

EXHIBIT 6

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8 Submitted on Behalf of:

9 **CROWLEY NORMAN LLP &**
10 **PAYNE MITCHELL LAW GROUP, LLP**

11 Counsel for Plaintiff(s) in:

12 *Washburn v. Kia Motors Corporation, et al.,*
13 **Case No. 4:12-cv-00770, In the Eastern District of Texas**

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

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18 IN RE: HYUNDAI AND KIA FUEL
19 ECONOMY LITIGATION

Case No. 2:13-ml-02424-GW-FFM

20 **DECLARATION OF RICHARD E.**
21 **NORMAN IN SUPPORT OF**
22 **REQUEST FOR ATTORNEYS' FEES**
23 **AND EXPENSES**

24 Date: December 18, 2014

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DECLARATION OF RICHARD E. NORMAN IN SUPPORT OF REQUEST FOR
ATTORNEYS' FEES AND EXPENSES

1 I, Richard E. Norman, declare as follows:

2 1. I am partner at Crowley Norman LLP, counsel for Plaintiff, Michael
3 Washburn. This declaration is submitted in support of the fees and expenses request for
4 work performed by Crowley Norman LLP ("Crowley Norman") and the Payne Mitchell
5 Law Group ("Payne Mitchell") (collectively "Texas Firms") in connection with this
6 litigation. I have personal knowledge of the facts below and, if called upon to do so,
7 could and would testify competently thereto.

8 2. This declaration is submitted with knowledge of the efforts of the attorneys
9 at both Crowley Norman and Payne Mitchell, and after a review of the billing records of
10 Crowley Norman and my co-counsel, Dean Gresham and Max S. Antony, at the Payne
11 Mitchell firm. The Texas Firms adopt and join in the omnibus Memorandum of Points
12 and Authorities Submitted in Support of the Non-Settling Plaintiffs' Motion for
13 Attorneys' Fees and Expenses. The information set forth herein is submitted as a
14 supplement to that brief.

15 3. Because describing precisely what tasks were performed and when would
16 constitute our attorney work product, I provide the Court herein with general descriptions
17 of the tasks we performed during the course of this litigation and am not attaching the
18 underlying time records maintained by Crowley Norman and Payne Mitchell. Such
19 records are maintained in the regular course of the firm's business, and are created based
20 on records contemporaneously maintained by the firm's attorneys and staff. My office
21 reviewed those records in summarizing the description of entries and the time expended
22 in each category as set forth below to ensure their accuracy.

23 **A. Overview**

24 4. This multi-district class action litigation arises out of misstatements by
25 Defendants Hyundai Motor America ("HMA") and Kia Motors America ("KMA")
26 ("Defendants") regarding the fuel economy of certain vehicles in their advertisements and
27 Monroney stickers. The settlement the Court has preliminarily approved resulted from
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1 contributions by several experienced class action plaintiff's firms, including in no small
2 part the diligent efforts of attorneys in the Texas Firms.

3 5. As will be described in more detail below, Crowley Norman and Payne
4 Mitchell Law worked in coordination with several other firms that had filed similar
5 litigation:

- 6 a. *Jeremy Wilton, et al. v. Kia Motors America, Inc., and Hyundai Motor*
7 *America, Inc.*, Case No. 12-cv-1917 JVS (ANx), originally filed in the
8 Central District of California (Whatley Kallas LLP and Doyle
9 Lowther LLP)
- 10 b. *Andre Carullo and Donald Kendig v. Kia Motors Corporation*, Case
11 No. 12-02174 AG (MLGx), originally filed in the Central District of
12 California (Mauriello Law Firm, APC)

13 6. Collectively, our five firms coordinated efforts to carry out tasks assigned by
14 liaison counsel Eric Gibbs at Girard Gibbs (hereafter "Liaison Counsel") that had been
15 discussed with the Court.

16 7. Coordinating their efforts with court-appointed Liaison Counsel, Whatley
17 Kallas, Crowley Norman, Payne Mitchell, Doyle Lowther, and the Mauriello Firm have
18 not only significantly aided a confirmatory discovery and settlement evaluation process
19 that was necessary given the circumstances, but have also helped to bring about
20 significant enhancements to the final settlement, including its class notice and claims-
21 submission provisions.

22 8. Crowley Norman and Payne Mitchell respectfully petition the Court for a
23 total award of attorneys' fees in the amount of and reimbursement of costs in the
24 following amounts:

- 25 a. Crowley Norman fees (past): \$141,117.00
26 b. Crowley Norman fees (future): \$9,500.00
27 c. Payne Mitchell fees (past): \$41,305.00
28 d. Texas Firms shared expenses: \$448.20

1 9. The Texas Firms submit this application is fair and reasonable in light of:
2 (1) the resources and expertise counsel devoted to this matter; (2) the substantial time and
3 effort expended by counsel in litigating this matter and confirming and improving the
4 terms of the settlement agreement; (3) the delays and risks involved in the litigation and
5 the complexity of the issues of this case; (4) the experience and diligence of counsel; and
6 (5) fees commonly awarded in cases of this nature.

7 **B. Summary of Work Performed**

8 10. This complex litigation has unfolded somewhat unusually. After
9 investigation, on December 13, 2012 the Texas Firms filed an original class action
10 complaint in Texas federal district court on behalf of their client, Michael Washburn, and
11 a Texas class, styled *Washburn, Individually and on Behalf of Those Similarly Situated in*
12 *the State of Texas v. Kia Motors Corporation and Kia Motors America, Inc.*, Cause No.
13 4:12-cv-00770, in the United States District Court for the Eastern District of Texas,
14 Sherman Division. The Texas Firms prosecuted the Texas matter, and the case was then
15 transferred to the MDL proceeding before this Court. See February 6, 2013 order
16 creating MDL (Docket No. 1); Feb. 14, 2013 Reporter's Transcript (Docket No. 10).

17 11. A tentative settlement was announced by certain plaintiffs prior to sufficient
18 formal discovery, before any class had been certified, and almost immediately after
19 numerous other proposed class actions (involving various claims and proposed classes)
20 were consolidated in an MDL. The Court recognized the need for the involvement of
21 counsel for Non-Settling Plaintiffs, appointed Liaison Counsel, and helped guide all
22 through a process involving confirmatory discovery and substantive evaluation of the
23 proposed settlement. As a result, a group of highly experienced class action lawyers
24 efficiently focused their efforts and pooled their resources to ensure a settlement that is
25 fair and reasonable in light of the circumstances.

26 12. Upon transfer to the MDL proceedings, the Texas Firms worked with liaison
27 counsel to protect the interest of Texas class members. Counsel from the Texas Firms
28 actively participated in the litigation process, including discovery proceedings, to assure

1 that the settlement was fair and reasonable to all class members, including Texas class
2 members. Counsel cooperated with Liaison Counsel in discovery matters to ensure that
3 all materials were adequately reviewed and analyzed, while at the same time working to
4 minimize any duplication of efforts.

5 13. Crowley Norman and Payne Mitchell actively participated in and
6 contributed to the confirmatory discovery and settlement evaluation process.

7 14. Additionally, Crowley Norman and Payne Mitchell helped to identify
8 several terms to be modified in order to enhance the settlement before the Court
9 preliminarily approved the settlement, such as allowing an online claims submission
10 process and providing e-mail notice of the settlement.

11 **C. Counsel Are Entitled To An Award of Attorneys' Fees And Costs**

12 15. The settlement makes available several hundred million dollars to pay class
13 member claims, in addition to providing other relief. *See* Amended Settlement
14 Agreement (Docket No. 354-1); *see also, e.g.*, Court's Minutes Regarding Preliminary
15 Approval, at p. 2 (Docket No. 317 p. 4). "If all class members submit claims under the
16 settlement, the class will recover \$392M in cash before deductions for compensation
17 already paid through the lifetime reimbursement program are made." Settling Parties'
18 Supplemental Brief In Support of Preliminary Approval of Class Settlement and
19 Certification of Settlement Class at p. 15 (Docket No. 271 at p. 21).

20 16. Even when there is "no contractual or statutory basis to award attorneys'
21 fees in a class action case, a court may rely on the 'common fund doctrine'" to award
22 attorneys' fees. *Rodriguez v. Disner*, 688 F.3d 645, 653 (9th Cir. 2012), quoting *Vincent*
23 *v. Hughes Air West, Inc.*, 557 F.2d 759, 770 (9th Cir. 1977). "Federal courts award
24 attorneys' fees under the common fund doctrine as a matter of federal common law, based
25 on 'the historic equity jurisdiction of the federal courts.'" *Id.*, quoting *Sprague v. Ticonic*
26 *Nat'l Bank*, 307 U.S. 161, 164, 59 S. Ct. 777, 83 L. Ed. 1184 (1939). Under the common
27 fund doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of
28 persons other than himself or his client is entitled to a reasonable attorney's fee from the

1 fund as a whole.” *Id.*, quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S.Ct.
2 745, 62 L.Ed.2d 676 (1980). “The guiding principle is that attorneys’ fees ‘be reasonable
3 under the circumstances.’” *Id.*, quoting *Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir.
4 1990).

5 17. The equitable power to award such fees is not limited to formally-appointed
6 “class counsel”; rather, it extends to an “attorney who confers a benefit on the class.” *See*
7 *Rodriguez*, 688 F.3d at 660 n. 11 (noting that “an attorney who confers a benefit on the
8 class is entitled to fees based on equitable principles of unjust enrichment, and has
9 standing to challenge the denial of such fees, regardless whether the attorney’s client will
10 receive any of the savings”); *see also Class Plaintiffs v. Jaffe & Schlesinger, P.A.*, 19
11 F.3d 1306, 1309 (9th Cir. 1994) (although holding that district court did not abuse its
12 discretion in denying fee request by firm that had pursued parallel state court class action
13 which court found to be “not sufficiently related to the MDL litigation to warrant
14 payment out of the MDL settlement fund,” the court of appeals recognized that Supreme
15 Court precedent established that the district court had “the power to entertain a proposal
16 for attorneys’ fees in circumstances such as those now before the court.”), citing *Sprague*,
17 307 U.S. 161, and *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 478
18 U.S. 546, 106 S.Ct. 3088, 92 L.Ed.2d 439 (1986). As one district court has put it:

19 [T]he Court has no doubt that it has power to award fees from this settlement
20 ... consistent with the general equitable power of the courts to require
21 parties to contribute to the fee of an attorney whose efforts have benefited
22 those parties ... without regard to the fact that the attorneys are not the
23 formal representatives of those classes.

24 *In re Ampicillin Antitrust Litig.*, 81 F.R.D. 395, 405-07 (D.D.C. 1978) (citations omitted);
25 *see also Sprague*, 307 U.S. at 166–67 (noting that “formalities of the litigation” do not
26 override “the power of equity in doing justice” by awarding fees to those helping to
27 create a fund benefiting others).

1 18. Together with Whatley Kallas and Doyle Lowther, Crowley Norman and
2 Payne Mitchell have played important roles in the process of developing and confirming
3 a final settlement that establishes a significant fund to fairly and reasonably pay the
4 claims of all class members. The settlement here was reached prior to class certification
5 and under circumstances which, it is undisputed, necessitated confirmatory discovery.
6 Federal Rule of Civil Procedure 23(e) of course “require[s] the district court to determine
7 whether a proposed settlement is fundamentally fair, adequate, and reasonable.” *In re*
8 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir.2000) (citing *Hanlon v. Chrysler*
9 *Corp.*, 150 F.3d 1011, 1026 (9th Cir.1998)). Where the “parties reach a settlement
10 agreement prior to class certification, courts must peruse the proposed compromise to
11 ratify both the propriety of the certification and the fairness of the settlement.” *Stanton v.*
12 *Boeing Co.*, 327 F.3d 938, 952 (9th Cir.2003). In these situations, settlement approval
13 “requires a higher standard of fairness and a more probing inquiry than may normally be
14 required under Rule 23(e).” *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir.2012)
15 (internal quotation marks omitted); *see also Hanlon*, 150 F.3d at 1026 (“[S]ettlement
16 approval that takes place prior to formal class certification requires a higher standard of
17 fairness.”). Consequently, a district court “must be particularly vigilant not only for
18 explicit collusion, but also for more subtle signs that class counsel have allowed pursuit
19 of their own self-interests and that of certain class members to infect the negotiations.” *In*
20 *re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir.2011). Other
21 relevant factors to this determination include, among others, “the strength of the
22 plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the
23 risk of maintaining class-action status throughout the trial; the amount offered in
24 settlement; the extent of discovery completed and the stage of the proceedings; the
25 experience and views of counsel; the presence of a governmental participant; and the
26 reaction of the class members to the proposed settlement.” *Hanlon*, 150 F.3d at 1026.

27 [I]n cases with little or no discovery, it is sometimes anticipated that there
28 may be a challenge to class counsel's understanding of the merits of the case

1 due to the lack of a current factual investigation and/or discovery. In other
2 words, an argument that class counsel is settling a case that they do not
3 know enough about or are engaging in collusion. [...] In those cases,
4 plaintiffs' class counsel sometimes seek “confirmatory discovery” to address
5 these issues and support the fairness of the settlement.

6 As discussed in the case law, confirmatory discovery is focused
7 discovery in order to confirm the settling plaintiffs' factual understanding
8 and rebut potential claims of inadequacy by objectors to the settlement. [...].
9 This is done with an eye toward demonstrating to the approving court that
10 plaintiffs' counsel has a complete and current understanding of the facts and
11 claims, and that the settlement is fair, adequate, and reasonable. [...] As a
12 practical matter, confirmatory discovery is often used to negate the
13 impression that a class action was quickly settled with little discovery or
14 investigation to generate the substantial legal fees often awarded in class
15 actions.

16 *Alves v. Main*, No. 01-789 DMC, 2012 WL 2339809, at *3 (D.N.J. June 19, 2012)
17 (internal citations omitted).

18 19. Here, the “Parties refrained from seeking Court approval of the settlement
19 described herein until confirmatory discovery was substantially complete.” Amended
20 Settlement Agreement at p. 3 (Docket No. 354-1, at p. 4). The settlement expressly
21 references the scope and role of confirmatory discovery herein. *Id.* And, as recognized by
22 Class Counsel, “[r]epresentatives of non-settling plaintiffs participated in document and
23 in person discovery efforts.” Memo in Support of Settlement at p. 31 (Docket 185-1 at p.
24 39).

25 20. The process of both confirming and improving the settlement has
26 “confer[red] a benefit on the class,” and Crowley Norman and Payne Mitchell were an
27 integral part of that process. Their diligent efforts have benefitted the class and this
28 request for fees should be granted.

1 **D. The Lodestar Amount Sought By the Texas Firms Is Reasonable**

2 21. Crowley Norman and Payne Mitchell are requesting a total “lodestar” figure
3 of \$191,922.00 in attorneys’ fees and costs, which is based on 300.15 hours of work in
4 the past and an anticipated 15 hours of work in the future. There is a strong presumption
5 that the “lodestar” figure represents a reasonable fee award. *See Harris v. Marhoefer*, 24
6 F.3d 16, 18 (9th Cir.1994); *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d
7 403, 406-407 (9th Cir. 1990); *accord Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 554,
8 130 S. Ct. 1662, 1673, 176 L. Ed. 2d 494 (2010). “The ‘lodestar’ is calculated by
9 multiplying the number of hours the prevailing party reasonably expended on the
10 litigation by a reasonable hourly rate.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973,
11 978 (9th Cir. 2008), quoting *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1194 n.4
12 (9th Cir. 2001).¹

13 **1. Counsel worked efficiently and the hours claimed are reasonable.**

14 22. A detailed description of the hours their firms expended on this case and the
15 tasks they performed is set forth, *infra*, at ¶¶ 32-56. “Plaintiff’s counsel, of course, is not
16 required to record in great detail how each minute of his time was expended. But at least
17 counsel should identify the general subject matter of his time expenditures.” citing
18 *Hensley*, 461 U.S. at 437 n. 12; *California Ass’n of Rural Health Clinics v. Douglas*, No.
19 2:10-CV-00759-TLN, 2014 WL 5797154, at *3 (E.D. Cal. Nov. 6, 2014) (““Counsel is
20 not required to record this time in great detail but must provide the general subject matter
21 for the task performed.”).

22 23. “An attorney’s sworn testimony that, in fact, it took the time claimed ‘... is
23 evidence of considerable weight on the issue of the time required ...’” *Blackwell v. Foley*,
24 724 F. Supp. 2d 1068, 1081 (N.D. Cal. 2010), quoting *Perkins v. Mobile Housing Bd.*,

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¹ Given the amount made available to pay class member claims under the settlement, counsel’s
requested lodestar fee represents a very small percentage of the value to the class by any standard. *See,*
gen., Shaffer v. Cont’l Cas. Co., 362 F. App’x 627, 631 (9th Cir. 2010) (using both lodestar and
percentage-of-fund methods to “cross-check” reasonableness of fee award in case where “no actual no
cash fund exists” and court “estimated the value of class benefit.”).

1 847 F.2d 735, 738 (11th Cir.1988). “To deny compensation, “it must appear that the time
2 claimed is obviously and convincingly excessive under the circumstances.” *Id.*

3 24. “[T]he party opposing the fee application has a burden of rebuttal that
4 requires submission of evidence to the district court challenging the accuracy and
5 reasonableness of the hours charged or the facts asserted by the prevailing party in its
6 submitted affidavits.” *Gates v. Deukmejian*, 987 F.2d 1392, 1397–98 (9th Cir. 1992).
7 “Conclusory and unsubstantiated objections are not sufficient to warrant a reduction in
8 fees.” *Lucas v. White*, 63 F.Supp.2d 1046, 1057-58 (N.D. Cal. 1999); *see also, e.g. Sobel*
9 *v. Hertz Corp.*, No. 306-CV-00545-LRH-RAM, 2014 WL 5063397, at *7 (D. Nev. Oct.
10 9, 2014) (party opposing fees failed to meet its “burden of producing evidence that
11 Plaintiffs' challenged hours were duplicative or inaccurate.”), citing *PSM Holding Corp.*
12 *v. Nat'l Farm Fin. Corp.*, 743 F.Supp.2d 1136, 1157 (C.D. Cal. 2010) (“Multiple
13 attorneys may be essential for planning strategy, eliciting testimony or evaluating facts or
14 law.”); *Sunstone Behavioral Health, Inc. v. Alameda Cnty. Med. Ctr.*, 646 F.Supp.2d
15 1206, 1214 (E.D. Cal. 2009) (declining to reduce fees when “defendant provide[d] no
16 persuasive reason why having two or three attorneys” perform a given task “was
17 unreasonable”).

18 25. Here, there is no indication that counsel’s time was unreasonable or
19 inefficient. To the contrary, counsel’s detailed records demonstrate that this matter was
20 pursued vigorously and efficiently. Counsel spent time on, among other tasks, preparing
21 complaint(s) and litigating actions outside of the MDL, appearing telephonically in court
22 hearings in the MDL; participating in calls with non-settling Plaintiffs group in order to
23 coordinate work efforts; reviewing and discussing settlement terms and revisions;
24 preparing document requests, reviewing documents and document production summaries,
25 participating via phone and chatroom in confirmatory discovery interviews, reviewing
26 "hot document" databases provided by Liaison Counsel; conducting document review
27 and confirmatory discovery interviews assigned by Liaison Counsel; conducting
28 discovery-related motion practice and meet and confers as directed by Liaison Counsel;

1 and performing other necessary litigation tasks such as reviewing Court filings and
2 orders.

3 26. The time spent by each of the attorneys and staff on these tasks is well
4 within what is reasonable for such work in the context of a suit of this complexity and
5 magnitude.

6 **2. Counsel’s hourly rates are reasonable and consistent with rates for**
7 **similar work performed by attorneys of comparable skill, experience,**
8 **and reputation.**

9 27. The Ninth Circuit has held that “[i]n determining a reasonable hourly rate,
10 the district court should be guided by the rate prevailing in the community for similar
11 work performed by attorneys of comparable skill, experience, and reputation.” *Ingram v.*
12 *Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011); *see also Chalmers v. City of Los Angeles*,
13 796 F.2d 1205, 1210–11 (9th Cir. 1986). “Affidavits of the plaintiffs’ attorney and other
14 attorneys regarding prevailing fees in the community, and rate determinations in other
15 cases, particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence
16 of the prevailing market rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896
17 F.2d 403, 407 (9th Cir. 1990), citing *Chalmers*, 796 F.2d at 1214.

18 28. The attorneys at Crowley Norman and Payne Mitchell specialize in complex
19 class action litigation and have considerable experience successfully pursuing matters
20 similar to the instant litigation. Below is a summary of all of the individuals who worked
21 on this matter, their role, the total number of hours they worked on this matter for which
22 compensation is requested, their hourly billing rate, and their total lodestar:

INCURRED TO DATE

Crowley Norman

Attorney	Role	Total Hours	Billing Rate	Lodestar
Richard E. Norman	Sr. Partner	123.70	\$650.00	\$80,405.00
R. Martin Weber, Jr.	Of Counsel	99.25	\$600.00	\$59,550.00
Gloria T. Suarez	Paralegal	8.30	\$140.00	\$1,162.00
TOTALS		231.25		\$141,117.00

Payne Mitchell

Attorney	Role	Total Hours	Billing Rate	Lodestar
Dean Gresham	Sr. Partner	60.20	\$650.00	\$39,130.00
Max S. Antony	Associate	8.70	\$250.00	\$2,175.00
TOTALS		68.9		\$41,305.00

REASONABLY ANTICIPATED TO BE INCURRED IN THE FUTURE

Crowley Norman

Attorney	Role	Total Hours	Billing Rate	Lodestar
Richard E. Norman	Sr. Partner	10.0	\$650.00	\$6,500.00
R. Martin Weber, Jr.	Of Counsel	5.0	\$600.00	\$3,000.00
TOTALS		15.00		\$9,500.00

29. These rates are reasonable as measured by the rates charged by attorneys of comparable skill and experience who specialize in cases of this nature in the geographical region. While California rates may exceed those rates that are usual and customary in some regions of the country, it is my experience that the rates charges in Dallas (Payne Mitchell's location) and Houston (Crowley Norman's location) are consistent with the California rates. In fact, the rates requested by the Texas Firms have been routinely

1 approved around the country and in California by both state and federal courts as the
2 usual and customary hourly rate for class action work. It is my opinion that these rates
3 fall within the usual and customary rates for both the Houston area, where I practice, in
4 Dallas, where Payne Mitchell practices, as well as the Los Angeles area where the case is
5 pending, and are, therefore, reasonable for this matter.

6 30. By way of example, the rates requested herein have been approved as part
7 of fee applications in cases in which this firm has participated:

- 8 a. by California state court Judge Steven A. Brick (Order Re Final
9 Approval and Award of Attorneys' Fees, Expenses and Incentive
10 Award, *El Dorado Hospitality, LLC v. Thyssenkrupp Elevator Corp.*,
11 Case No.: RG10507954; Superior Court of the State of California in
12 and for the County of Alameda)
- 13 b. by United States District Court Judge Stephen P. Friot (In re: Farmers
14 Insurance Co., Inc., FCRA Litigation; Western Dist. Case No. CN-
15 03-158-F; MDL No. 1564; In the United States District Court for the
16 Western District of Oklahoma)
- 17 c. by United States District Court Judge Katherine S. Hayden (*Alin v.*
18 *Honda Motor Co.*, Civil Action No.: 2:08-cv-04825; United States
19 District Court for the District of New Jersey)
- 20 d. by United States District Court Judge Dolly Gee (No. 2:10-cv-05279;
21 *Lang v. NCH Corporation*; in the United States District Court,
22 Central District of California).
- 23 e. by United States District Court Judge Kenneth Hoyt (Case 4:07-cv-
24 00625; *Evans, et l. v. Sterling Chemicals, Inc., et al.*; in the United
25 States District Court, Southern District of Texas).

26 31. Counsel's rates are consistent with rates prevailing in the Central District of
27 California and the Northern and Southern District of Texas for similar work performed
28

1 by attorneys of comparable skill, experience, and reputation, and the Texas Firms should
2 be awarded fees, as requested, based on their regular rates.

3 **E. Lodestar By Type Of Work**

4 32. Counsel made every effort to eliminate duplicative time, and, when possible
5 based on availability, assigned tasks to the counsel with the lowest billable rate. The
6 below describes in general terms the actions taken by counsel in this matter. Counsel
7 maintained detailed billing records, which will be submitted to the Court, upon request,
8 for *in camera* inspection.

9 33. In order to file the *Washburn* action, counsel spent time investigating the
10 complaint, meeting with Mr. Washburn, preparing a complaint, and reviewing MDL
11 proceedings prior to the transfer and initial status conference in this MDL Court on
12 February 14, 2013. Counsel expended time gathering information and investigating Mr.
13 Washburn's claim prior to filing suit, and expended time performing legal research, and
14 drafting, finalizing, and filing the complaint.

15 34. Below is a list of the attorneys who worked on this portion of the litigation,
16 along with the number of hours each spent, their billing rates, the lodestar attributable to
17 them, and the total lodestar for this portion of the litigation (the below chart aggregates
18 the time of Crowley Norman and Payne Mitchell):

19

Attorney	Total Hours	Billing Rate	Lodestar
Richard E. Norman	14.3	\$650.00	\$9,295.00
R. Martin Weber, Jr.	3.05	\$600.00	\$1,830.00
Dean Gresham	31.1	\$650.00	\$20,215.00
TOTALS	48.45		\$31,340.00

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25 35. Starting with the initial status conference, and continuing to present, counsel
26 have attended the Court hearings telephonically. Counsel limited the number of counsel
27 participating in hearings in order to avoid unnecessary duplication of efforts, and Counsel
28 attended hearings telephonically in order to avoid unnecessary travel time. Counsel's

1 participation in the hearings was necessary in order to stay abreast of developments and
2 to properly monitor the proceedings in order to allow the Texas class members to be
3 adequately represented. The first hearing was on February 14, 2013.

4 36. Below is a list of the attorneys who worked on this portion of the litigation,
5 along with the number of hours each spent, their billing rates, the lodestar attributable to
6 them, and the total lodestar for this portion of the litigation (the below chart aggregates
7 the time of Crowley Norman and Payne Mitchell):

8 Attorney	9 Total Hours	10 Billing Rate	11 Lodestar
12 Richard E. Norman	13 15.7	14 \$650.00	15 \$10,205.00
16 R. Martin Weber, Jr.	17 12.3	18 \$600.00	19 \$7,380.00
20 Dean Gresham	21 5.4	22 \$650.00	23 \$3,510.00
24 TOTALS	25 33.4		26 \$21,095.00

14 37. As the Court is aware, Non-Settling Plaintiffs coordinated their efforts
15 through the Court-designated Liaison Counsel. The calls with Non-Settling Plaintiffs
16 were necessary to stay abreast of the strategy involved, the discussions between Liaison
17 Counsel, Lead Counsel, and Defense Counsel regarding the confirmatory discovery,
18 witness interviews, and settlement negotiations. Counsel limited the number of counsel
19 participating in conference calls with the Non-Settling Plaintiffs in order to avoid
20 unnecessary duplication of efforts. Counsel's participation in the conference calls with
21 the Non-Settling Plaintiffs was necessary in order to stay abreast of developments and to
22 properly monitor the proceedings in order to allow the Texas class members to be
23 adequately represented as Texas Counsel filed the only Texas state class against Kia.

24 38. Below is a list of the attorneys who worked on this portion of the litigation,
25 along with the number of hours each spent, their billing rates, the lodestar attributable to
26 them, and the total lodestar for this portion of the litigation (the below chart aggregates
27 the time of Crowley Norman and Payne Mitchell):
28

Attorney	Total Hours	Billing Rate	Lodestar
Richard E. Norman	31.45	\$650.00	\$20,442.50
R. Martin Weber, Jr.	29.10	\$600.00	\$17,460.00
Dean Gresham	8.40	\$650.00	\$5,460.00
Max S. Antony	3.60	\$250.00	\$900.00
TOTALS	72.55		\$44,262.00

39. In order to evaluate the settlement for purposes of determining whether it could be supported or improved, Texas Counsel spent significant time reviewing and discussing the terms of the proposed settlement. As the only counsel seeking to represent a Texas-only class with specific claims under Texas law, the time incurred by *Washburn* counsel was necessary to analyze the proposed settlement terms and to best protect the interest of the Texas class.

40. Specific tasks included:

- a. Review of the initial Term Sheet, distributed in February 2013.
- b. Review of Liaison Counsel’s December 20, 2013 memo, which described how the discovery related to the strengths and weaknesses of plaintiffs’ claims.
- c. Review of the proposed settlement filed December 23, 2013 and the two Addendums, filed January 16, 2014, and May 2, 2014. This includes discussions and correspondence with Non-Settling Plaintiffs regarding the settlement, the settlement negotiations conducted by Liaison Counsel, and the revisions to the settlement. It also includes the review of settlement-related memos and summaries distributed to Non-Settling Plaintiffs after the settlement was filed on December 23, 2013.
- d. Time spent preparing position statements for Liaison Counsel’s January 30 and May 30 Reports.

1 41. Below is a list of the attorneys who worked on this portion of the litigation,
2 along with the number of hours each spent, their billing rates, the lodestar attributable to
3 them, and the total lodestar for this portion of the litigation.

4 Attorney	5 Total Hours	6 Billing Rate	7 Lodestar
8 Richard E. Norman	11	\$650.00	\$7,150.00
9 R. Martin Weber, Jr.	10.65	\$600.00	\$6,390.00
Dean Gresham	6.30	\$650.00	\$4,095.00
TOTALS	27.95		\$17,635.00

10 42. As the case progressed, and as monitored by the Court, the Defendants
11 produced substantial documentation. Those documents were catalogued and maintained
12 in databases to which the Texas Counsel were provided access.

13 43. In addition, as discovery progressed, documents were identified by Texas
14 Counsel for use in the witness interview process.

15 44. The time expended by Texas Counsel under this category was necessary to
16 stay abreast of the discovery issues, to participate in the discovery process, and to have a
17 sufficient understanding of the documents produced and interviewee testimony so as to
18 fully evaluate the proposed settlement with regard to the Texas class.

19 45. Specific tasks included:

- 20 a. Preparing, reviewing, and submitting revisions to plaintiffs' document
- 21 requests served on May 22, 2013;
- 22 b. Review of document production summaries distributed by Liaison
- 23 Counsel throughout the course of the litigation, as well as documents
- 24 contained in the online document database that accompanied Liaison
- 25 Counsel's summaries in October and December 2013; and
- 26 c. Participating in the confirmatory discovery interviews via telephone
- 27 and chatroom.
- 28

1 46. Below is a list of the attorneys who worked on this portion of the litigation,
2 along with the number of hours each spent, their billing rates, the lodestar attributable to
3 them, and the total lodestar for this portion of the litigation.

4 Attorney	Total Hours	Billing Rate	Lodestar
5 Richard E. Norman	8.75	\$650.00	\$5,687.50
6 R. Martin Weber, Jr.	13.7	\$600.00	\$8,220.00
7 Dean Gresham	2.8	\$650.00	\$1,820.00
8 Max S. Antony	5.1	\$250.00	\$1,275.00
9 TOTALS	30.35		\$17,002.50

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11 47. Liaison Counsel also allocated review of those documents to certain firms,
12 and Whatley Kallas, Doyle Lowther, and the Texas Firms divided the review process
13 amongst themselves. Texas Counsel spent time reviewing and coding documents posted
14 to the online EasyESI database that was specifically assigned by Liaison Counsel. As
15 part of this review process, it was necessary to coordinate with other counsel via email
16 and telephone on smaller group calls specifically regarding the document review. There
17 were numerous instances where document reviewers were asked to identify specific
18 documents or categories of documents and provide that information to the counsel
19 conducting the interviews or to Liaison Counsel for the preparation of document
20 summary reports.

21 48. Further, after review of the documents, Texas counsel spent time
22 participating in the confirmatory discovery interviews of Hyundai and Kia personnel for
23 the purpose of asking questions on behalf on Non-Settling Plaintiffs.

24 49. Below is a list of the attorneys who worked on this portion of the litigation,
25 along with the number of hours each spent, their billing rates, the lodestar attributable to
26 them, and the total lodestar for this portion of the litigation.
27
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Attorney	Total Hours	Billing Rate	Lodestar
Richard E. Norman	12.5	\$650.00	\$8,125.00
R. Martin Weber, Jr.	11	\$600.00	\$6,600.00
TOTALS	23.5		\$14,725.00

50. Texas Counsel were tasked by Liaison counsel to work with Ms. Kate DiDonato to resolve outstanding discovery disputes. That exercise required a review of objections, a review of document production, analysis of unproduced documents, and conferences with counsel and Defendants' counsel to arrive at reasonable resolutions of differences. Texas Counsel spent time meeting and conferring on those issues and assisting in the preparation of portions of the joint discovery stipulation filed in November 2013.

51. Below is a list of the attorneys who worked on this portion of the litigation, along with the number of hours each spent, their billing rates, the lodestar attributable to them, and the total lodestar for this portion of the litigation.

Attorney	Total Hours	Billing Rate	Lodestar
Richard E. Norman	4.0	\$650.00	\$2,600.00
R. Martin Weber, Jr.	4.85	\$600.00	\$2,910.00
TOTALS	8.85		\$5,510.00

52. In addition to the delineated categories, Texas Counsel spent time performing necessary litigation tasks such as reviewing Court filings to stay abreast of developments and reviewing Court orders, calendaring, preparing filings, and other administrative tasks. This category includes any hours not included in the above categories for which attorneys' fees are sought.

53. Below is a list of the attorneys and staff who worked on this portion of the litigation, along with the number of hours each spent, their billing rates, the lodestar attributable to them, and the total lodestar for this portion of the litigation.

Attorney		Total Hours	Billing Rate	Lodestar
Richard E. Norman		22	\$650.00	\$14,300.00
R. Martin Weber, Jr.		4.6	\$600.00	\$2,760.00
Dean Gresham		6.2	\$650.00	\$4,030.00
Gloria T. Suarez	Paralegal	8.30	\$140.00	\$1,162.00
TOTALS		32.8		\$22,252.00

54. Crowley Norman has incurred an additional \$8,600.00 (Weber, 10 hrs/\$600 hr. + Norman, 4 hrs/\$650 hr.) in lodestar to finalize this fee application and review and edit related declarations and fee briefs (the time recorded in this declaration is through December 17, 2014), and will in reasonable probability incur an additional \$9,500 in lodestar (Weber, 5 hrs/\$600 hr. + Norman, 10 hrs/\$650 hr.) related to (a) responding to client and Class member inquires about the settlement; and (b) review or prepare supplemental materials in support of the motion for final approval of settlement and fee application, as well as to participate in additional hearings telephonically and additional conference calls to discuss further matters in this case. I base this estimate on the expectation that, after December 17, 2014, I will bill an additional 10 hours of time to this matter and that R. martin Weber with my firm will incur and addition 4 hours of work.

F. Counsel are Entitled to Out-of-Pocket Costs

55. The lodestar figures set forth above do not include counsel’s out-of-pocket costs. Crowley Norman and Payne Mitchell should be reimbursed for all of their reasonable out-of-pocket litigation expenses incurred pursuing this matter. *See, e.g., Sobel, ___ F.Supp.3d ____, 2014 WL 5063397, at *12* (awarding expenses to objectors from common fund settlement). Counsel kept costs within reasonable limits and have sufficiently detailed their expense entries to allow review by the Court.

Expense Category	Amount
Filing Fees and Process of Service	\$405.00
Pacer Account	\$43.20
Total	\$448.20

56. Counsel incurred documented out-of-pocket litigation expenses of \$448.20 in pursuing this case. These expenses were incurred in filing the *Washburn* case in the United States District Court, Eastern District of Texas, Sherman Division.

G. Plaintiff Washburn Is Entitled To Receive Additional Compensation For His Efforts

57. The Texas Firms request that the Court award Plaintiff Washburn \$500 to compensate him for his efforts in this litigation. *See, e.g., Sobel*, ___ F.Supp.3d ____, 2014 WL 5063397, at *12 (granting incentive award to objectors). When considering requests for incentive awards, courts consider factors such as the risk to the representative in commencing suit, both financial and otherwise; the notoriety and personal difficulties encountered by the class representative; the amount of time and effort spent by the representative; the duration of the litigation; and the personal benefit (or lack thereof) enjoyed by the representative as a result of the litigation. *See, Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG CWX, 2014 WL 4090564, at *18 (C.D. Cal. Apr. 29, 2014), quoting *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D.Cal.1995). The \$500 requested for Mr. Washburn is justified based on the role he played in providing information for the complaints, disclosing personal information, subjecting himself to concerns about potential risk of harm through retribution and loss of privacy, the time and effort expended on reviewing and discussing the settlement, and the courage to come forward to speak out about Defendants' practices.

1 **H. Conclusion**

2 58. The Texas Firms respectfully submit that the following awards are supported
3 by the evidence, the record, and established case law, and are warranted in this case:

- 4 a. Crowley Norman fees (past): \$141,117.00
- 5 b. Crowley Norman fees (future): \$9,500.00
- 6 c. Payne Mitchell fees (past): \$41,305.00
- 7 d. Texas Firms shared expenses: \$448.20

8 The Texas Firms respectfully request that the Court enter an award in the foregoing
9 amounts.

10 I declare under penalty of perjury under the laws of the United States of America
11 that the foregoing is true and correct.

12 Executed on Thursday, December 18, 2014, in Houston, Texas.

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Richard E. Norman