Awards

Lawyer of the Year for Antitrust Litigation,” Northern California, Best Lawyers, 2021
Selected for inclusion by peers in The Best Lawyers in America in the fields of “Litigation - Antitrust,” 2013 - 2022
“Lawdragon 500 Leading Plaintiff Financial Lawyers in America,” Lawdragon, 2019-2021
“Top 100 Super Lawyers of Northern California,” Super Lawyers, 2020, 2021
“Lawdragon 500 Leading Lawyers in America,” Lawdragon, 2019 - 2021
“Super Lawyer for Northern California,” Super Lawyers, 2010 - 2021
“Plaintiff Law Trailblazer,” National Law Journal, 2018
“Outstanding Private Practice Antitrust Achievement,” American Antitrust Institute, 2017
“Top Plaintiff Lawyers,” Daily Journal, 2016 - 2017
“Leader in the Field” for Antitrust - Plaintiffs (California); Antitrust - Plaintiffs (Nationwide), Chambers USA, 2017
“California Litigation Star,” Benchmark Plaintiff, 2013 - 2016
“California Lawyer Attorney of the Year (CLAY) Award,” California Lawyer, 2016
“Top 100 Lawyers in California,” Daily Journal, 2013
Legal 500 recommended lawyer, LegalEase, 2013
“Top Attorneys in Business Law,” Super Lawyers Corporate Counsel Edition, 2012
“Lawdragon Finalist,” Lawdragon, 2009

**Lieff
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Attorneys at Law

Michelle Lamy

Partner

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Michelle Lamy is a partner in Lieff Cabraser’s San Francisco office. She specializes in employment and antitrust class actions on behalf of plaintiffs, and individual cases addressing sexual abuse and sex trafficking on behalf of survivors.

Prior to joining Lieff Cabraser, Michelle was a Law Clerk to the Honorable Thelton E. Henderson of the United States District Court for the Northern District of California. Michelle earned her law degree from Stanford Law School. While there, Michelle was a Levin Center Public Interest Fellow, worked at the Stanford Community Law Clinic, served on the Executive Board of the Stanford Journal of Civil Rights & Civil Liberties, and was Co-President of Law Students for Reproductive Justice. Prior to attending law school, Michelle earned a bachelor of arts degree from Boston College.

Education

Stanford Law School, Palo Alto, California, J.D. - 2015

Boston College, Chestnut Hill, Massachusetts, B.A. (*summa cum laude*) - 2009

Bar Admissions

California, 2015

U.S. Court of Appeals for the Ninth Circuit, 2017

U.S. District Court, Northern District of California, 2017

U.S. District Court, Western District of Wisconsin, 2016

Honors & Awards

“Rising Star for Northern California,” Super Lawyers, 2019-2021

“Outstanding Private Practice Antitrust Achievement,” American Antitrust Institute, 2020

Professional Associations & Memberships

Bar Association of San Francisco, Litigation Section Executive Committee, 2021

Equal Rights Advocates, Litigation Committee, 2021

American Bar Association

State Bar of California

Classes/Seminars

Moderator, "Ethics of Litigating in a Post-Pandemic World," November 2021

Speaker, "2021 Impact Fund Class Action Conference," February 2021

Panelist, Stanford Law School "Women in Plaintiffs' Law" Event, February 2020

Speaker, "Sexual Harassment in the Workplace: Understanding Your Rights in the Age of Tech and Trump," November 2017

Tracy R. Kirkham graduated *cum laude* from the Washington College of Law at the American University, and worked briefly in government, as a law clerk to an Administrative Law Judge and then a staff attorney at the United States Department of Energy. Since entering private practice, she has specialized in complex business and class action litigation, with a particular emphasis in antitrust enforcement. Since forming Cooper & Kirkham, P.C., with Josef D. Cooper in 1992, Ms. Kirkham has been Lead Counsel or a member of Plaintiffs' Executive Committee in federal and state antitrust cases that have collectively recovered more than \$2.5 billion in settlements for class members, including most recently, *In Re Dynamic Access Memory (DRAM) Antitrust Litigation*, MDL 1486 (N.D.Cal.) (Co-Lead Counsel); *In re Parking Heaters Antitrust Litigation*, Case No. 15-MC-0940 (DLI) (JO) (E.D.N.Y.) (Co-Lead Counsel); *In Re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL 1827 (N.D. Cal.) (Executive Committee); and *Microsoft I-V Cases*, J.C.C.P. No. 4106 (San Francisco Super. Ct.) (Executive Committee).

SAVERI & SAVERI, INC.
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SAVERI & SAVERI, INC., an AV-rated law firm, was established in 1959. The firm engages in antitrust and securities litigation, product defect cases, and in general civil and trial practice. For over sixty years the firm has specialized in complex, multidistrict, and class action litigation.

The Saveri Firm has extensive experience in antitrust class action litigation and trial experience, including leadership roles in many of the major antitrust class actions in the Northern District of California. In the last twenty-five years, representative leadership positions include: ***In re Citric Acid Antitrust Litig.***, MDL No. 1092, Case No. C-95-2963 FMS (N.D. Cal.) (Smith, J.) (appointed Co-Lead Counsel); ***In re Methionine Antitrust Litigation***, MDL No. 1311, Case No. C-99-3491-CRB (N.D. Cal.) (Breyer, J.) (appointed Co-Lead Counsel); ***In re Dynamic Random Access Memory Antitrust Litigation***, MDL No. 1486, Case No. 02-md-01486-PHJ (N.D. Cal.) (Hamilton, J.) (“*DRAM P*”) (appointed Co-Lead Counsel); ***In re Tableware Antitrust Litigation***, Case No. C-04-3514 VRW (N.D. Cal.) (Walker, J.) (appointed Chair of Plaintiffs’ Counsel); ***In re Static Random Access Memory (SRAM) Antitrust Litigation***, MDL No. 1819, Case No. 07-cv-01819-CW (N.D. Cal.) (Wilken, J.) (appointed to Steering Committee); ***In re Flash Memory Antitrust Litigation***, No. 4:07-CV-00086 SBA (N.D. Cal.) (Armstrong, J.) (appointed Co-Lead Counsel); ***In re TFT-LCD (Flat Panel) Antitrust Litigation***, MDL No. 1827, Case No. 07-md-01827 (N.D. Cal.) (Illston, J.) (member of plaintiffs’ executive committee); ***In re Cathode Ray Tube (CRT) Antitrust Litigation***, MDL No. 1917, Case No. 07-cv-5944-JST (N.D. Cal.) (Tigar, J.) (appointed Lead Counsel); ***In re California Title Insurance Antitrust Litigation***, Case No. 08-01341-JSW (N.D. Cal.) (White, J.) (appointed Co-Lead Counsel); ***In re Optical Disk Drive (ODD) Antitrust Litigation***, MDL No. 2143, Case No. 10-md-02143-RS (N.D. Cal.) (Seeborg, J.) (appointed Chair of Plaintiffs’ Executive Committee); ***In re Lithium Ion Batteries Antitrust Litigation***, MDL No. 2420, Case No. 13-md-2420-YGR (N.D. Cal.) (Gonzalez Rogers, J.) (appointed Co-Lead Counsel); ***In re Dynamic Random Access Memory (DRAM) Direct Purchaser Antitrust Litigation***, No. 18-cv-3805-JSW-KAW (N.D. Cal.) (White, J.) (“*DRAM IP*”) (appointed Co-Lead Counsel); ***Cameron v. Apple Inc.***, No. 4:19-cv-03074-YGR (N.D. Cal.) (Gonzalez Rogers, J.) (appointed to Plaintiffs’ Executive Committee).

In addition to these cases, the Saveri Firm has been appointed to lead major antitrust class actions in federal courts throughout the country. The Saveri Firm is known for its antitrust class action experience, dedication to vigorously prosecuting its cases, and working collaboratively and efficiently with other counsel.

PARTNERS

R. ALEXANDER SAVERI, born San Francisco, California, July 22, 1965; admitted to bar, 1994, California and U.S. District Court, Northern District of California; 1995, U.S. Court of Appeals, Ninth Circuit; 2000, U.S. District Court, Southern District of California and U.S. District Court, Central District of California; 2012, U.S. Court of Appeals, Third Circuit. *Education:* University of Texas at Austin (B.B.A., Finance 1990); University of San Francisco School of Law (J.D., 1994), University of San Francisco Maritime Law Journal 1993–1994. *Member:* State Bar of California; American Bar Association (Member, Antitrust Section); Association of Trial Lawyers of America; University of San Francisco Inn of Court; National Italian American Bar Association; University of San Francisco Board of Governors (2003–2006); Legal Aid Society (Board of Directors).

Mr. Saveri is the managing partner of Saveri & Saveri, Inc. After graduating from law school, he began working for his father and uncle at Saveri & Saveri, P.C. on antitrust and complex litigation. The current practice of Saveri & Saveri, Inc. emphasizes class action antitrust litigation.

He has an AV Preeminent Peer Review Rating on Martindale-Hubbell and was named a “Super Lawyer for Northern California” in 2019 and 2020.

Mr. Saveri has served or is serving as court-appointed Co-Lead or Liaison Counsel in the following cases:

In re Lithium Ion Batteries Antitrust Litigation, MDL No. 2420, Case No. 13-md-2420-YGR, United States District Court, Northern District of California (antitrust class action on behalf of direct purchasers of lithium ion batteries).

In re California Title Insurance Antitrust Litigation, Case No. 08-01341 JSW, United States District Court, Northern District of California (antitrust class action involving federal antitrust laws and California statutory law for unlawful practices concerning payments for title insurance in California).

In re Intel Corp. Microprocessor Antitrust Litigation, MDL No. 1717, United States District Court, District of Delaware (antitrust class action on behalf of all consumers in the United States that indirectly purchased Intel x86 microprocessors).

In re Vitamin C Antitrust Litigation, MDL No. 1738, United States District Court, Eastern District of New York (antitrust class action on behalf of all California indirect purchasers of Vitamin C).

In re Polychloroprene Antitrust Cases, J.C.C.P. No. 4376, Los Angeles Superior Court (antitrust class action on behalf of all California indirect purchasers of polychloroprene rubber).

In re NBR Cases, J.C.C.P. No. 4369, San Francisco Superior Court (antitrust class action on behalf of all California indirect purchasers of acrylonitrile-butadiene rubber (“NBR”).

Carpinelli v. Boliden AB, Master File No. CGC-04-435547, San Francisco Superior Court (antitrust class action on behalf of all California indirect purchasers of copper tubing).

Competition Collision Center, LLC v. Crompton Corporation, Case No. CGC-04-431278, San Francisco Superior Court (antitrust class action on behalf of all California indirect purchasers of plastic additives).

In re Urethane Cases, J.C.C.P. No. 4367, San Francisco Superior Court (antitrust class action on behalf of all California indirect purchasers of urethane and urethane chemicals).

The Harman Press v. International Paper Co., Master File No. CGC-04-432167, San Francisco Superior Court (antitrust class action on behalf of all California indirect purchasers of publication paper).

In re Label Stock Cases, J.C.C.P. No. 4314, San Francisco Superior Court (antitrust class action on behalf of all California indirect purchasers of high-pressure label stock).

Richard Villa v. Crompton Corporation, Master File No. CGC-03-419116, San Francisco Superior Court (antitrust class action on behalf of California indirect purchasers of EPDM).

Russell Reidel v. Norfalco LLC, Master File No. CGC-03-418080, San Francisco Superior Court (antitrust class action on behalf of California indirect purchasers of sulfuric acid).

Smokeless Tobacco Cases I-IV, J.C.C.P. Nos. 4250, 4258, 4259 and 4262, San Francisco Superior Court (certified antitrust class action on behalf of California consumers of smokeless tobacco products).

Electrical Carbon Products Cases, J.C.C.P. No. 4294, San Francisco Superior Court (Private Entity Cases) (antitrust class action on behalf of California indirect purchasers of electrical carbon products).

The Vaccine Cases, J.C.C.P. No. 4246, Los Angeles Superior Court (medical monitoring class action on behalf of children exposed to mercury laden vaccines).

In re Laminate Cases, J.C.C.P. No. 4129, Alameda Superior Court (antitrust class action on behalf of California indirect purchasers of high-pressure laminate).

Compact Disk Cases, J.C.C.P. No. 4123, Los Angeles Superior Court (antitrust class action on behalf of California consumers of prerecorded compact disks).

Sorbate Prices Cases, J.C.C.P. No. 4073, San Francisco Superior Court (antitrust class action on behalf of California indirect purchasers of sorbate).

In re Flat Glass Cases, J.C.C.P. No. 4033, San Francisco Superior Court (antitrust class action on behalf of California indirect purchasers of flat glass products).

Vitamin Cases, J.C.C.P. No. 4076, San Francisco Superior Court (antitrust class action on behalf of California indirect purchasers of vitamins).

California Indirect Purchaser MSG Antitrust Cases, Master File No. 304471, San Francisco Superior Court (antitrust class action on behalf of California indirect purchasers of Monosodium Glutamate).

In re Aspartame Indirect Purchaser Antitrust Litigation, Master Docket No. 06-1862-LDD, United States District Court, Eastern District of Pennsylvania (antitrust class action on behalf of California indirect purchasers of aspartame).

GM Car Paint Cases, J.C.C.P. No. 4070, San Francisco Superior Court (class action on behalf of all California owners of General Motors vehicles suffering from paint delamination).

In re TelexFree Securities Litigation, Master Docket No. 4:14-md-02566-TSH) (appointed to the executive committee in one of the largest pyramid scheme cases in history).

GEOFFREY C. RUSHING, born San Jose, California, May 21, 1960; admitted to bar, 1986, California and U.S. District Court, Northern District of California; 2017, U.S. Court of Appeals, Ninth Circuit. *Education*: University of California, Berkeley (A.B. with honors, 1982); University of California, Berkeley, Boalt Hall (J.D., 1986). *Member*: State Bar of California. *Honors & Distinctions*: Named a “Super Lawyer for Northern California” in 2020-2022.

CADIO ZIRPOLI, born Washington D.C., September 1, 1967; admitted to bar, 1995, California and U.S. District Court, Northern District of California; 2015, U.S. Court of Appeals, Ninth Circuit. *Education*: University of California, Berkeley (B.A., 1989); University of San Francisco School of Law (J.D., *cum laude*, 1995). *Experience*: Assistant District Attorney, City and County of San Francisco 1996–2000. *Member*: State Bar of California.

Mr. Zirpoli has an AV Preeminent Peer Review Rating on Martindale-Hubbell and was named a “Super Lawyer for Northern California” in 2010, 2014–2022 (Top 100 Northern California Super Lawyers List, 2018-2021).

ASSOCIATES

MATTHEW D. HEAPHY, born Hartford, Connecticut, December 4, 1974, admitted to bar, 2003, California and U.S. District Court, Northern District of California; 2017, U.S. Court of Appeals, Ninth Circuit. *Education*: Wesleyan University (B.A., 1997); University of San Francisco School of Law (J.D., *cum laude*, 2003), University of San Francisco Law Review, International & Comparative Law Certificate, with Honors. *Publications*: Comment: The Intricacies of Commercial Arbitration in the United States and Brazil: A Comparison of Two National Arbitration Statutes, 37 U.S.F. L. Rev. 441 (2003); M. Heaphy & Co-Author, Does the United States Really Prosecute its Servicemembers for War Crimes? Implications for Complementarity Before the ICC, 21 Leiden J. Int’l L. 165 (March 2008); M. Heaphy, The United States and the 2010 Review Conference of the Rome Statute of the ICC, 81 Int’l Rev. Penal L. 77 (2010). *Member*: State Bar of California. *Languages*: French, Italian.

MELISSA SHAPIRO, born Los Angeles, California, May 27, 1980, admitted to bar, 2006, California and U.S. District Court, Northern and Central Districts of California. *Education*: University of Southern California (B.A., 2002); Pepperdine University School of Law (J.D., 2005), Pepperdine Law Review. *Publication*: Comment: Is Silica the Next Asbestos? An Analysis of the Sudden Resurgence of Silica Lawsuit Filings, 32 Pepp. L. Rev. 983 (2005).

TRAVIS L. MANFREDI, born Fresno, California, March 16, 1980, admitted to bar January 2012, California and U.S. District Court, Northern District of California. *Education*: University of California, Santa Cruz (B.A. 2004); University of San Francisco School of Law

(J.D., *cum laude*, 2011): University of San Francisco Law Review Managing Editor, Vol. 45; Member of National Appellate Advocacy Competition team; Research assistant to Professor J. Thomas McCarthy, author of McCarthy on Trademarks and Unfair Competition. Publications: Survey, *In re Spirits Int'l, N.V.*, 563 F.3d 1347 (Fed. Cir. 2009), 14 *Intell. Prop. L. Bull.* 71 (2009); Note, Sans Protection: Typeface Design and Copyright in the Twenty-First Century, 45 *U.S.F. L. Rev.* 841 (2011). *Member*: State Bar of California.

DAVID HWU, born Stanford, California, November 20, 1985; admitted to bar, 2012, California and U.S. District Court, Northern District of California. *Education*: University of California, Berkeley (B.A., 2008); University of San Francisco School of Law (J.D., 2011). *Member*: State Bar of California. *Languages*: Chinese, Japanese. *Honors & Distinctions*: Named to the Super Lawyers Northern California Rising Stars List, 2018–2020.

SARAH VAN CULIN, born London, England, September 2, 1985, admitted to bar, 2013, California; 2015, U.S. District Court, Northern District of California; 2020, U.S. District Court, Central District of California. *Education*: University of Nottingham (B.A., English, 2007); University of San Francisco School of Law (J.D., *cum laude*, 2013), Editor in Chief, University of San Francisco Law Review, Business Law Certificate, with Honors. *Member*: State Bar of California, Antitrust, UCL and Privacy Section; American Bar Association, Section of Antitrust Law; Bar Association of San Francisco, Antitrust and Business Regulation Section. *Honors & Distinctions*: Named to the Super Lawyers Northern California Rising Stars List, 2018–2020.

LEGAL ASSISTANTS

ALYSSA WEAVER (Paralegal), born San Mateo, California, August 10, 1989. *Education*: City College of San Francisco (A.S. 2015).44

FOUNDING PARTNERS

From the firm's founding in 1959, Saveri & Saveri, Inc. activity participated in numerous antitrust and class action cases.

GUIDO SAVERI, born San Francisco, California, June 10, 1925; admitted to bar, 1951, California; died October 18, 2021. *Education*: University of San Francisco (B.S., *summa cum laude*, 1947; LL.B., *summa cum laude*, 1950). *Member*: Bar Association of San Francisco; State Bar of California; American Bar Association (Member, Antitrust Section); Lawyers Club of San Francisco.

Mr. Saveri was a senior partner of Saveri & Saveri, Inc. He started the firm in 1959 and associated with Joseph L. Alioto, Esq. in the practice of antitrust and other corporate litigation.

Between completing law school in 1951 and until forming his firm in 1959 he was associated with the law firm of Pillsbury, Madison & Sutro in San Francisco, California.

Mr. Saveri testified before the Federal Judiciary Committee on antitrust matters and lectured on antitrust matters before The Association of Trial Lawyers of America, the Federal Practice Institute, and other lawyer associations. Mr. Saveri also wrote various periodicals on antitrust topics. Mr. Saveri was named the 2007 Antitrust Lawyer of the Year by the State Bar of California's Antitrust and Unfair Competition Law Section. He has the highest rating in Martindale Hubbell, namely, "AV" and was named a "Super Lawyer for Northern California" in 2010.

From the time he started his firm in 1959, Mr. Saveri devoted practically all of his time to antitrust and other corporate and complex litigation. He actively participated in antitrust cases involving myriad industries: electronics, electrical, water meter, scrap metal, liquid asphalt, dairy products, typewriter, vanadium, pipe-fitting, grocery business, liquor, movie, animal-raising business, chemical, snack food, paper label, chrysanthemum, drug, sugar, records, industrial gas, wheelchair, rope, copper tubing, folding cartons, ocean shipping, pancreas gland, corrugated container, glass container, fine paper, food additives, prescription drugs, medical x-ray film, computer chips, and many others.

RICHARD SAVERI, Partner, 1951–1999.

CLASS ACTION LITIGATION

The following are some additional class action cases in which Saveri & Saveri, Inc. actively participated as class counsel:

In re NASDAQ Market-Makers Antitrust Litigation, MDL No. 1023, United States District Court, Southern District of New York. A nationwide class action on behalf of purchasers of securities on the NASDAQ market alleging a violation of the Sherman Act for fixing the spread between the quoted buy and sell prices for the securities sold on the NASDAQ market.

In re Potash Antitrust Litigation, MDL No. 981, United States District Court, District of Minnesota, Third Division. A class action on behalf of all direct purchasers of potash throughout the United States alleging a horizontal price fix.

In re Airline Ticket Commission Antitrust Litigation, MDL No. 1058, United States District Court, District of Minnesota. A class action alleging that the major airlines conspired to fix travel agents' commission rates.

Pharmaceutical Cases I, II & III, J.C.C.P. Nos. 2969, 2971 & 2972, San Francisco Superior Court. A certified class action on behalf of all California consumers against the major drug manufacturers for fixing the price of all brand name prescription drugs sold in California.

Perish v. Intel Corp., Civ. No. 755101, Santa Clara Superior Court. A nationwide class action on behalf of purchasers of Intel Pentium chips alleging consumer fraud and false advertising.

In re Carpet Antitrust Litigation, MDL No. 1075, United States District Court, Northern District of Georgia, Rome Division. A nationwide class action on behalf of all direct purchasers of polypropylene carpet alleging a horizontal price fix.

In re California Indirect-Purchaser Plasticware Antitrust Litigation, Civ. Nos. 961814, 963201, 963590, San Francisco Superior Court. A class action on behalf of indirect purchasers of plasticware alleging price-fixing.

In re Worlds of Wonder Securities Litigation; No.C-87-5491 SC, United States District Court, Northern District of California.

Pastorelli Food Products, Inc. v. Pillsbury Co., et al., No. 87C 20233, United States District Court, Northern District of Illinois.

Red Eagle Resources Corp., et al. v. Baker Hughes Incorporated, et al., No. 91-627 (NWB) (Drill Bits Litigation), United States District Court, Southern District of Texas, Houston Division.

In re Wirebound Boxes Antitrust Litigation, MDL No. 793, United States District Court, District of Minnesota, Fourth Division. A nationwide class action on behalf of purchasers of wirebound boxes alleging a horizontal price fix.

In re Bulk Popcorn Antitrust Litigation, No. 3-89-710, United States District Court, District of Minnesota, Third Division. A nationwide class action on behalf of direct purchasers of bulk popcorn alleging price-fixing.

Nancy Wolf v. Toyota Sales, U.S.A. and Related Cases, No. C 94-1359, United States District Court, Northern District of California.

Mark Notz v. Ticketmaster - Southern, and Related Cases, No. 943327, San Francisco Superior Court. A consumer class action alleging a territorial allocation in violation of the Cartwright Act.

Neve Brothers v. Potash Corp., No. 959867, San Francisco Superior Court. A class action alleging price-fixing on behalf of indirect purchasers of potash in California.

In re Chrysler Corporation Vehicle Paint Litigation, MDL No. 1239. Nationwide class action on behalf of owners of delaminating Chrysler vehicles.

Miller v. General Motors Corp., Case No. 98 C 7836, United States District Court, Northern District of Illinois. Nationwide class action alleging a defective paint process which causes automobile paint to peel off when exposed to ordinary sunlight.

ANTITRUST LITIGATION

The following list outlines some of the antitrust litigation in which the firm of Saveri & Saveri has been involved:

1. ***Union Carbide & Carbon Corp. v. Nisley***, 300 F. 2d 561 (10th Cir. 1960)
2. ***Continental Ore. Co. v. Union Carbide and Carbon Corp.***, 370 U.S. 690 (1962)
3. ***Public Service C. of N.M. v. General Elec. Co.***, 315 F.2d 306 (10th Cir. 1963)

4. *State of Washington v. General Elec. Co.*, 246 F. Supp. 960 (W.D. Wash. 1965)
5. *Nurserymen's Exchange v. Yoder Brothers, Inc.*, No. 70-1510 (N.D. Cal. 1970)
6. *Bel Air Markets v. Foremost Dairies Inc.*, 55 F.R.D. 538 (N.D. Cal. 1972)
7. *In re Western Liquid Asphalt Case*, 487 F.2d 191 (9th Cir. 1973)
8. *In re Gypsum Cases*, 386 F. Supp. 959 (N.D. Cal. 1974)
9. *City of San Diego v. Rockwell Manufacturing Co.*
10. *In re Private Civil Treble Damage Actions Against Certain Snack Food Companies*, Civil No. 70-2121-R (C.D. Cal. 1970)
11. *In re Sugar Antitrust Litigation*, MDL No. 201, 559 F.2d 481 (9th Cir. 1977)
12. *Sun Garden Packing Co. v. International Paper Co.*, No. C-72-52 (N.D. Cal. 1972)
13. *In re Folding Carton Antitrust Litigation*, MDL No. 250 (E.D. Ill.)
14. *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, No. 4-72 Civ 435, 410 F. Supp. 706 (D. Minn. 1972)
15. *Building Service Union Health & Welfare Trust Fund v. Chas. Pfizer & Company*, Nos. 4-71 Civ. 435, 4-71 Civ. 413 (D. Minn. 1971)
16. *In re Fine Paper Antitrust Litigation*, MDL No. 323 (E.D. Pa.)
17. *In re Armored Car Antitrust Litigation*, CA No. 78-139A, 472 F. Supp. 1357 (N.D. Ga. 1978)
18. *In re Ocean Shipping Antitrust Litigation*, MDL No. 395, 500 F. Supp. 1235 (3d Cir. 1984)
19. *In re Corn Derivatives Antitrust Litigation*, MDL No. 414 (D.N.J. 1980)
20. *In re Coconut Oil Antitrust Litigation*, MDL No. 474 (N.D. Cal.)
21. *Garside v. Everest & Jennings Intern.*, No. S-80-82 MLS, 586 F. Supp. 389 (E.D. Cal. 1984)
22. *Lorries Travel & Tours, Inc. v. SFO Airporter Inc.*, 753 F.2d 790 (9th Cir. 1985)
23. *O'Neill Meat Co. v. Eli Lilly and Company*, No. 30 C 5093 (N.D. Ill.)
24. *In re Records and Tapes Antitrust Litigation*, No.82 C 7589, 118 F.R.D. 92 (N.D. Ill. 1987)
25. *In re Industrial Gas Antitrust Litigation*, No. 80 C 3479, 100 F.R.D. 280 (N.D. Ill. 1987)
26. *Matter of Superior Beverages/Glass Container Consolidated Pretrial*, No. 83-C512, 137 F.R.D. 119 (N.D. Ill. 1990)
27. *Big D. Building Corp. v. Gordon W. Wattles*, MDL No. 652
28. *In re Insurance Antitrust Litigation*, MDL No. 767 (N.D. Cal.)
29. *In re Wirebound Boxes Antitrust Litigation*, MDL No. 793 (D. Minn.)

30. *In re Domestic Air Transp. Antitrust Litigation*, MDL No. 861, 144 F.R.D. 421 (N.D. Ga. 1992)
31. *In re Infant Formula Antitrust Litigation*, MDL No. 878 (N.D. Fla.)
32. *Finnegan v. Campeau Corp.*, 915 F.2d 824 (2d Cir. 1990)
33. *In re Carbon Dioxide Industry Antitrust Litigation*, MDL No. 940, 155 F.R.D. 209 (M.D. Fla.)
34. *In re Medical X-Ray Film Antitrust Litigation*, No. CV 93-5904 (E.D.N.Y. 1993)
35. *In re Bulk Popcorn Antitrust Litigation*, 792 F. Supp. 650 (D. Minn. 1992)
36. *In re Baby Food Antitrust Litigation*, No. 92-5495 (NHP) (D.N.J. 1992)
37. *In re Potash Antitrust Litigation*, MDL No. 981 (D. Minn.)
38. *In re Brand Name Prescription Drugs Antitrust Litigation*, MDL No. 997, 94 C 897 (N.D. Ill.)
39. *In re Citric Acid Antitrust Litigation*, MDL No. 1092 (N.D. Cal.)
40. *In re NASDAQ Market-Makers Antitrust Litigation*, MDL No. 1023 (S.D.N.Y.)
41. *In re Airline Ticket Commission Antitrust Litigation*, MDL No. 1058 (D. Minn.)
42. *Pharmaceutical Cases I, II & III*, J.C.C.P. Nos. 2969, 2971 & 2972, San Francisco Superior Court
43. *In re Carpet Antitrust Litigation*, MDL No. 1075 (N.D. Ga.)
44. *In re California Indirect-Purchaser Plastic Ware Antitrust Litigation*, Nos. 961814, 963201, 963590, San Francisco Superior Court
45. *Pastorelli Food Products, Inc. v. Pillsbury Co.*, No. 87C 20233 (N.D. Ill.)
46. *Red Eagle Resources Corp. v. Baker Hughes Inc.*, No. 91-627 (NWB) (Drill Bits Litigation) (S.D. Tex.)
47. *Mark Notz v. Ticketmaster - Southern, and Related Cases*, No. 943327, San Francisco Superior Court
48. *Neve Brothers. v. Potash Corp.*, No. 959867, San Francisco Superior Court
49. *Food Additives (Citric Acid) Cases*, J.C.C.P. No. 3625, Master File No. 974-120
50. *Biljac Associates v. First Interstate Bank*, No. 824-289, San Francisco Superior Court
51. *Diane Barela v. Ralph's Grocery Co.*, No. BC070061, Los Angeles Superior Court
52. *Leslie K. Bruce v. Gerber Products Co.*, No. 948-857, San Francisco Superior Court
53. *In re California Indirect Purchaser Medical X-Ray Film Antitrust Litigation*, Master File No. 960886
54. *Lee Bright v. Kanzaki Specialty Papers, Inc.*, No. 963-598, San Francisco Superior Court
55. *Neve Brothers v. Potash Corporation of America*, No. 959-767, San Francisco Superior Court

56. *Gaehwiler v. Sunrise Carpet Industries Inc.*, No. 978345, San Francisco Superior Court
57. *In re Commercial Tissue Products Antitrust Litigation*, MDL No. 1189 (N.D. Fla.)
58. *Sanitary Paper Cases I and II*, J.C.C.P. Nos. 4019 & 4027, San Francisco Superior Court
59. *Gaehwiler v. Aladdin Mills, Inc.*, No. 300756, San Francisco Superior Court
60. *In re Flat Glass Antitrust Litigation*, MDL No. 1200 (3d Cir.)
61. *Flat Glass Cases*, J.C.C.P. No. 4033, San Francisco Superior Court
62. *Sorbate Prices Cases*, J.C.C.P. No. 4073, San Francisco Superior Court
63. *In re Stock Options Trading Antitrust Litigation*, MDL No. 1283 (S.D.N.Y.)
64. *In re Vitamin Antitrust Litigation*, MDL No. 1285 (D.D.C.)
65. *In re Sorbates Direct Purchaser Antitrust Litigation*, Master File No. C 98-4886 CAL (N.D. Cal. 1998)
66. *Vitamin Cases*, J.C.C.P. No. 4076, San Francisco Superior Court
67. *In re PRK/Lasik Consumer Litigation*, Master File No. CV 772894, Santa Clara Superior Court
68. *In re Nine West Shoes Antitrust Litigation*, Master File No. 99-CV-0245 (BDP) (S.D.N.Y. 1999)
69. *Food Additives (HFCS) Cases*, J.C.C.P. No. 3261, Stanislaus County Superior Court
70. *In re Toys “R” Us Antitrust Litigation*, MDL No. 1211 (E.D.N.Y.)
71. *Cosmetics Cases*, J.C.C.P. No. 4056, Marin County Superior Court
72. *In re Methionine Antitrust Litigation*, MDL No. 1311 (N.D. Cal.)
73. *Bromine Cases*, J.C.C.P. No. 4108
74. *Fu’s Garden Restaurant v. Archer-Daniels-Midland*, No. 304471, San Francisco Superior Court
75. *Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives and Composites, Inc.*, No. CV 99-07796 GHK (C.D. Cal. 1999)
76. *In re Monosodium Glutamate Antitrust Litigation*, MDL No. 1328 (D. Minn.)
77. *California Indirect Purchaser Auction House Cases*, Master Case No. 310313, San Francisco Superior Court
78. *In re Cigarette Antitrust Litigation*, MDL No. 1342 (N.D. Ga.)
79. *Cigarette Price Fixing Cases*, J.C.C.P. No. 4114, Alameda County Superior Court
80. *Microsoft Cases*, J.C.C.P. No. 4106, San Francisco Superior Court
81. *Compact Disk Cases*, J.C.C.P. No. 4123, Los Angeles Superior Court
82. *In re Compact Disc Minimum Advertised Price Antitrust Litigation*, MDL No. 1361 (D. Me.)

83. *In re Ciprofloxacin Hydrochloride Antitrust Litigation*, MDL No. 1383 (E.D.N.Y.)
84. *In re Buspirone Antitrust Litigation*, MDL No. 1413 (S.D.N.Y.)
85. *In re K-Durr Prescription Drug Antitrust Litigation*, MDL No. 1419
86. *Carbon Cases*, J.C.C.P. Nos. 4212, 4216 and 4222, San Francisco Superior Court
87. *In re Polychloroprene Antitrust Cases*, J.C.C.P. No. 4376, Los Angeles Superior Court
88. *In re Urethane Cases*, J.C.C.P. No. 4367, San Francisco Superior Court
89. *The Harman Press v. International Paper Co.*, Master File No. CGC-04-432167, San Francisco Superior Court
90. *In re Label Stock Cases*, J.C.C.P. No. 4314, San Francisco Superior Court
91. *Richard Villa v. Crompton Corp.*, Master File No. CGC-03- 419116, San Francisco Superior Court
92. *Russell Reidel v. Norfalco LLC*, Master File No. CGC-03-418080, San Francisco Superior Court
93. *Smokeless Tobacco Cases I-IV*, J.C.C.P. Nos. 4250, 4258, 4259, & 4262, San Francisco Superior Court
94. *Natural Gas Antitrust Cases*, J.C.C.P. No. 4312
95. *In re Western States Wholesale Natural Gas Litigation*, MDL No. 1566 (D. Nev.)
96. *In re Automotive Refinishing Paint Cases*, J.C.C.P. No. 4199, Alameda County Superior Court
97. *In re Tableware Antitrust Litigation*, Master File No. C-04-3514 VRW (N.D. Cal. 2004)
98. *In re Credit/Debit Card Tying Cases*, J.C.C.P. No. 4335, San Francisco Superior Court
99. *In re NBR Cases*, J.C.C.P. No. 4369, San Francisco Superior Court
100. *Competition Collision Center, LLC v. Crompton Corp.*, No. CGC-04-431278, San Francisco Superior Court
101. *In re Urethane Chemicals Antitrust Litigation*, MDL No. 1616 (D. Kan.)
102. *In re Rubber Chemicals Antitrust Litigation*, MDL No. 1648 (N.D. Cal.)
103. *Carpinelli v. Boliden AB*, Master File No. CGC-04-435547, San Francisco Superior Court
104. *Automobile Antitrust Cases I and II*, J.C.C.P. Nos. 4298 and 4303, San Francisco Superior Court
105. *In re Currency Conversion Fee Antitrust Litigation*, MDL No. 1409 (S.D.N.Y.)
106. *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, MDL No. 1486 (N.D. Cal.)
107. *In re Publication Paper Antitrust Litigation*, MDL No. 1631 (D. Conn.)
108. *In re Insurance Brokerage Antitrust Litigation*, MDL No. 1663 (D.N.J.)

109. *In re Hydrogen Peroxide Antitrust Litigation*, MDL No. 1682 (E.D. Pa.)
110. *In re Intel Corp. Microprocessor Antitrust Litigation*, MDL No. 1717 (D. Del.)
111. *In re Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775 (E.D.N.Y.)
112. *In re International Air Transportation Surcharge Antitrust Litigation*, MDL No. 1793 (N.D. Cal.)
113. *Carbon Black Cases*, J.C.C.P. No. 4323, San Francisco Superior Court
114. *Madani v. Shell Oil Co.*, No. 07-CV-04296 MJJ (N.D. Cal.)
115. *In re Static Random Access Memory (SRAM) Antitrust Litigation*, MDL No. 1819 (N.D. Cal.)
116. *In re Flash Memory Antitrust Litigation*, No. 07-CV-00086-SBA (N.D. Cal.)
117. *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 1827 (N.D. Cal.)
118. *In re Korean Air Lines Co., Ltd., Antitrust Litigation*, MDL No. 1891 (C.D. Cal.)
119. *In re Fasteners Antitrust Litigation*, MDL No. 1912 (E.D. Pa.)
120. *In re Transpacific Passenger Air Transportation Antitrust Litigation*, MDL No. 1913 (N.D. Cal.)
121. *In re Cathode Ray Tube (CRT) Antitrust Litigation*, MDL No. 1917 (N.D. Cal.)
122. *In re Chocolate Confectionary Antitrust Litigation*, MDL No. 1935 (M.D. Pa.)
123. *In re Flat Glass Antitrust Litigation (II)*, MDL No. 1942 (W.D. Pa.)
124. *In re Municipal Derivatives Antitrust Litigation*, MDL No. 1950 (S.D.N.Y.)
125. *In re Aftermarket Filters Antitrust Litigation*, MDL No. 1957 (N.D. Ill.)
126. *In re Puerto Rican Cabotage Antitrust Litigation*, MDL No. 1960 (D.P.R.)
127. *In re Hawaiian and Guamanian Cabotage Antitrust Litigation*, MDL No. 1972 (W.D. Wash.)
128. *In re California Title Insurance Antitrust Litigation*, No. 08-01341 JSW (N.D. Cal.)
129. *In re Optical Disk Drive (ODD) Antitrust Litigation*, MDL No. 2143 (N.D. Cal.)
130. *Kleen Products LLC v. Packaging Corporation of America*, No. 10-5711 (N.D. Ill.)
131. *In re Automotive Parts Antitrust Litigation*, MDL No. 2311 (E.D. Mich.)
132. *In re On-Line Travel Company (OTC)/Hotel Booking Antitrust Litigation*, MDL No. 2405 (N.D. Tex.)
133. *In re Lithium Ion Batteries Antitrust Litigation*, MDL No. 2420 (N.D. Cal.)
134. *In re Capacitors Antitrust Litigation*, Master File No. 14-cv-03264 JD (N.D. Cal.)
135. *In re Resistors Antitrust Litigation*, Master File No. 15-cv-03820 JD (N.D. Cal.)
136. *In re Domestic Airline Travel Antitrust Litigation*, MDL No. 2656 (D.D.C.)
137. *In re Inductors Antitrust Litigation*, Master File No. 18-cv-00198 EJD (N.D. Cal.)

138. *In re Dynamic Random Access Memory (DRAM) Direct Purchaser Antitrust Litigation*, No. 18-cv-3805-JSW-KAW (N.D. Cal.)
139. *Cameron v. Apple Inc.*, No. 4:19-cv-03074-YGR (N.D. Cal.)

###

EXHIBIT U

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3 Jessica Moy (SBN 272941)
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12 *Attorneys for Class Plaintiffs*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
09/01/2017
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **CITY AND COUNTY OF SAN FRANCISCO**
15 **UNLIMITED JURISDICTION**

16 COORDINATION PROCEEDING SPECIAL)
17 TITLE (RULE 1550(b)))

Judicial Council Coordination
Proceeding Nos. 4298

18 AUTOMOBILE ANTITRUST CASES I)
19 AND II)

CJC-03-004298

CLASS ACTION

20 _____)
21 This document relates to:)
22 All Actions)

**DECLARATION OF TODD A. SEAVER IN
SUPPORT OF PLAINTIFFS' MOTION
FOR ENTRY OF AN ORDER ENTERING
SATISFACTION OF JUDGMENT AND
OBJECTION TO [PROPOSED] AMENDED
JUDGMENT IN FAVOR OF FORD
MOTOR COMPANY**

Date: September 29, 2017

Time: 10:30 a.m.

Dept: 304

Judge: Honorable Curtis E.A. Karnow

Date Complaint Filed: October 6, 2003

(Consolidated Amended Class Action
Complaint)

1 I, Todd A. Seaver, declare as follows:

2 1. I am an attorney licensed to practice before the courts of the State of California, and a
3 partner in the law firm Berman Tabacco, attorneys for Plaintiffs in this action. I make this
4 Declaration in support of Plaintiffs' Motion For Entry of an Order Entering Satisfaction of Judgment
5 and Objection to [Proposed] Amended Judgment In Favor of Ford Motor Company. I have personal
6 knowledge of the facts stated in this Declaration and, if called as a witness, I could and would testify
7 competently to them.

8 2. On January 6, 2012, Defendant Ford Motor Company ("Ford") obtained judgment in
9 this action. A true and correct copy of the Notice of Entry of Judgement, with attached Judgement
10 In Favor of Ford Motor Company, filed herein on January 10, 2012, is attached hereto as Exhibit 1.

11 3. On August 22, 2017, the Court entered an order awarding Ford Motor Company costs
12 in the amount of \$199,464.98. A true and correct copy of the Order Denying in Part and Granting in
13 Part Plaintiffs' Motion to Tax Costs of Ford U.S. ("Costs Order") is attached hereto as Exhibit 2.

14 4. The Costs Order provides that interest accrues from August 22, 2017, the date of the
15 Costs Order. *See Ex. 2*, at 19:9-10.

16 5. On August 28, 2017, my office attempted to tender the payment of the cost award to
17 Ford's counsel at Latham & Watkins in San Francisco.

18 6. On August 29, 2017 Ford's counsel informed Plaintiffs that they would not accept the
19 payment unless payment came from the named plaintiffs personally, stating it is Ford's position that
20 the California Rules of Professional Conduct prohibit attorneys from tendering payment of an award
21 of costs. Further, counsel for Ford threatened that it intends to execute the costs award against the
22 named plaintiffs. Specifically, Ford's counsel informed Plaintiffs that "Ford intends to execute the
23 costs award against the named plaintiffs to preserve the integrity of judgment."

24 7. I communicated to Ford's counsel that it is Plaintiffs' position that the California
25 Rules of Professional Conduct, Rule 4-210(a)(3), expressly provides that an attorney is permitted to
26 "advance[e] the costs of prosecuting or defending a claim or action ... the repayment of which may
27 be contingent on the outcome of the matter." Cal. Rules of Professional Conduct, Rule 4-210(a)(3).

28

1 Ford's counsel took the position that the cost judgment here is not actually litigation costs, but
2 rather "personal or business expenses of a . . . client" which the Rules prohibit an attorney from
3 advancing without the expectation of repayment.

4 8. Ford also communicated on August 29, 2017 that it would shortly file a "[Proposed]
5 Amended Judgement In Favor of Ford Motor Company." Within minutes, Ford did so, never
6 meeting and conferring with Plaintiffs regarding the filing.

7 9. Pursuant to the Costs Order, interest on the cost award was accruing daily. Ex. 2, at
8 19:9-10. Faced with Ford's refusal to accept the tender of payment, Ford's threat to attempt to execute
9 writs of execution on the named plaintiffs personally and, to cease the accrual of interest, Plaintiffs
10 deposited two checks with the Court in the amount of \$199,464.98, plus interest in the amount of
11 \$491.83 pursuant to Cal. Civ. Proc. Code § 685.030(d)(2). One check is in the amount of
12 \$199,464.98, representing the award of costs, and the other check is in the amount of \$491.83,
13 representing the accrual of nine (9) days of interest, at the 10% annual interest rate as provided in
14 Cal. Civ. Proc. Code § 685.010(a), for the period August 23, 2017 through August 31, 2017. The
15 interest was calculated by: (i) calculating yearly interest by multiplying the principal amount by
16 10% annual interest [$\$199,464.98 \times 10\% = \$19,946.50$]; (ii) calculating daily interest by multiplying
17 the yearly interest amount by 365 days [$\$19,946.50 \div 365 = \54.65]; and (iii) calculating interest
18 from August 23, 2017 through August 31, 2017 (nine (9) days) [$\$54.65 \times 9 = \491.83]. True and
19 correct copies of the checks payable to Ford Motor Company deposited with the Court on
20 August 31, 2017 and Trust Receipts from Court are attached hereto as Exhibit 3.

21 10. The deposit has been made pursuant to Cal. Civ. Proc. Code § 685.030(d)(2). In
22 advance of making the deposit, I spoke with Ms. Regina Dennis, the Court Manager for the Court's
23 Civil Division. Ms. Dennis advised that to accomplish the deposit I should bring a copy of the Costs
24 Order along with payment to the Court and upon remittance the Court would provide a
25 corresponding "Trust Receipt." As noted above, true and correct copies of the two Trust Receipts,
26 corresponding to each check deposited with the Court, are attached hereto as Exhibit 3.

1 11. The funds used to pay the costs award and accrued interest were sourced from the
2 attorneys' fees awarded by this Court in connection with an earlier settlement with defendant
3 General Motors of Canada, Ltd.

4 12. Plaintiffs tendered the deposit under coercion of Defendant Ford U.S. and Ford
5 Canada's counsel's written threat to execute on the assets of the class representatives. In addition,
6 payment was compelled by the daily accrual of interest.

7 13. By making this deposit, Plaintiffs are not waiving their right to appeal.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
2 and correct.

3 Executed this 1st day of September, 2017 in San Francisco, California.

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5 By: 

6 TODD A. SEAVER
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Exhibit 1

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6 *California Action Liaison Counsel*

7 [Names and addresses of additional counsel on signature page]

FILED
Superior Court of California
County of San Francisco

JAN 10 2012

CLERK OF THE COURT
BY: *Lenora Danoski*
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 CITY AND COUNTY OF SAN FRANCISCO
11 UNLIMITED JURISDICTION

12 COORDINATION PROCEEDING SPECIAL)
13 TITLE (RULE 1550(b)))
14 AUTOMOBILE ANTITRUST CASES I)
15 AND II)
16 This Document Relates to:)
17 All Actions)

Judicial Council Coordination
Proceeding Nos. 4298 and 4303

NOTICE OF ENTRY OF JUDGMENT

Dept. 304
Honorable Richard A. Kramer
Coordination Trial Judge

Trial Date: None Set

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 9, 2012 the Court entered a "Judgment in Favor of
3 Defendant Ford Motor Company," a true and correct copy of which is attached hereto as Exhibit A.

4 Dated: January 10, 2012

Respectfully Submitted,

5
6 By: 

Craig C. Corbitt

7 Craig C. Corbitt (SBN 83251)
8 Jiangxiao Athena Hou (SBN 215256)
9 Judith A. Zahid (SBN 215418)
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#3226575

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EXHIBIT A

1 WHEREAS, on May 18, 2009, this Court certified this action as a plaintiff class action
2 and defined the plaintiff class as follows:

3 All persons and entities residing in California on the date notice is first published,
4 who purchased a new or leased motor vehicle manufactured or distributed by a
5 defendant, from an authorized dealer located in California, during the period
6 January 1, 2001 through April 30, 2002, for their own use. Excluded from the
7 class are the defendants; the officers, directors or employees of any defendant; any
8 entity in which any defendant has a controlling interest; the affiliates, legal
9 representatives, attorneys, heirs or assigns of any defendant; any government
10 entity; any judge, justice or judicial officer presiding over this matter, and the
11 members of their immediate families and judicial staffs;

12 WHEREAS, on September 30, 2010, this Court ordered that Notice of Pendency of Class
13 Action be provided to the plaintiff class and that, pursuant to that Order, such notice was given to
14 the class by publication on November 15, 2010;

15 WHEREAS, on November 4, 2011, by written Order, signed by the Honorable Richard
16 Kramer, this Court granted the motion for summary judgment, or in the alternative, for summary
17 adjudication, by Defendant Ford Motor Company;

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

- 19 1. Final Judgment shall be entered in favor of Defendant Ford Motor Company;
- 20 2. Plaintiffs shall take nothing from Defendant Ford Motor Company;
- 21 3. Plaintiffs shall bear their own costs and fees in this action;

22 4. Defendant Ford Motor Company may move to recover its costs in this action, as
23 provided in Code Civ. Proc. §§ 1032 and 1033.5, by timely filing a Memorandum of
24 Costs per Court Rule 3.1700(a)(1).; and

25 5. Notice of this Judgment be provided to the class by publication of this Judgment
26 at <http://www.caautoantitrustcases.com>.

27 *JAN. 6*
Dated: *November*, 2012


THE HONORABLE RICHARD KRAMER
San Francisco Superior Court

28 J.C.C.P. No. 4298

AUTOMOBILE ANTITRUST CASES I AND II

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Approved as to form,
Dated: November __, 2011

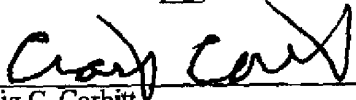
Craig C. Corbitt
ZELLE HOFMANN VOELBEL & MASON LLP
Liaison Counsel for Plaintiffs

Approved as to form
Dated: November 18, 2011

Margaret M. Zwisler
Margaret M. Zwisler
LATHAM & WATKINS LLP
Counsel for Ford Motor Company

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Approved as to form,
Dated: November 18, 2011



Craig C. Corbitt
ZELLE HOFMANN VOELBEL & MASON LLP
Liaison Counsel for Plaintiffs

Approved as to form,
Dated: November __, 2011

Margaret M. Zwisler
LATHAM & WATKINS LLP
Counsel for Ford Motor Company

Exhibit 2

FILED
San Francisco County Superior Court



AUG 22 2017

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

COORDINATION PROCEEDING SPECIAL
TITLE (Cal. R. Ct. 1550(b))

J.C.C.P. No. 4298

CJC-03-004298

AUTOMOBILE ANTITRUST CASES I, II

ORDER DENYING IN PART AND GRANTING
IN PART PLAINTIFFS' MOTION TO TAX
COSTS OF FORD US

This document relates to:
All Actions

I heard argument August 18, 2017 on plaintiffs' motion to tax costs of Ford US.

In July 2012, Judge Kramer issued an order awarding \$199,464.98 in costs in favor of two companies, Ford Canada and Ford US. Judge Kramer's merits ruling for Ford US was affirmed, and that for Ford Canada reversed.

The parties disagreed as to whether the costs order should be enforced. I noted plaintiffs had not had an adequate opportunity to challenge the assertions that all costs were actually incurred by Ford US. June 12, 2017 Order, 1-2. Further background is set forth in that order.

This motion to tax costs followed.

Litigation Costs

Plaintiffs argue that Ford US should not be permitted to recover all of the claimed costs because: (1) some costs¹ were incurred in the a federal multidistrict litigation (the MDL), not the

¹ The only item of costs specifically identified in connection with this argument is deposition costs, the largest component of the costs. See Lamy Decl., Ex. 2.

1 California litigation; (2) if deposition costs are allowed here, they should be apportioned between
2 this action and each of the other actions (including the MDL and five other state actions); (3) all
3 litigation costs should be apportioned between Ford US and Ford Canada, either because they
4 were jointly incurred or regardless of which entity incurred them.

5
6 The first two arguments were considered and rejected by Judge Kramer. Opposition, 9-
7 15; Kuntz Decl. Exs. 1-4; Lamy Decl., Ex. 3. For the reasons discussed below, Judge Kramer's
8 ruling is not binding,² but he was actively involved in managing this litigation, and I cannot
9 improve on his consideration. I make an independent review, and adopt his reasoning. Thus I
10 decline to tax the deposition costs here, or any other costs here, because the costs were incurred
11 in the MDL or that those costs should be apportioned to the MDL or an action in another state.

12 The third argument has two parts.

13
14 First, on reply, plaintiffs argue for the first time that Ford US's current declaration
15 attesting to the fact that Ford US incurred all of the litigation costs set forth in its bill of costs is
16 contradicted by a 2012 declaration. Seaver Decl., Exs. A-B.³ Margaret Zwisler, in the 2012
17 declaration, used the term "Ford" to refer collectively to Ford US and Ford Canada. Seaver
18 Decl., Ex. A at ¶ 1. Zwisler attested to the fact that "Ford" incurred all of the claimed costs. *Id.*
19 at ¶ 2. Zwisler did not state whether those costs were incurred jointly or whether any costs were
20 incurred separately. *Compare* Reply, 1 (arguing that Zwisler attested to the fact that the costs
21 were jointly incurred). In the 2017 declaration, William Sherman declared that Ford US incurred
22 all of the claimed costs. Seaver Decl., Ex. B at ¶ 2. This is not logically inconsistent with the
23

24
25 ² The dismissal of plaintiffs' appeal does not preclude plaintiffs from raising these issues. *See* Lamy Decl., Ex. 5.

26 ³ In the moving papers, Plaintiffs argued only that the submission of a joint bill of costs created the inference that both Ford US and Ford Canada incurred costs. Motion, 9. This argument is unpersuasive. June 12, 2017 Order, 1 (original cost memorandum was not allocated, likely because allocation was irrelevant then).

1 Zwisler Declaration.

2 Second, plaintiffs ask me to exercise discretion to allocate costs between Ford US and
3 Ford Canada, even if Ford US paid all of the defense costs. Plaintiffs argue costs paid by either
4 of the Ford entities benefited both, suggesting a 50% allocation. Prevailing defendant may be
5 awarded all costs incurred, even if those benefit another non-prevailing party. *Kramer v.*
6 *Ferguson*, 230 Cal.App.2d 237, 250-51 (1964); *Charton v. Harkey*, 247 Cal.App.4th 730, 743-45
7 (2016). The differences between the Zwisler Declaration and the Sherman Declaration are
8 insufficient to undercut Ford US's showing, in the Sherman Declaration, that Ford US actually
9 incurred the costs claimed and that those costs were reasonably necessary to Ford US's defense.
10 Accordingly, the costs are properly recovered, in full, by Ford US.

11 **Interest**

12
13 The question is whether interest on this court's cost award accrues from the date of the
14 original judgment in favor of Ford US or from the date of this cost order. At the hearing, the
15 parties correctly agreed that the date on which interest accrues turns on whether Judge Kramer's
16 cost order was in effect affirmed or reversed by the Court of Appeal, with interest running from
17 2012 if the cost order was affirmed and from the date of this order if Judge Kramer's 2012 cost
18 order was reversed.
19

20
21 Judge Kramer entered separate judgments in favor of Ford US and Ford Canada. Then he
22 entered a joint cost order. Lamy Decl., Ex. 3. The Court of Appeal affirmed the judgment on the
23 merits as to Ford US and reversed as to Ford Canada; and then granted plaintiffs' motion to
24 dismiss their appeal as to Judge Kramer's joint cost order. In that dismissal, the Court of Appeal
25 stated: "The granting of this motion is without prejudice to the parties raising any issues relating
26 to costs in the trial court in connection with further proceedings below following remand of

1 appeal A134913.” Lamy Decl., Ex. 5. The Court of Appeal’s instructions anticipated that
2 further proceedings on the costs issue were necessitated by the reversal of the Ford Canada
3 judgment. The dismissal of the appeal remands the cost issue to this court, and does not affirm
4 Judge Kramer’s order granting costs.

5
6 Judge Kramer did not determine the costs to which Ford US, standing alone, was entitled,
7 and that issue was remanded to this court. There was a reversal of the cost order with a remand
8 for further fact-finding. I held a further evidentiary hearing, in which Ford US submitted new

9 evidence to demonstrate *its* entitlement to the costs at issue. Interest accrues from the date of this
10 Court’s new cost order. *Munoz v. City of Union City*, 173 Cal.App.4th 199 (2009); *Stockton*
11 *Theatres, Inc. v. Palermo*, 55 Cal.2d 439 (1961).

12 **Conclusion**

13
14 Plaintiffs’ motion to tax is granted to the extent it objects to interest accrued following
15 the entry of Judge Kramer’s 2012 joint cost order, and it is otherwise denied. Ford US is entitled
16 to costs in the amount of \$199,464.98.

17
18
19 Dated: August 22, 2017



20 _____
Curtis E.A. Karnow
21 Judge Of The Superior Court
22
23
24
25
26

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On **AUG 23 2017**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated:

AUG 23 2017

T. Michael Yuen, Clerk

By: 

DANIAL LEMIRE, Deputy Clerk

Exhibit 3

CITY NATIONAL BANK

The way up.[®]

For Inquiries Call 800-773-7100



CASHIER'S CHECK

16-1606
1220

30521458

DATE August 31, 2017

PAY TO THE ORDER OF **Ford Motor Company**

\$ *****199,464.98**

PAY **ONE HUNDRED NINETY NINE THOUSAND FOUR HUNDRED SIXTY FOUR DOLLARS AND NINETY EIGHT CENTS

Ford Cost Award-Principal Amount
Branch: 432

[Handwritten Signature]
AUTHORIZED SIGNATURE

Two signatures required over \$50,000

⑈ 30521458⑈ ⑆ 122016066⑆ 112⑈ 851844⑈

CITY NATIONAL BANK

The way up.[®]

For Inquiries Call 800-773-7100



CASHIER'S CHECK

16-1606
1220

30521459

DATE August 31, 2017

PAY TO THE ORDER OF **Ford Motor Company**

\$ *****491.83**

PAY **FOUR HUNDRED NINETY ONE DOLLARS AND EIGHTY THREE CENTS**

Ford Cost Award-Interest Amount
Branch: 432

[Handwritten Signature]
AUTHORIZED SIGNATURE

Two signatures required over \$50,000

⑈ 30521459⑈ ⑆ 122016066⑆ 112⑈ 851844⑈

Superior Court of California,
County of San Francisco
Civil/Small Claims

Aug-31-2017 15:47:55 W15178310017 BLEU

CASE NUMBER: CSC-03-004298

AUTOMOBILE ANTITRUST CASES I

OTHER TRUST DEPOSIT

FILED BY WILLSEY, ROBERT

FEE: \$199,464.98 PAID BY MONEY ORDER

THANK YOU

034877

SAN FRANCISCO SUPERIOR COURT

CASE: CSC-03-004298 CASHIER: MLJU

AUTOMOBILE ANTITRUST CASES I

DATE: Aug-31-2017 TIME: W15178310017

Filing Type: DEPOSIT OF UNDERTAKING

Pay Type: MONEY ORD Amt: \$199,464.98
NO. BALANCE DUE

Paid By:

TOOB A. SERVER (271057)

BERNARD DEVALERIO

44 HORTONWAY STREET

SUITE 650

SAN FRANCISCO, CALIFORNIA 94104

Superior Court of California,
County of San Francisco
Civil/Small Claims

Aug-31-2017 15:51:30 W15178310018 BLIU

CASE NUMBER: CJC-03-004298

AUTOMOBILE ANTI-TRUST CASES I

OTHER TRUST DEPOSIT

FILED BY BELL, GEORGE

FEE: \$491.83 PAID BY MONEY ORDER

THANK YOU

034898

SAN FRANCISCO SUPERIOR COURT

CASE: CJC-03-004298 CASHIER: BLIU

AUTOMOBILE ANTI-TRUST CASES I

DATE: Aug-31-2017 TXNO: W15178310018

Filing Type: DEPOSIT OF UNDERTAKING

Pay Type: MONEY ORD Amt: \$491.83
DU. BALANCE DUE

Paid By:
TOM A. SEAYER (271057)
BERNAN DEVALERIO
44 MONTGOMERY STREET
SUITE 650
SAN FRANCISCO, CALIFORNIA 94104

EXHIBIT V

Oct 19 00 04:32p

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Oct 19 00 12:36p

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ORIGINAL

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FILED
San Francisco County Superior Court

APR 30 1999

ALAN CARLSON, Clerk
BY: *[Signature]*
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

COORDINATION PROCEEDING
SPECIAL TITLE (RULE 1550(b))

JUDICIAL COUNCIL
COORDINATION PROCEEDING
NOS. 2969, 2971 and 2972

PHARMACEUTICAL CASES I, II and III

Hon. Alfred G. Chiantelli
Coordination Trial Judge

THIS DOCUMENT RELATES TO:

Preciado v. Abbott Laboratories

San Francisco Sup. Ct. No. 962294

Lazio v. Abbott Laboratories

San Francisco Sup. Ct. No. 969870

Miller v. Abbott Laboratories

San Francisco Sup. Ct. No. 975309

Hamid v. Abbott Laboratories

Alameda Sup. Ct. No. 753649-0

~~PROPOSED~~ ORDER
AWARDING ATTORNEYS' FEES
AND COSTS

Date: April 30, 1999
Time: 10:00 a.m.
Department: 206
Judge: Alfred G. Chiantelli

Oct 19 00 04:35p

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p. 3

1 This matter is before the Court on Settlement Class Counsel's Motion for an award of
2 attorneys' fees and costs ("Fee Request"), due notice of which was given to all settlement class
3 members. The Court heard argument regarding the Fee Request upon duly noticed motion on
4 April 30, 1999. Based upon the Court's observation and assessment of the performance of
5 Settlement Class Counsel throughout this Coordinated Proceeding, oral argument, all papers filed
6 with the Court, and the resulting settlement recovery, and good cause appearing therefor,

7 **IT IS HEREBY ORDERED ADJUDGED AND DECREED:**

8 1. An award of attorneys' fees and costs of \$27,274,114, with interest thereon to
9 the date of distribution, is hereby approved and awarded to Settlement Class Counsel. Such award
10 shall be paid by the Settling Defendants according to the terms of the Master Agreement of
11 Settlement and Release.

12 2. The amount of this award is based on application of both the percentage fee
13 and the lodestar-plus-multiplier methods for awarding reasonable attorneys' fee and costs--Both
14 methods are available to the Court, both produce the same result, and the Court relies on each
15 method as an independent basis for its determination of a reasonable award of attorneys' fees and
16 costs. The award of \$27,274,114 is approximately 15.41% of the total value of the settlement
17 consideration that this Court finds is easily calculable at \$176.96 million, the value of the free brand
18 name prescription drugs and the cash the Settling Defendants must provide. As set forth in
19 paragraph 5 below, applying the percentage recovery analysis, the Court determines that an award of
20 fees and costs of 15.41% of the total settlement consideration is reasonable and appropriate under the
21 circumstances of this case.

22 3. The \$27,274,114 award also is independently based on the lodestar-plus-
23 multiplier method for determining a reasonable award of attorneys' fees and costs. Having reviewed
24 Plaintiffs' Counsel's time records, the Court finds that the lodestar Plaintiffs' Counsel have
25 accumulated of \$5,095,482.25 was reasonable and consistent with the litigation in this case. This
26 Court further finds that Plaintiffs' Counsel's hourly rates were reasonable for the work they
27 performed. Settlement Class Counsel seek an award of attorneys' fees and costs from the Settling
28 Defendants equal to their lodestar enhanced by a multiplier of approximately 5.23, after accounting

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1 for their costs of \$634,966.83. As set forth in paragraph 5 below, this requested multiplier is
2 reasonable and appropriate under the circumstances of this case. Application of the lodestar-plus-
3 multiplier method to the overall requested fees also demonstrates that the percentage fee award of
4 approximately 15.41% from the settlement is reasonable.

5 4. In setting an award of attorneys' fees and costs, the Court has considered the
6 following factors: 1) the time and labor required; 2) the contingent nature of the case; 3) preclusion
7 of other employment; 4) the experience, reputation and ability of Plaintiffs' Counsel and the skill
8 they displayed in litigation; 5) the results achieved; and 6) the informed consent of the clients. See
9 e.g., Serrano v. Priest (1977) 20 Cal. 3d 25, 49; Dunk v. Ford Motor Co. (1996) 48 Cal. App.
10 4th 1794, 1810 n.21; Glendora Comm. Redev. Agency v. Demeter (1984) 155 Cal. App. 3d 465,
11 474.

12 5. As to each specific factor justifying the fee award, the Court observes that the
13 time and labor necessary to prosecute this consumer class action was substantial. Resolution of this
14 action took approximately five years, which necessitated that Plaintiffs' Counsel forego other
15 potentially lucrative employment opportunities. In addition, these actions were fraught with risk,
16 and Plaintiffs' Counsel prosecuted all of these actions on a contingent fee basis, accumulating
17 significant costs. Plaintiffs' Counsel were able to overcome challenges, including the defendants'
18 opposition to class certification. Plaintiffs' Counsel employed their considerable knowledge of
19 antitrust law and of class actions, and thereby created substantial settlements, despite a directed
20 verdict for the defendants in related federal litigation. The Court has had a substantial period of
21 time, in this intensive litigation, to observe and assess the quality of Plaintiffs' Counsel's services, in
22 the course of pleading and motions practice, briefing, the class certification process, and in the
23 settlement they have achieved and for which they have secured final approval. Plaintiffs' Counsel
24 have sound reputations and have substantial experience in the area of complex antitrust and class
25 action litigation. The Court also observes that Plaintiffs' Counsel's fee arrangement with the class
26 representatives is the standard contingent fee retainer, which placed the risk of unrecovered costs and
27 uncompensated attorneys' fees on counsel. In addition, Plaintiffs' Counsel will continue to work
28 with Public Health Trust and Eligible Recipients of the free prescription drugs to ensure proper

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1 administration of the settlements. Finally, Plaintiffs' Counsel were able to achieve an excellent
2 result. Application of all these factors demonstrates both that a percentage fee and cost award of
3 15.41% of the total settlement consideration of \$176.96 million is appropriate, and that application
4 of the requested multiplier of 5.23 to Plaintiffs' Counsel's lodestar in connection with the settlements
5 is reasonable under the circumstances.

6 6. For the foregoing reasons, the Court finds that an award of attorneys' fees and
7 costs of \$27,274,114 is fair and reasonable compensation for the work performed by Plaintiffs'
8 Counsel in achieving the settlements and hereby grants Settlement Class Counsel's Fee Request in
9 the amount of \$27,274,114 to be paid by the Settling Defendants according to the terms of the
10 Master Agreement of Settlement and Release.

11
12 IT IS SO ORDERED.

13
14 Dated: April 30, 1999

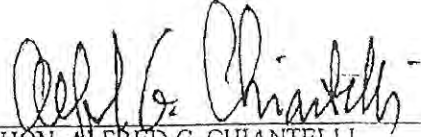
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16 HON. ALFRED G. CHIANTELLI
17 Coordination Trial Judge
18 Superior Court of the State of California
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EXHIBIT W

FILED
San Francisco County Superior Court

JUL 10 2012

CLERK OF THE COURT
BY: Stuvia Sheen Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION**

COORDINATION PROCEEDING
SPECIAL TITLE (Cal. R. Ct. 1550(b))

AUTOMOBILE ANTITRUST CASES I, II

J.C.C.P. No. 4298 and 4303

CJC-03-004298

CLASS ACTION

~~PROPOSED~~ ORDER ON COSTS

Hon. Richard A. Kramer
Coordination Trial Judge
Dept.: 304

This document relates to:
All Actions

1 Defendants Ford Motor Company (“Ford Division”) and Ford Motor Company of
2 Canada, Ltd. (“Ford Canada”) (collectively, “Ford”), as a result of this Court’s entry of judgment
3 in their favor on plaintiffs’ claim, have filed a Memorandum of Costs on January 24, 2012, and
4 an Amended Memorandum of Costs on March 7, 2012, seeking reimbursement for costs in the
5 amount of \$201,089.98.

- 6 1. On April 30, 2003, the Judicial Council of California assigned the Superior Court
7 for the City and County of San Francisco to determine whether a number of
8 actions filed in multiple California Superior Courts were complex, and if so,
9 whether coordination was appropriate.
- 10 2. On June 4, 2003, this Court granted a motion for coordination, which resulted in
11 the consolidation of numerous cases under the instant caption.
- 12 3. On October 6, 2003, plaintiffs George Bell, Laurence de Vries, Joshua Chen,
13 Jason Gabelsberg, Ross Lee, Jeffrey M. Lohman, Christine Nichols, United Food
14 & Commercial Workers Local 588, Estelle Weyl, Michael Wilsker, and W. Scott
15 Young (collectively, the “Named Plaintiffs”) filed their Consolidated Amended
16 Class Action Complaint.
- 17 4. On June 18, 2004, this Court entered a Joint Coordination Order governing
18 discovery between this case and the federal multidistrict litigation, which raised
19 the same factual and legal issues plaintiffs raised in this case. The Joint
20 Coordination Order established a system that preserved the integrity of each state
21 case and coordinated completely all discovery in this case with the federal
22 multidistrict litigation.
- 23 5. On May 19, 2009, this Court granted plaintiffs’ motion for class certification and
24 ordered that Named Plaintiffs serve as class representatives to adequately
25 represent the class.
- 26 6. On January 29, 2010, Ford filed a motion for summary judgment, or in the
27 alternative, summary adjudication, on the issue of whether Ford conspired with
28

1 defendants. Ford and plaintiffs litigated and briefed these motions until August
2 2011.

3 7. On November 4, 2011, this Court granted Ford's motion for summary judgment.
4 The Court found that plaintiffs had not met their burden to demonstrate an issue
5 of material fact as to whether Ford had conspired with the other named and
6 unnamed defendants. As a result, the Court found that Ford was entitled to
7 judgment as a matter of law on all of plaintiffs' claims.

8 8. This court entered judgment in favor of Ford Division on January 9, 2012, and in
9 favor of Ford Canada on January 13, 2012. Those judgments provided that
10 plaintiffs shall take nothing from either Ford Division or Ford Canada. Those
11 judgments further provided that Ford Division and Ford Canada may move to
12 recover costs as provided in Code Civ. Proc. §§ 1032 and 1033.5.

13 9. Plaintiffs filed a notice of entry of judgment with respect to Ford Division on
14 January 10, 2012, and with respect to Ford Canada on January 18, 2012.

15 10. Ford filed a Memorandum of Costs on January 24, 2012.

16 11. Plaintiffs moved to tax Ford's costs. Ford opposed the motion and submitted both
17 a memorandum of law and evidence that established the reasonableness and
18 necessity of its costs, together with more than 200 individual receipts, invoices,
19 and other supporting documents to attest to the veracity of the requested costs.
20 Plaintiffs filed a reply in support of their motion.

21 This Court held a hearing on March 20, 2012. After full consideration of the matters
22 raised by the parties and on proof made to the satisfaction of the Court, the Court determines the
23 motion should be GRANTED with respect to costs claimed for court transcripts and should be
24 DENIED in all other respects.

25 IT IS ORDERED that the four charges for transcripts of summary judgment hearings on
26 Ford's Memorandum of Costs be disallowed and be and hereby are taxed the whole amount
27 claimed, \$1,625.00.

1 IT IS FURTHER ORDERED that Ford be and hereby is allowed the balance of the
2 claimed litigation costs, \$199,464.98.

3 IT IS FURTHER ORDERED that the named class representatives in this case, George
4 Bell, Wei Cheng, Laurence de Vries, Joshua Chen, Jason Gabelsberg, Ross Lee, Jeffrey M.
5 Lohman, Christine Nichols, United Food & Commercial Workers Local 588, Estelle Weyl,
6 Michael Wilsker, and W. Scott Young shall satisfy the judgment with in 30 days of the date of
7 this order.

8 The Clerk of the Court is directed to amend the judgments for Ford Division and Ford
9 Canada.

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Dated: 7-6, 2012



THE HONORABLE RICHARD KRAMER
San Francisco Superior Court

J.C.C.P. Nos. 4298 and 4303
AUTOMOBILE ANTITRUST CASES I AND II

Superior Court of California
County of San Francisco

COORDINATION PROCEEDING
SPECIAL TITLE [RULE 3.550]

**AUTOMOBILE ANTITRUST CASES
I AND II**

Coordinated Actions:
See Attached List.

JUDICIAL COUNCIL
COORDINATION PROCEEDING
NO. **4298 & 4303**

CERTIFICATE OF MAILING
[CCP 1013a (4)]

I, Felicia Green, a Deputy Clerk of the Superior Court of the City and County of San Francisco, certify that I am not a party to the within action.

On July 10, 2012, I served the attached **ORDER ON COSTS** by placing copies thereof in sealed envelopes, addressed as follows:

Guido Saveri SAVERI & SAVERI, INC. 111 Pine Street, Suite 1700 San Francisco, CA 94111	Maxwell Blecher BLECHER & COLLINS, P.C. 515 South Figueroa Street, 17 th Floor Los Angeles, CA 90071-3334
Philip Bowe DAVIS, COWELL & BOWE, LLP 595 Market Street, Suite 1400 San Francisco, CA 94105	Barry L. Bunshoft HANCOCK, ROTHERT & BUNSHOFT 4 Embarcadero, 10th Fl. San Francisco, CA 94111
John Rosch LATHAM & WATKINS 505 Montgomery Street, Suite 1900 San Francisco, CA 94111	Frederick P. Furth THE FURTH FIRM 225 Bush Street, 15 th Floor San Francisco, CA 94104
Francis O. Scarpulla ZELLE HOFMANN VOELBEL MASON & GETTE, LLP 44 Montgomery St. Ste. 3400 San Francisco, CA 94104	Joseph M. Alioto ALIOTO LAW FIRM 225 Bush Street, 16 th Floor San Francisco, CA 94104

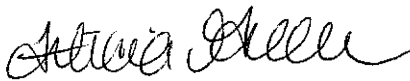
<p>Norman C Hile ORRICK, HERRINGTON & SUTCLIFFE 400 Capitol Mall, Suite 3000 Sacramento, CA 95814-4497</p>	<p>Samuel Miller FOLGER, LEVIN & KAHN Embarcadero Center West 275 Battery St., 2nd Floor San Francisco, CA 94111</p>
<p>Lawrence Papale 1308 Main Street, Suite 117 The Cornerstone Building St. Helena, CA 94574</p>	<p>Joseph M. Patane 2280 Union Street San Francisco, CA 94123</p>
<p>Craig L. Winterman HERZFELD & RUBIN LLP 1925 Century Park East, Suite 600 Los Angeles, CA 90067</p>	<p>Joseph J. Tabacco, Jr. BERMAN, DeVALERIO, PEASE TABACCO, et al. One California Street, Suite 900 San Francisco, CA 94111</p>
<p>Michael Lehmann FURTH LEHMANN & GRANT LLP 225 Bush Street, 15th Floor San Francisco, CA 94104</p>	<p>Michael Lehmann HAUSFELD LLP 44 Montgomery Street, Suite 3400 San Francisco, CA 94104</p>
<p>Craig C. Corbitt ZELLE HOFMANN VOELBEL & MASON LLP 44 Montgomery St, Ste 3400 San Francisco, CA 94104</p>	<p>Robert A. Van Nest KEKER & VAN NEST, LLP 710 Sansome Street San Francisco, CA 94111</p>
<p>Daniel J. Mogin THE MOGIN LAW FIRM, P.C. 707 Broadway Ste 1000 San Diego, CA 92120</p>	<p>Alexander M. Schack LAW OFFICES OF ALEXANDER M. SCHACK 16870 West Bernardo Drive, Suite 400 San Diego, CA 92127</p>
<p>Peter Sullivan GIBSON, DUNN & CRUTCHER, LLP 333 South Grand Avenue Los Angeles, CA 90071-3197</p>	<p>Terry Gross GROSS BELSKY, LLP 180 Montgomery Street, Suite 2200 San Francisco, CA 94104</p>
<p>Joel Sanders GIBSON, DUNN & CRUTCHER, LLP One Montgomery Street Telesis Tower, 26th Floor San Francisco, CA 94104</p>	<p>Jeri Rouse Looney LORD BISSELL & BROOK, LLP 300 S. Grand Avenue, Eighth Floor Los Angeles, CA 90071-3119</p>

<p>Joseph Saveri LIEFF CABRASER & HEIMANN Embarcadero Center West 275 Battery Street, 30th Floor San Francisco, CA 9411-3339</p>	<p>Stephen Alexander FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, LLP 350 South Grand Ave., S-3200 Los Angeles, CA 90071-3406</p>
<p>Christopher J. Cox WEIL, GOTSHAL & MANGES LLP 201 Redwood Shores Parkway Redwood Shores, CA 94065</p>	<p>Eric R. Lamison KIRKLAND & ELLIS LLP 555 California St. San Francisco, CA 94104</p>
<p>Colin C. West MCCUTCHEM, DOYLE, BROWN & ENERSEN, LLP Three Embarcadero Center San Francisco, CA 94111-4067</p>	<p>Lisa Kimmel HOWREY, SIMON, ARNOLD & WHITE LLP 525 Market St., Suite 3600 San Francisco, CA 94105-2708</p>
<p>Buckmaster De Wolf HOWREY SIMON ARNOLD & WHITE, L.L.P. 525 Market Street, Suite 3600 San Francisco, CA 94105-2708</p>	<p>Susan Welde LORD BISSELL & BROOK, LLP 300 S. Grand Avenue, 8th Floor Los Angeles, CA 90071-3119</p>
<p>Jenelle Welling GREEN WELLING LLP 595 Market Street, Suite 2750 San Francisco, CA 94105</p>	<p>Shannon P Keniry FINKELSTEIN, THOMPSON LLP 100 Bush Street, Suite 1450 San Francisco, CA 94111</p>
<p>Anamika D. Ghista LATHAM & WATKINS LLP 555 11th Street, NW, Suite 1000 Washington, DC 20004</p>	<p>Administrative Office of the Courts Attn: Appellate & Trial Court Judicial Services (Civil Case Coordination) 455 Golden Gate Avenue San Francisco, CA 94102-3688</p>
<p>Richard C. Godfrey KIRKLAND & ELLIS, LLP 300 North LaSalle Chicago, IL 60654</p>	<p>Michael R. Lazerwitz CLEARY, GOTTLIEB, STEEN & HAMILTON 2000 Pennsylvania Avenue, N.W., Suite 9000 Washington, DC 20006</p>

Margaret M. Zwisler LATHAM & WATKINS LLP 555 11 th Street, NW, Suite 1001 Washington, DC 20004-1304	Daniel E. Laytin KIRKLAND & ELLIS LLP 300 North LaSalle Chicago, IL 60654
David J. Zott KIRKLAND & ELLIS LLP 300 North LaSalle Chicago, IL 60654	William R. Sherman LATHAM & WATKINS LLP 555 11 th Street, NW, Suite 1000 Washington, DC 20004-1304
Daniel Gsovksi HERZFELD & RUBIN, P.C. 40 Wall Street New York, NY 10005	Jeffrey Chase HERZFELD & RUBIN, P.C. 40 Wall Street New York, NY 10005

I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Date: July 10, 2012

By: 

 Felicia Green, Deputy Court Clerk