

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: HYUNDAI AND KIA FUEL
ECONOMY LITIGATION

CASE NO. 2:13-ML-02424-GW-FFM

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT
Of Legal Fees and Costs**

Wilson v. Kia

Case No. 2:13-cv-1625

Lewis G. Adler, Esq.
Paul DePetris, Esq.
26 Newton Avenue
Woodbury, NJ 08096
(856)845-1968
lewisadler@verizon.net

TABLE OF CONTENTS

| | Page(s) |
|---|---------|
| TABLE OF AUTHORITIES..... | 3 |
| PRELIMINARY STATEMENT..... | 4 |
| ARGUMENT..... | 4 |
| I. THE COURT SHOULD APPROVE THE REQUEST BY CLASS COUNSEL FOR ATTORNEY’S FEES AND COSTS..... | 4 |
| CONCLUSION..... | 9 |

TABLE OF AUTHORITIES

| Cases | Page(s) |
|--|----------------|
| <i>Blanchard v. Bergeron</i> , 489 U.S. 87, 103 L. Ed. 2d 67, 109 S. Ct. 939 (1989)... | 4 |
| <i>City of Burlington v. Dague</i> , 505 U.S. 557, 112 S. Ct. 2638, 120 L. Ed. 2d 449 (1992)..... | 4 |
| <i>City of Riverside v. Rivera</i> , 477 U.S. 561, 91 L. Ed. 2d 466, 106 S. Ct. 2686 (1986)..... | 4 |
| <i>Farrar v. Hobby</i> , 506 U.S. 103, 121 L. Ed. 2d 494, 113 S. Ct. 566 (1992)..... | 4 |
| <i>Hensley v. Eckerhart</i> , 461 U.S. 424, 76 L. Ed. 2d 40, 103 S. Ct. 1933 (1983)... | |
| <i>Lindy Brothers Builders, Inc. of Philadelphia v. American Radiator & Standard Sanitary Corp.</i> , 487 F.2d 161 (3d Cir. 1973)..... | 4 |
| <i>Pennsylvania v. Delaware Valley Citizens' Counsel for Clean Air</i> , 483 U.S. 711, 97 L. Ed. 2d 585, 107 S. Ct. 3078 (1987)..... | 4 |
| <i>Perdue v. Kenny A.</i> , __ U.S. __, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010)..... | 4 |
| <i>Rendine v. Pantzer</i> , 141 N.J. 292, 334-335 (1995)..... | 5 |
| <i>Walker v. Giuggre</i> , 209 NJ 124 (2011)..... | 5 |
| <i>Webb v. Board of Educ. of Dyer County</i> , 471 U.S. 234, 85 L. Ed. 2d 233, 105 S. Ct. 1923 (1985)..... | 4 |
| Statutory Authority | |
| <i>New Jersey Consumer Fraud Act NJSA 56:8-1 et al.</i> (“CFA”)..... | 7 |

PRELIMINARY STATEMENT

This motion constitutes the culmination of years litigation with various defendants. The purpose of the litigation was to rectify the false representation of the mileage ratings of the defendants vehicles.

As is typical with litigation against a major corporation, reams of documents were requested and had to be reviewed in order to sort out their internal policies and practices. Interviews of witness were completed. Numerous issues on discovery were discussed and resolved.

ARGUMENT

I. THE COURT SHOULD APPROVE THE REQUEST BY COUNSEL FOR ATTORNEY'S FEES AND COSTS.

We join in the motion by Consumer Watchdog and liason counsel concerning the legal basis for fees under California law. Below we address as well the law in New Jersey for fees.

Courts have developed several means of reviewing the reasonableness of fee requests. At the dawn of the class action era, the most frequently used device was the lodestar method, which was developed by this Court in *Lindy Brothers Builders, Inc. of Philadelphia v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3d Cir. 1973). Under that approach, the Court assesses the number

of hours that lead counsel reasonably worked, decides the reasonable hourly rate for the lawyers' services, and determines counsel's fee by multiplying the number of hours reasonably worked by the reasonable hourly rate. The Supreme Court has developed an elaborate jurisprudence covering the proper application of the lodestar method, which remains the governing approach for cases governed by fee-shifting statutes. See, e.g., *Hensley v. Eckerhart*, 461 U.S. 424, 76 L. Ed. 2d 40, 103 S. Ct. 1933 (1983); *Webb v. Board of Educ. of Dyer County*, 471 U.S. 234, 85 L. Ed. 2d 233, 105 S. Ct. 1923 (1985); *City of Riverside v. Rivera*, 477 U.S. 561, 91 L. Ed. 2d 466, 106 S. Ct. 2686 (1986); *Pennsylvania v. Delaware Valley Citizens' Counsel for Clean Air*, 483 U.S. 711, 97 L. Ed. 2d 585, 107 S. Ct. 3078 (1987); *Blanchard v. Bergeron*, 489 U.S. 87, 103 L. Ed. 2d 67, 109 S. Ct. 939 (1989); *Farrar v. Hobby*, 506 U.S. 103, 121 L. Ed. 2d 494, 113 S. Ct. 566 (1992).

The US Supreme Court has addressed the issue of legal fees in federal fee shifting statutes. *Perdue v. Kenny A.*, ___ U.S. ___, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010) ; *City of Burlington v. Dague*, 505 U.S. 557, 112 S. Ct. 2638, 120 L. Ed. 2d 449 (1992). In *Dague*, the Court referred to the lodestar analysis as "the guiding light of our fee-shifting jurisprudence . . . [and to the] strong

presumption that the lodestar represents the reasonable fee[.]" *Id.* at 562, 112 S. Ct. at 2641, 120 L. Ed. 2d at 456 (internal citations and quotations omitted). Commenting that there is a burden on one who seeks an enhancement to demonstrate that it is "necessary," *ibid.* The Court held that enhancing the lodestar because a case was taken on a contingent fee basis was inappropriate.

Under New Jersey law, the New Jersey Supreme Court has continued to hold that the enhancement of the lodestar method is to be applied. *Walker v. Giuggre*, 209 NJ 124 (2011). "The framework we devised for calculating an award of fees pursuant to state statutory fee-shifting provisions is well-established, but the issues before us in these appeals require us to briefly reiterate that framework and, in particular, to explain the role that the contingency enhancement was intended to play. Making an award of attorneys' fees in the context of the LAD and similar state statutes begins with determining the lodestar, a calculation that we described as "the most significant element in the award of a reasonable fee." *Rendine v. Pantzer*, 141 N.J. 292, 334-335 (1995). Although the lodestar is essentially derived by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate, *ibid.*, our opinion in

Rendine included specific guidance, consistent with the requirements of *RPC* 1.5(a), that informs both aspects of the lodestar equation. " *Id* at 131.

The instant case is a statutory fee-shifting case under state law (See New Jersey Consumer Fraud Act (CFA) NJSA 56:8-19). Counsel were able to effect a total benefit for class. Counsel actively involved as a non-settling party in reviewing and monitoring the case from our initial joinder to date. Counsel wrote a variety of memos on the state law issues, and strategy. Counsel attempted to find experts to support the position of the non-settling parties during the course of the litigation. In the settlement process only Consumer Watchdog and ourselves objected to the form of the notices being provided. As the court is aware the form of notice had to be massively changed from the initial proposed version.

Counsel seeks a fee of \$78,964.00 inclusive of costs of suit. The fee represents no enhancement to the Class Counsel but a significant discount of the work done. There have been out of pocket costs in the amount of \$229.00. We have incurred the following total hours (284): Lewis Adler - 151.1 billed at \$300 per hour; and Paul Depetris-132.9 billed at \$250 per hour. The 2012 lodestar rate used by Community Legal Services for Paul Depetris with 19 years

experience is \$435.00 to \$505.00. The 2012 lodestar rate used by Community Legal Services for Lewis Adler with 29 years experience is \$600.00 to \$650.00. Certification of Lewis G. Adler Exhibit " 3" Without using this lodestar or any enhancement yields a fee of \$78,964.00. Using the minimum lodestar for each (DePetris 132.9 @ \$435 = \$57,811.50 and Adler 151.1 @ \$600 =\$90,660) yields a fee of \$148,471.50.

IV. CONCLUSION.

In view of all of the above, it is respectfully submitted that this Court should rule that this settlement is fair, reasonable and adequate and that counsel fees and costs should be awarded to Lewis G. Adler, Esq., and Paul DePetris, Esq., in the amount of \$78,964.00 to be paid by the Defendants.

/s/ LEWIS G. ADLER, ESQ.
LEWIS G. ADLER, ESQ.

/s/ PAUL DEPETRIS, ESQ.
PAUL DEPETRIS, ESQ.