

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE: SAMSUNG TOP-LOAD)	
WASHING MACHINE MARKETING,)	
SALES PRACTICES AND PRODUCT)	
LIABILITY LITIGATION)	
)	MDL Case No. 17-ml-2792-D
)	
THIS DOCUMENT RELATES TO)	
ALL ACTIONS)	District Judge Timothy D. DeGiusti

**MOTION AND MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’
REQUEST FOR AN AWARD OF ATTORNEYS’ FEES AND EXPENSES AND
FOR CLASS REPRESENTATIVE SERVICE AWARDS**

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Plaintiffs respectfully submit this Motion for an Award of Attorneys' Fees and Expenses and for Class Representative Service Awards.

I. INTRODUCTION

After three years of litigation and nine mediation sessions with a highly respected national class-action mediator, Plaintiffs and Defendants reached an agreement on a nationwide settlement (the "Settlement") to resolve a variety of claims relating to the Washers.¹ The hard-fought agreement ensures that all of the 2.8 million Class Members receive adequate compensation or relief tailored to their specific circumstances—a vast improvement upon the Voluntary Recall.

The Settlement represents an outstanding result for the Class, particularly given the challenges posed by this nationwide class action litigation. It resulted from the hard work, creativity, tenacity, and risk undertaken by Class Counsel. On these facts, and under governing law, Class Counsel's request for \$5,996,079.46 in attorneys' fees and \$242,764.47 in expense reimbursements is well-warranted. The requested fees and expenses are \$260,000 *lower* than the amount Samsung agreed to pay in negotiations conducted after relief to the Class was finalized. And to date, no Class Member—despite

¹ These claims were asserted against Samsung and five "Retailer Defendants": The Home Depot, Inc., Lowe's Companies, Inc., Lowe's Home Centers, LLC, Best Buy Co., Inc., and Sears Holding Corporation. Unless otherwise stated, all capitalized terms in this memorandum carry the same meaning as set forth in the Settlement Agreement, which was filed as Exhibit A to the Joint Notice Regarding Fully Executed Global MDL Settlement (Doc. No. 92-1). The Settlement has been modified and Sears dismissed as a result of its ongoing bankruptcy proceeding.

receiving notice of a larger proposed fee and expense award—has objected to the fees, expenses, or service awards.

Class Counsel respectfully ask the Court to award them these fees and expense reimbursements, and to approve modest service awards to reimburse the Class Representatives for the time, inconvenience, risks, and burdens of litigation.

II. BACKGROUND

A. The multidistrict class action litigation

This MDL encompasses all cases in the country alleging that certain Washers contain a design defect that can cause the Washers to vibrate excessively. One of the original complaints further alleged that due to the excess vibrations the drain pump in the Washer detached from its housing, causing the Washer to leak. *See Wagner v. Samsung Elecs. Am., Inc.*, No. 16-01099-D (E.D. Pa. June 30, 2017). The Washers are high-speed spin cycle top-load clothes washers that are substantially identical from an engineering standpoint. The Washers ranged in price from approximately \$549 to \$1,499.

On November 4, 2016, after the initial litigation was well underway, Samsung and the U.S. Consumer Product Safety Commission (the “CPSC”) announced a Voluntary Recall of 34 models of Washers. The Voluntary Recall acknowledged a risk that the drums in the Washers may lose balance, triggering excessive vibrations, resulting in the top separating from the washer in circumstances where a high-speed spin cycle is used for bedding, water-resistant, or bulky items.

Plaintiffs allege that Samsung and the Retailer Defendants sold these Washers to the public knowing they were defective. Plaintiffs further allege that the Voluntary Recall was inadequate and seek compensation for consumers whose Washers no longer function as marketed and warranted. In particular, Plaintiffs brought claims for violations of state consumer protection laws, breaches of express and implied warranties, unjust enrichment, negligence, failure to warn, and violation of the Magnusson-Moss Warranty Act, 15 U.S.C. §§ 12302-12. Plaintiffs in the MDL did not bring claims for personal injury or emotional distress, and those claims are not released under the Settlement.

B. Material terms of the Settlement

The Settlement is the result of hard fought and adversarial negotiations, informed by years of litigation, legal experience, input from experts, and the substantial aid of an experienced and skilled mediator. It significantly enhances relief available to consumers under the November 4, 2016 CPSC recall of the affected 2.8 million Washers (the “Voluntary Recall”). The Settlement provides substantial benefits to the Class, tethered directly to the claims asserted, including:

- A full refund to any Class Member who experienced a Top Separation or who experiences one within seven years of purchase.
- Samsung has increased its Minimum Recall Rebate to 15.5% of the Estimated Purchase Price of their Washer.
- Class Members who choose to keep their Washers and have Samsung perform the Recall Repair are entitled to a cash rebate of up to \$85 toward the purchase of a Samsung Major Home Appliance that is transferable to any Class Member’s immediate family member or household member.

- Class Members who have Samsung perform the Recall Repair in the future are entitled to have the Recall Repair completed within fourteen days of the Class Member's request. If the Recall Repair is not performed within fourteen days, Samsung will, at its option, provide the Class Member with a \$50, fully transferable, cash-equivalent card (e.g., Visa or American Express), or replace the Class Member's Washer.
- A complete repair of the drain pump for any Class Member who experiences a Drain Pump Failure in a Selected Washer within three years of the notice date. Additionally, Defendants will replace any Selected Washer with a new, comparable machine if they cannot repair the drain pump.
- Class Members who already paid to have their Drain Pump repaired in a Selected Washer due to Drain Pump Failure can recover up to \$150 in reimbursement for the costs of repair.
- Defendants will pay up to \$400 in expenses (e.g., cleaning costs) to each Class Member who experienced either a Top Separation or Drain Pump Failure.
- Samsung will pay all costs for state-of-the-art notice and claims administration from a nationally-respected class-action settlement administrator.
- Samsung will pay attorneys' costs and fees in addition to the relief it is providing directly to the Class.

The Settlement includes a narrowly tailored release, which provides optimal relief to the Class. In particular, the proposed Settlement does not release any claim for property damage or personal injury, thereby preserving Class Members' rights to litigate these claims against Samsung while allowing Class Members to also receive the considerable benefits of this Settlement.

III. CLASS COUNSEL PROSECUTED THIS CASE VIGOROUSLY.

A. Early MDL litigation history.

Beginning in 2016, Plaintiffs around the country filed over two dozen substantially similar putative class actions against Defendants. On June 20, 2017, Defendants asked the U.S. Judicial Panel on Multidistrict Litigation (“JPML”) to consolidate twenty-four of these cases for Pretrial Proceedings (MDL No. 2792, Doc. No. 1), a request the JPML granted on October 4, 2017 (Doc. No. 1).² Plaintiffs organized themselves quickly and filed a Unanimous Motion for Appointment of Interim Lead Counsel and Steering Committee on October 19, 2017. Doc. No. 12.

On November 9, 2017, Plaintiffs filed a Status Report with the Court seeking to move the litigation forward as quickly as possible. Doc. No. 23. Plaintiffs asked this Court to enter a scheduling order, allow the filing of an amended consolidated complaint, allow the parties to conduct discovery, issue a protective order, and allow for Plaintiffs to conduct bellwether trials. *Id.* Defendants opposed certain of Plaintiffs’ proposals. *See* Doc. No. 54.

On December 6, 2017, this Court named William B. Federman of Federman & Sherwood and Jason L. Lichtman of Lieff Cabraser Heimann & Bernstein, LLP as Co-Interim Class Counsel and Co-Lead MDL Counsel. Doc. No. 52. Pursuant to this Order, these attorneys were directed to, among other things, control the work of all plaintiffs’

² Two additional cases were transferred to the MDL the following week.

counsel to ensure that work was “conducted efficiently, effectively, and in the best interests of the Plaintiffs and the proposed class(es).” *Id.* at 2.

On December 28, 2017, Plaintiffs opposed Defendants’ proposed stay and sought permission to conduct discovery and proposed a procedural structure for the MDL. Doc. No. 60. This Court then ordered the parties to either submit an agreed-upon Proposed Case Management Order or to propose separate Proposed Case Management Orders. Doc. No. 65. On March 9, 2018, following the Parties filing separate submissions, the Court entered the Case Management Order. Doc. No. 72.

B. The parties’ settlement discussions.

While the parties previously attempted and failed at mediation efforts in certain underlying actions prior to JPML consolidation, they determined that it would be worthwhile to explore whether they could now resolve the consolidated litigation efficiently. The parties retained Michael N. Ungar, an experienced large-case mediator and partner at Ulmer & Berne, LLP. The Parties submitted detailed mediation statements to Mr. Ungar that set forth thorough legal and factual arguments to support their respective positions on issues including liability, class certification, and damages.

Over the course of several months, the parties participated in nine days of in-person formal mediation sessions, including sessions going late into the night and weekends. Samsung representatives from the Republic of Korea attended each of these sessions personally, along with their outside counsel, special settlement counsel and in-house counsel. During the formal mediation sessions, Mr. Ungar practiced shuttle

diplomacy, talking to both sides and assisting in exchanges of substantive information, including candid discussions concerning strengths and weaknesses of the parties' positions.

In addition to formal in-person mediations, the parties conducted multiple telephone calls both to pursue a potential settlement of the MDL and, in the alternative, to advance the litigation by conferring about discovery and other procedural issues. The parties also employed the services of Mr. Ungar to conduct telephonic mediation sessions and other settlement discussions.

Through the numerous extensive formal mediation sessions and the parties' telephonic negotiations, both with Mr. Ungar and separately, the parties made considerable progress toward resolution over several months. Following a final three full days of formal mediation at the end of March 2018, the parties were finally able to reach an agreement in principle on a global settlement of all the cases then included in the MDL. The parties thereafter worked to confirm their agreement, after which Mr. Ungar prepared—and the parties signed—an Understanding of Key Substantive Terms.

After the principal Settlement terms were reached and the Understanding of Key Substantive Terms was executed, the Parties engaged in confirmatory discovery. Specifically, Samsung produced information showing: (a) the number of Washers manufactured by model numbers and years of manufacture; (b) the serial numbers of the units with the allegedly defective drain pumps, as well as information demonstrating the

efficacy of the Drain Pump Repair; and (c) Samsung's processes for addressing property damage claims.

C. Attempted intervention by *Kennedy/Orenstein* plaintiffs.

On May 7, 2018, Co-Lead Counsel received a letter from attorney Bruce Nagel stating that he planned to seek enforcement of a purported settlement with Samsung which he claimed was reached in a New Jersey case (*Kennedy/Orenstein*) related to washing machine drain pump failures, but not included in the MDL. *See* Doc. No. 84. Mr. Nagel, having kept his case separate and apart from the MDL claimed that his case was now related to the consolidated Samsung litigation, though neither he nor Samsung had ever previously disclosed it to the Judicial Panel on Multidistrict Litigation (JPML) as a "related action." After reversing his earlier position, a lengthy process ensued in which Mr. Nagel sought to intervene in this action while, at the Court's direction, Mr. Nagel's case was tagged as a related action in front of the JPML. *See* Doc. No. 95. This Court granted the New Jersey plaintiffs' motion to intervene on permissive grounds and denied their request to intervene as of right. Doc. No. 113.

In the meantime, Class Counsel finalized the Class Settlement Agreement with Defendants. On July 9, 2018, Plaintiffs asked the Court to preliminarily approve the Settlement and certify the 2.8-million-member Class for settlement purposes. The *Kennedy/Orenstein* action was consolidated with this action, and the New Jersey plaintiffs sought approval of their putative settlement and urged the Court to reject this

settlement. Doc. No. 127. On November 29, 2018, the Court held a hearing on the competing settlement proposals.

D. Preliminary approval and settlement administration.

On January 8, 2019, this Court rejected the New Jersey plaintiffs' arguments and granted MDL Plaintiffs' motion for preliminary approval. It found that "the MDL Settlement is objectively superior to the proposed New Jersey settlement" because, for example, "the total relief for the class as a whole, and individually, is significantly greater in the MDL Settlement, the MDL Settlement covers future failures for a longer period of time, and, significantly, no proof of purchase is required in order for class members to assert their rights under the MDL Settlement." Doc. No. 138 at 11. The Court appointed Co-Lead Counsel as Class Counsel and directed that notice be given to the Class.

The Settlement Administrator promptly launched the Settlement Website and began mailing notice to the Class. Notice was completed on March 8, 2019, by which time 2,617,980 postcards were mailed. The Settlement Administrator also provided Publication Notice to the Settlement Class Members via millions of internet banner impressions that were distributed to mobile and desktop devices over the Google Display Network and that linked directly to the Settlement website. As of April 15, 2019, approximately 60,000 claims have been filed. Notice was also published on Lead Counsel's websites and reported by a national wire service, local news stations across the country, and media outlets such as Consumer Reports and Digital Trends.

IV. LEGAL STANDARDS

A. The fee request is governed by New York law.

A federal court has the power to “award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).

Where, as here, subject matter jurisdiction is based on diversity, the Tenth Circuit applies state law to determine the right to attorneys’ fees and the method of calculating those fees.

Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P., 888 F.3d 455, 460 (10th Cir. 2017) (collecting cases), *cert. denied sub nom. Chieftain Royalty Co. v. Nutley*, 139 S. Ct. 482 (2018) (“*Chieftain*”); *see also* Newberg on Class Actions § 15:2 (5th ed. 2016) (“Most courts hold that when state law provides the rule of decision in the case (as in diversity cases), state law also governs counsel’s entitlement to a fee.”).

Class Counsel’s entitlement to an award of reasonable attorneys’ fees in this case derives from the Settlement Agreement, which contains an explicit choice of law provision applying New York law. Settlement Agreement, § XII.J (“This Agreement shall be construed and governed in accordance with federal procedural law and the substantive laws of the State of New York, without regard to New York’s conflict-of-laws principles.”). New York law thus determines the reasonableness of Class Counsel’s fee request. *See Chieftain Royalty Co. v. XTO Energy Inc.*, No. CIV-11-29-KEW, 2018 WL 2296588, at *2 (E.D. Okla. Mar. 27, 2018) (“*XTO Energy*”). For example, the Court in *XTO Energy* applied Oklahoma law because there was a choice of law provision in the

settlement agreement selecting Oklahoma law. *See id.*³ In doing so, the Court noted that this was consistent with not only federal law, but also the law of Oklahoma. *See id.* (citing, *inter alia*, *Leritz v. Farmers Ins. Co., Inc.*, 385 P.3d 991, 992 (Okla. 2016) (“Generally, ‘[t]he law of the state chosen by the parties to govern their contractual rights and duties will be applied....’”). That said, because the standard for determining a reasonable attorneys’ fee in a class action is similar under New York and federal common law, the substantive law of New York provides that federal fee jurisprudence is an “appropriate guide” when making a reasonableness determination under New York law. *Matakov v. Kel-Tech Constr., Inc.*, 84 A.D.3d 677, 679 [footnote] (N.Y. App. Div. 2011); *see also In re HSBC Bank U.S.A., N.A., Checking Account Overdraft Litig.*, 49 Misc. 3d 1211(A) (Sup. Ct. N.Y. County 2015).

B. The Court reviews fees using the “lodestar” method.

In a case like this one, in which the parties reach a settlement with a claims-made structure that has no upper cap on relief, the Court evaluates attorney fee requests primarily by using what is known as the lodestar method. *See In re: Whirlpool Corp. Front-loading Washer Prods. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL 5338012, at *22 (N.D. Ohio Sept. 23, 2016); *Chambers*, 214 F. Supp. 3d at 893 (lodestar method used

³ *Accord, e.g., In re Volkswagen & Audi Warranty Extension Litig.*, 692 F.3d 4, 14-21 (1st Cir. 2012) (holding that state contract law governs attorneys fee provisions in settlement agreements, and determining which state’s law to apply where agreement was silent); *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 894 (C.D. Cal. 2016) (applying California law to interpret attorneys fee provision in settlement agreement containing choice of law provision).

where settlement benefits are “not easily monetized”).⁴ This is because a claims-made settlement has an indefinite total value and is not typically capable of being characterized as a true “common fund” for the purpose of a percentage-of-the-fund fee analysis. *See Rosenbaum v. MacAllister*, 64 F.3d 1439, 1447–48 (10th Cir. 1995) (percentage award not warranted where settlement provides common benefit but does not create common fund); *McLennan v. LG Elecs. USA, Inc.*, No. 2:10-CV-03604 WJM, 2012 WL 686020, at *9 (D.N.J. Mar. 2, 2012) (same); Newberg § 15:56 (noting that “[c]laims-made settlements do not create a common fund”). All fees and costs awarded here, moreover, will be paid by Samsung and will not reduce the amount paid to the Class in any way.

The lodestar calculation is simple: reasonable rates multiplied by reasonable hours. *See, e.g., In re HSBC Bank U.S.A., N.A., Checking Account Overdraft Litig.*, 49 Misc. 3d 1211(A) (Sup. Ct. N.Y. County 2015); *Chieftain*, 888 F.3d at 458. The burden is on the party seeking fees to demonstrate their reasonableness; the claimant is “not required to tender contemporaneously-maintained time records,” but should provide “an objective and detailed breakdown by the attorney of the time and labor expended, together with other factors he or she feels supports the fee requested.” *Klein v. Robert’s Am. Gourmet Food, Inc.*, 28 A.D.3d 63, 75 (N.Y. App. Div. 2006) (citation and internal quotation

⁴ The Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1712, does not conflict with these cases because CAFA provides that where a class action includes relief in the form of coupons or rebates but “a portion of the recovery of the coupons is not used to determine the attorney’s fee,” then the fee shall be lodestar-based and may include a multiplier, *id.* at § 1712(b)(1) & (b)(2). *See, e.g., In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 706-10 (7th Cir. 2015); *Galloway v. Kan. City Landsmen, LLC*, 833 F.3d 969, 974 (8th Cir. 2016); *Chambers*, 214 F. Supp. 3d at 894-95.

marks omitted); Manual Complex Lit. § 14.223 (4th ed. 2004) (stating that before the fairness hearing, class counsel should submit time and expense records for the Court to review). This allows the attorney to be compensated “for all hours she spent providing legal services to the prevailing party so long as the total number is reasonable.” Newberg § 15:45.

C. Beyond using the lodestar method in the first instance, this Court has broad discretion to evaluate counsel’s fee request.

The Court has “broad discretion” when determining a reasonable fee award under New York law. *Schumacher v. NeoStem, Inc.*, 43 Misc. 3d 1233(A) (Sup. Ct. N.Y. County 2014). In particular, it should consider whether the lodestar method yields an appropriate fee award in light of the following “well-established” factors: (1) the time and labor required; (2) the difficulty of the questions involved; (3) the skill required to handle the issues presented; (4) the experience, ability and reputation of counsel; (5) the proposed amount of fees; (6) the benefit resulting to the putative class from the services; (7) the customary fee charged for similar services; (8) the contingency or certainty of compensation; (9) the results obtained; (10) and the responsibility involved. *Saska v. Metro. Museum of Art*, 57 Misc. 3d 218, 226–27 (Sup. Ct. N.Y. County 2017) (citing *Gordon v. Verizon Commc’ns, Inc.*, 148 A.D.3d 146, 165 (N.Y. App. Div. 2017)) and *In re Freeman’s Estate*, 34 N.Y. 2d 1, 9 (N.Y. App. Div. 1974)). These factors generally track the *Johnson* factors endorsed by the Tenth Circuit for courts applying federal fee jurisprudence. *See, e.g., XTO Energy*, 2018 WL 2296588, at *3 (citing *Johnson v.*

Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974)). All of these factors are “rarely . . . applicable” in one case. *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988). Instead, the “overarching ‘principle [is] that a settlement court should have discretion to award attorney’s fees in an amount commensurate with the degree of benefit obtained by the class as a result of the litigation.’” *Saska*, 57 Misc. 3d at 227 (citation omitted).

V. CLASS COUNSEL’S REQUEST FOR AN AWARD OF ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES IS WELL-SUPPORTED

The negotiation of fee agreements is generally encouraged. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (“A request for attorneys’ fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee.”). Here, “the parties negotiated and agreed upon the attorneys’ fee provision in the Settlement”—but only *after* the substantive terms of the Settlement were finalized, Lichtman Decl., ¶ 17⁵—so “regardless of the size of the fee award, class members who apply for recovery under the terms of the Settlement will receive the same benefit; the fee award does not reduce the recovery to the class.” *In re Sony SXR Rear Projection Television Class Action Litig.*, No. 06 CIV. 5173 (RPP), 2008 WL 1956267, at *15–16 (S.D.N.Y. May 1, 2008). An independently negotiated fee award gives the defendant an incentive to bargain aggressively and thus diminishes the danger of conflicts of interest between attorneys and class members, “greatly reduc[ing]” the Court’s fiduciary role in

⁵ The Lichtman Declaration is attached to this motion as Ex. 1, and the Federman Declaration is attached as Ex. 2.

overseeing the award. *Michels v. Phoenix Home Life Mut. Ins.*, No. 95/5318, 1997 WL 1161145, at *30 (Sup. Ct. N.Y. County Jan. 7, 1997); *Mirakay v. Dakota Growers Pasta Co.*, No. 13-CV-4429 JAP, 2014 WL 5358987, at *11 (D.N.J. Oct. 20, 2014).⁶

A. Class Counsel’s fee request is appropriate under the lodestar method.

Here, the lodestar analysis confirms that the requested fees of \$5,996,079.46 are reasonable. For purposes of this motion, Class Counsel submit the time of 14 firms for the Court’s consideration.⁷ This represents the closely supervised work of Class Counsel and all Plaintiffs’ Steering Committee members from the formation of the MDL on October 4, 2017 through March 31, 2019, not including the hours spent preparing the motion for attorneys’ fees and expenses, as well as law firms that assisted Class Counsel and the PSC firms. It also includes Plaintiffs’ Counsel’s pre-MDL time that specifically advanced the prosecution of this action and benefited the class—namely time spent responding to Defendants’ motions to dismiss or for summary judgment; preparing for

⁶ See also *Lane v. Page*, 862 F. Supp. 2d 1182, 1258 (D.N.M. 2012) (approving fees that were negotiated separately and did not diminish class recovery); *In re LG/Zenith Rear Projection Television Class Action Litig.*, Civ. A. No. 06-5609 (JLL), 2009 WL 455513, at *8-9 (D.N.J. Feb. 18, 2009) (approving agreed upon attorneys’ fee award that did not diminish the settlement fund); *In re Ins. Brokerage Antitrust Litig.*, Civ. No. 04-5184 GEB, 2007 WL 1652303, at *4 (D.N.J. June 5, 2007), *aff’d*, 579 F.3d 241 (3d Cir. 2009) (same); *In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 106 F.Supp.2d 721, 732 (D.N.J. 2000) (finding it significant that attorneys’ fees would not diminish settlement fund); *McBean v. City of New York*, 233 F.R.D. 377, 392 (S.D.N.Y. 2006) (granting class counsel full amount of fees agreed to by defendant where the attorneys’ fees were separate from the class settlement and did not diminish the class settlement); *In re Sony*, 2008 WL 1956267, at *15-*16 (same); *Dupler v. Costco Wholesale Corp.*, 705 F.Supp.2d 231, 245 (E.D.N.Y. 2010) (same); *Bezio v. Gen. Elec. Co.*, 655 F.Supp.2d 162, 167-68 (N.D.N.Y. 2009) (same); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 322 (W.D. Tex. 2007) (same).

⁷ Class counsel did not submit the time of 11 law firms, primarily local counsel, who worked on behalf of the Class for less than 10 hours.

and attending formal mediation; and selecting and working with expert witnesses. Federman Decl., ¶ 9. Importantly, Class Counsel do *not* seek reimbursement for *over \$1.4 million* of attorney time spent prosecuting the class actions before consolidation—time that, while important to each individual action, did not ultimately benefit the Class. Accordingly, Class Counsel’s fee request is particularly conservative and below the amount that Samsung had agreed, in negotiations, to pay. Lichtman Decl., ¶¶ 13, 17.

For these reasons, the Court can be confident that each firm’s work led to the excellent result here and “produced a beneficial result for the class.” *See* 2003 Advisory Committee Note, Fed. R. Civ. P. 23(h) (noting propriety of awarding fees to counsel who acted for the class before certification but were not appointed class counsel); *see also* Newberg § 15.22 (recognizing that non-class-counsel may be entitled to recover fees).

Soon after this Court’s December 2017 Order appointing a leadership structure (Doc. No. 52), Class Counsel began contemporaneously collecting and reviewing each firm’s submissions, exercising its billing judgment to strike entries for time that was “unproductive, excessive or redundant,” Newberg § 15:47. Federman Decl., ¶ 4. Accordingly, Class Counsel are confident that the fees requested here—to be paid by Samsung without any impact on the recovery to the Class—are reasonable. Lichtman Decl., ¶ 7; Federman Decl., ¶ 5.

1. Class Counsel’s hourly rates are reasonable.

Typically, a reasonable rate to be used in the lodestar calculation is the “customary fee charged for similar services by lawyers in the community with like experience and of

comparable reputation to those by whom the prevailing party was represented.” *Rahmey v. Blum*, 95 A.D.2d 294, 302 (N.Y. App. Div. 1983) (citing *Johnson*, 488 F.2d at 638); *Anchondo v. Anderson, Crenshaw & Assocs., L.L.C.*, 616 F.3d 1098, 1102 (10th Cir. 2010) (discussing calculation of reasonable hourly rate and noting that multiple highly experienced, nationally prominent attorneys may work on a case and be paid for their contributions). The situation is different, however, where the litigation is consolidated under the MDL procedures, and so counsel litigate in the forum by necessity rather than by choice. In this MDL—which was created by motion of Samsung to the JPML—the attorneys come from states across the country, and so it is appropriate to use each attorney’s national rates as the relevant metrics. Newberg § 15.42; *In re Vioxx Prods. Liab. Litig.*, 760 F. Supp. 2d 640, 660 (E.D. La. 2010) (in MDL, applying “national rate[s]”); *see generally* Robert L. Rossi, *Attorneys’ Fees* § 10:4 & n.11 (3d ed. 2016) (explaining that the relevant community is “generally the jurisdiction where the case was litigated, unless special factors exist which necessitated the employment of out-of-forum attorneys,” and collecting cases).

Here, Class Counsel are highly regarded members of the bar who are among the most experienced and successful in the country in the fields of consumer class actions, products liability, and complex litigation. *See* Doc. No. 12-2 (Lichtman Decl.) ¶¶ 2-8. Each firm whose time and costs Class Counsel submits for reimbursement performed work that contributed to the outstanding result in this case—whether by analyzing warranty and consumer protection laws of dozens of states, participating in mediation,

briefing significant motions, or working with experts. *See, e.g.*, Lichtman Decl., ¶ 8; Federman Decl., ¶ 7. Further, as noted, Class Counsel's hourly rates have been evaluated and approved by many courts in class action and complex litigation matters. *See* Lichtman Decl., ¶ 12; *see also In re: Whirlpool*, 2016 WL 5338012, at *22 (approving Lief Cabraser Heimann & Bernstein, LLP rates); *Angley v. UTi Worldwide Inc., et al.*, 14-cv-02066 (C.D. Cal Feb. 28, 2019) (approving Federman & Sherwood rates). And they are in line with rates approved by courts across the country. *See, e.g., In re Shop-Vac Mktg. & Sales Practices Litig.*, No. 2380, 2016 WL 7178421, at *15 (M.D. Pa. Dec. 9, 2016) (noting that district courts approve hourly rates reaching \$835.00/hour, averaging \$681.15/hour, and collecting cases).

2. The number of hours Class Counsel worked is reasonable.

Plaintiffs' counsel devoted a significant amount of time and effort to this challenging litigation over the course of three years, often to the exclusion of any other cases. The submitting firms collectively report over 5,000 hours, summarized in the accompanying declarations, and further evidenced by detailed time entries that can be submitted for in camera review. As previously noted, Co-Lead Counsel exercised discretion, pursuant to the Court's Order, to eliminate hundreds of time entries, and further decided not to seek reimbursement for over \$1.4 million of pre-MDL fees that did not obviously advance the prosecution of this action and benefit the Class.

As described above, Class Counsel's efforts include but are not limited to: (1) retaining experts to inspect and test washing machines that exploded after the CPSC-

sanctioned recall, which Class Counsel determined to be inadequate and pose a continued risk to consumers; (2) contesting multiple motions to dismiss in various jurisdictions; (3) overcoming Samsung's attempt to stay proceedings while the JPML considered its request to centralize the action; (4) organizing the MDL and successfully opposing Samsung's efforts to stay discovery and slow the consolidated litigation; (5) participating in nine hard-fought mediation sessions with the assistance of a professional mediator; (6) interviewing third-party witnesses, including service providers; and (7) remaining in contact with the named Plaintiffs and countless Class Members during the litigation and mediation phase, as well as subsequently. *See* Lichtman Decl., ¶ 8; Federman Decl., ¶ 7. Further, throughout this litigation, Class Counsel allocated responsibility among the various firms and avoided duplicate efforts. *See* Lichtman Decl., ¶ 4-5; Federman Decl., ¶¶ 4-6.

Although the reported hours have a cut-off date of March 31, 2019, Class Counsel's responsibilities did not end with the grant of preliminary approval. Class Counsel have spent, and will continue to spend, hundreds of hours monitoring the Settlement Administrator and responding to dozens of Class Member inquiries. Lichtman Dec., ¶ 10. Class Counsel's duties will continue even after Final Approval, and include responding to any objector appeals, overseeing claims administration, and assisting Class Members. *Id.*

Accordingly, Class Counsel respectfully submit that the hours recorded in this case, as reflected in the supporting documentation attached to this motion, are reasonable.

See Lichtman Decl., ¶ 7; Federman Decl., ¶ 5. Should the Court desire any further detail or documentation, Class Counsel stand prepared to provide it.

B. A modest multiplier is warranted.

Class Counsel’s request for a fee award of \$5,996,079.46 represents a reasonable multiplier of 2.33, which excludes the necessary time that will be spent by Co-Lead Counsel after the settlement is approved—a very measured multiplier that accounts for the excellent result for the Class, plaintiffs’ counsel’s risk in undertaking this socially beneficial litigation, and other relevant factors discussed below. Courts routinely grant larger multipliers in similar fee-award cases. See, e.g., *XTO Energy*, 2018 WL 2296588, at *10 (multiplier of 2.58 “is well within the range of multipliers approved in the Tenth Circuit, and other circuits,” and collecting cases); *Michels*, 1997 WL 1161145, at *32 (under New York law, a multiplier of “well in excess of 3.3 times the lodestar” is reasonable, and “the actual multiplier award effectively is less because the lodestar does not take into account the work still to be done by plaintiffs’ counsel in the implementation of this settlement”).⁸ It is particularly reasonable here, where Class Counsel omitted over \$1.4 million in lodestar from the fee request.

⁸ *Accord*, e.g., *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 171 (D. Mass. 2015) (awarding multiplier of 2 in auto defect class action MDL); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051-52 & n.6 (9th Cir. 2002) (approving multiplier of 3.65 and citing a survey of class settlements from 1996–2001 indicating that most multipliers range from 1.0 to 4.0); *In re Davita Healthcare Partners, Inc.*, No. 12-CV-2074-WJM-CBS, 2015 WL 3582265, at *5 (D. Colo. June 5, 2015) (multiplier of 3 “will adequately compensate Plaintiffs’ counsel for their extensive work on this complex case pursuant to the applicable *Johnson* factors, and is in line with the multipliers awarded in similar cases”); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Footnote continued on next page

Each of the factors weighed by New York and Tenth Circuit courts further demonstrates the reasonableness of Class Counsel's fee request.

1. The litigation involved difficult questions of law that required skillful handling.

Class Counsel confronted difficult questions of law throughout the course of this three-year litigation. From the outset, Class Counsel faced legal issues surrounding a product that posed a continued safety risk to consumers: Class Counsel retained sophisticated engineering experts to respond in real time to new reports of exploded Class Washers, traveling to consumers' homes across the country to inspect destroyed washers. Lichtman Decl., ¶ 8.i. Meanwhile, other experts purchased and tested machines in laboratory conditions to isolate the root cause of the defect. *Id.* Class Counsel dealt with the risk that evidence vital to the Class's claims was being destroyed when Samsung took possession of exploded washers. *See Moore v. Samsung Elecs. Am., Inc.*, No. 2:16-04966 (D.N.J.), Doc. Nos. 14, 15, 16, 22.

Second, Class Counsel faced the thorny legal issues posed by the CPSC-sanctioned Voluntary Recall. Class Counsel had to consider and in some cases confront arguments that the Voluntary Recall preempted their claims, eliminated Samsung's liability, zeroed out the Class's damages, and supplanted class action litigation as the superior method of handling consumer claims. Lichtman Decl., ¶¶ 8.c., 18. Even absent

Footnote continued from previous page

Supp. 2d 172, 185 (W.D.N.Y. 2011) (multiplier of 5.3 is "not atypical" because "courts regularly award lodestar multipliers from two to six times lodestar," and collecting cases) (citation omitted).

preemption, the fact that a federal agency arguably approved Samsung's recall added extra difficulty to Plaintiffs' legal arguments, both on the merits and with respect to the forthcoming class certification stage. *See In re Aqua Dots Prods. Liab. Litig.*, 654 F.3d 748, 753 (7th Cir. 2011) (affirming denial of class certification on manageability grounds, due in part to product recall).

Third, the litigation posed special challenges on the issue of damages. Samsung argued in briefing and negotiations that the Class could show little or no damages: it would claim that top-separation failures are exceedingly rare, the Voluntary Recall was more than adequate, and the vast majority of Class Members continue to use their washing machines as marketed. Class Counsel consulted with experts and were prepared to rebut these arguments as needed, but the highly disputed issue of damages posed special legal challenges to the litigation. *See Rhodes v. Olson Assocs., P.C.*, 308 F.R.D. 664, 667 (D. Colo. 2015) (finding that difficulty of proving damages weighs in favor of class settlement); Lichtman Decl., ¶ 18.

Finally, Class Counsel navigated the legal minefield posed by multidistrict class action litigation. Class Counsel were forced to confront issues ranging from identifying which states' consumer protection and warranty laws could be grouped together for efficient case administration amid an ever-changing legal landscape, *see* Doc. Nos. 60-61, opposing Samsung's efforts to delay discovery while JPML proceedings played out, to addressing whether a proposed settlement in another class action that was not

consolidated in the MDL would be able to undermine Class Counsel's efforts for the Class here, *see, e.g.*, Doc. Nos. 103, 111, 127, 138.

All of these legal issues required skilled lawyering by experienced attorneys who are well familiar with the intricacies of overlapping class action and multidistrict litigation practice. The successful result for the Class is a testament to the responsible efforts of Class Counsel. New York factors two, three, and ten, and *Johnson* factors two and three, counsel in favor of approval.

2. The results obtained for the Class are exceptional, while the proposed fee is modest.

As Plaintiffs described in their memorandum in support of preliminary approval, the Settlement provides terrific value to the Class, particularly in light of what could be recovered if Plaintiffs prevailed at trial and when measured against the likelihood of success. One damages consultant retained by Plaintiffs for mediation purposes preliminarily estimated the value of the disabled high-speed spin cycle on Samsung's washing machines at 7% of the purchase price. Lichtman Decl., ¶ 18. This was one of several reasonable damages estimates for Class Washers that (as Samsung frequently pointed out, and would no doubt argue at trial) *still washed and cleaned consumers' clothes* notwithstanding the vibration defect. In Class Counsel's experience, this estimate approximated damages recoverable at trial, and suggested that consumers were injured in the amount of roughly \$50 per washing machine, or \$140 million. *Id.*

The Settlement far exceeds these estimates and provides substantial relief for all 2.8 million Class Members that is tailored to their individual damages. As explained above, all Class Members who own a Washer are entitled to either: (1) a Recall Repair plus a cash rebate of up to \$85; or (2) an Enhanced Minimum Recall Rebate that ensures that they can receive a payment of at least 15.5% of the estimated purchase price of their Washer if they participate in the rebate option under the Voluntary Recall. Whether measured in dollars or as a percentage, the relief Class Members can receive under the Settlement objectively surpasses the above damages estimate. On top of that, Class Members who have experienced, or will experience, Top Separation or Drain Pump Failure receive a full refund or full repair, respectively, plus up to \$400 in consequential expenses. And the Settlement is uncapped—meaning Samsung will pay every eligible Class Member’s claim, and the value of each claimant’s award is not diminished by increased participation by Class Members. *See Michels*, 1997 WL 1161145, at *27 (noting that this positively distinguishes proposed settlement). This economic recovery is objectively substantial, builds off the recall framework approved by the CPSC, and allows Class Members to choose the type of relief most closely tailored to their needs, and receive guaranteed value no matter how many claims are filed—a significant victory for the Class.

Measured against the strong relief, Class Counsel’s requested attorneys’ fees for the law firms that participated in the MDL litigation efforts are modest. For example, using a \$50 per class member settlement value, the Settlement and Voluntary Recall

make more than \$125,000,000 available to Class Members. *Cf. Brown*, 838 F.2d at 455 n. 2 (collecting cases demonstrating that from 22% to 37.3% is typical in common fund cases). Most importantly, attorneys’ fees were only negotiated in the evening of the ninth mediation session before Mr. Ungar—after all material terms of the Settlement Agreement were resolved. The attorney fees to be awarded in this case to Class Counsel did not, and will not, diminish the recovery to the Class in any way. *See Lane*, 862 F. Supp. 2d at 1258 (fees negotiated separately “reduces the risk of improper bargaining”); *Michels*, 1997 WL 1161145, at *30 (absent evidence of collusion, the court gives “great weight to the negotiated fee”). New York factors five, six, and nine, and *Johnson* factor eight, weigh strongly in favor of approval.

3. Counsel’s compensation is contingent on success, required time and labor, and precluded other legal work.

From the outset of this case to the present, prosecution of this action involved financial risk for Class Counsel. *See Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 796 (N.D. Ohio 2010) (“This factor accounts for the substantial risk an attorney takes when he or she devotes substantial time and energy to a class action despite the fact that it will be uncompensated if the case does not settle and is dismissed.”). Class Counsel litigated this matter on a wholly-contingent basis, placing at risk their own resources with no guarantee of recovery—prosecuting this case on behalf of the Class Representatives and the Class for three years and counting. Lichtman Decl., ¶ 13;

Chieftain, 888 F.3d at 458 (considering “nature and length of professional relationship with client”) (citation omitted).

That risk manifested in the amount of attorney time and money invested in prosecuting this case on behalf of the Class. Plaintiffs’ Counsel invested over 8,000 hours of attorney time amounting to \$3.973 million in the success of this action (though Class Counsel’s fee request is based on only 5,000 hours totaling \$2.6 million in lodestar). Lichtman Decl., ¶ 13. This “necessarily” precluded them from handling other litigation during this time. *Id.*; *Lucken Family Ltd. P’ship, LLP v. Ultra Res., Inc.*, No. 09–cv01543, 2010 WL 5387559, at *5 (D. Colo. Dec. 22, 2010). The value of the services rendered by Class Counsel favors approval of the requested fee award. *See McNeely v. Nat’l Mobile Health Care, LLC*, No. CIV-07-933-M, 2008 WL 4816510, at *15 (W.D. Okla. Oct. 27, 2008) (when recovery is “highly contingent” and counsel’s efforts “were instrumental in realizing recovery on behalf of the class,” courts afford special weight to result obtained for the class) (citation and internal quotation marks omitted); *XTO Energy*, 2018 WL 2296588, at *4 (same). New York factors one and eight, and *Johnson* factors one, four, six, and eleven, weigh in favor of approval.

4. The experience, reputation, and ability of counsel justify an award of fees at the customary rate.

Class Counsel are experienced class action litigators with national reputations for successfully achieving results for clients. *See supra* Sec. III.B (citing attorney declarations and accompanying exhibits). Their rates are “customary . . . for similar

services by lawyers in the community with like experience and of comparable reputation” *Matakov*, 84 A.D.3d at 678 (citation and internal quotation marks omitted); *see supra* Sec. III.B. Moreover, based on reasonable valuations of the Settlement, the \$6.24 million attorneys’ fee award and expense reimbursement requested in this case is well below the one-third contingency fee award that is customary for class actions in this District. *See McNeely*, 2008 WL 4816510, at *15. New York factors four and seven, and *Johnson* factor nine.

C. Class Counsel’s application does not include fees for Bruce Nagel.

Lead Counsel notes respectfully that this fee application does not include time for Bruce H. Nagel, who prosecuted the *Kennedy/Orenstein* action separate and apart from the MDL, and did not play a role in providing this relief for the class. Federman Decl., ¶ 3 n.1. To the contrary, Mr. Nagel attempted to remain apart from the MDL and prevent the Settlement from occurring. Instead, Mr. Nagel has taken the position that he is entitled to the full amount of his fees that he negotiated directly with Samsung outside of the MDL from his separate NJ litigation before Judge Martini because he negotiated that amount with Samsung. *Id.*

Class Counsel intend to separately respond to the fee request by Mr. Nagel, but note that this is the second time in as many years that Mr. Nagel has asserted, wrongly, that he is entitled to fees from an MDL in which his work did not benefit the class. *See In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, 914 F.3d 623, 642 (9th Cir. 2019). In this case, as in *VW*, Mr. Nagel could have submitted his time

for consideration to Lead Counsel before settlement, but chose to continue to work outside of the MDL and this Court's ordered management structure for strategic reasons.

VI. CLASS COUNSEL'S REQUEST FOR REIMBURSEMENT OF EXPENSES IS REASONABLE.

It is well-established that Class Counsel are entitled to reimbursement of out-of-pocket expenses advanced for the Class. *See* Newberg § 16:1; *In re Williams Sec. Litig.-WCG Subclass*, 558 F.3d 1144, 1147 (10th Cir. 2009) (“Rule 54 creates a presumption that the district court will award costs to the prevailing party.”) (citation and internal quotation marks omitted). Class Counsel may recover their expenses and taxable costs recoverable by any prevailing party, *see* Fed. R. Civ. P. 54(d)(1), and also “nontaxable costs that are authorized by law or by the parties’ agreement,” *id.* 23(h). Here, Class Counsel request reimbursement for \$242,764.47 of costs and expenses paid out-of-pocket for the benefit of the Class, as provided for in the Settlement Agreement.⁹ These costs will be paid by Samsung on top of the benefits paid to the Class.

These costs and expenses were incurred in pursuit of this litigation and include, without limitation, (1) filing fees; (2) copying, mailing, faxing, and serving documents; (3) conducting computer research; (4) travel; and (5) expert fees. Federman Decl., ¶¶ 15-17. These are “the type of costs normally billed to clients,” and are appropriate for reimbursement. *Aragon v. Clear Water Prods. LLC*, No. 15-CV-02821-PAB-STV, 2018

⁹ The requested expense reimbursement does not double-count payments made to the MDL cost fund, but instead will ensure that each firm is fully reimbursed for its expenditures on behalf of the Class.

WL 6620724, at *7 (D. Colo. Dec. 18, 2018). Class Counsel respectfully request reimbursement of costs and expenses based on the agreement between the parties.

VII. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS ARE REASONABLE.

Courts regularly award class representatives service awards (or “incentive awards”) in recognition of their service to the class. *See* Newberg § 17:1 (“[T]he payments aim to compensate class representatives for their service to the class and simultaneously serve to incentivize them to perform this function.”); *Chieftain*, 888 F.3d at 467 (“Courts have recognized that an award may be appropriate to provide an incentive to act as a named plaintiff.”). They are “meant to compensate the named plaintiff for any personal risk incurred by the individual or any additional effort expended by the individual for the benefit of the lawsuit.” *McNeely*, 2008 WL 4816510, at *15 (citation and internal quotation marks omitted); *see also In re HSBC Bank U.S.A., N.A., Checking Account Overdraft Litig.*, 49 Misc. 3d 1211(A) (Sup. Ct. N.Y. County 2015) (observing that New York law does not specifically authorize service awards but does provide “reasonable compensation for time and effort expended on behalf of the class”) (citation and internal quotation marks omitted).

Here, 42 Class Representatives devoted time and effort to the litigation and faced all the risks and burdens that accompany class action litigation: many had to work with Class Counsel to have their Class Washers removed from their homes and stored as evidence; others made their Class Washers available for in-home inspections by lawyers;

and all of them agreed to face invasive discovery and participate in years-long litigation through trial, if needed. Federman Decl., ¶ 18. Samsung agreed to separately pay a total of \$100,000 in service awards—which amounts to \$2,380.95 per Class Representative—only after the parties reached agreement on all substantive provisions of the Settlement. These modest amounts, all to be paid by Samsung *in addition to* the benefits paid to the Class, are easily justified by the documented contributions of the Class Representatives. *See Hill v. Kaiser-Francis Oil Co.*, No. CIV-09-07-R, 2013 WL 12090048, at *3 (W.D. Okla. July 30, 2013) (approving incentive award of \$200,000 to one class representative); *Cox v. Microsoft Corp.*, 26 Misc. 3d 1220(A) (Sup. Ct. N.Y. County 2007) (approving service awards of \$7,500 per class representative).

VIII. CONCLUSION

For the above reasons, Plaintiffs respectfully ask the Court to grant Plaintiffs' motion and approve the \$100,000 in negotiated service awards for Class Representatives and \$6,238,843.93 in attorneys' fees and reimbursement of expenses for Class Counsel. Class Counsel ask the Court to give Class Counsel discretion to distribute the funds to Plaintiffs' Counsel in an amount that is just, equitable, and commensurate with the benefit to the Class.

Respectfully submitted, April 15, 2019,

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Co-Lead MDL Counsel for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on April 15, 2019, a copy of the above pleading was electronically filed with the Clerk of Court of the United States District Court for the Western District of Oklahoma, using the CM/ECF system, which will send a Notice of Electronic filing to all parties of record.

/s/ John T. Spragens

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

IN RE: SAMSUNG TOP-LOAD
WASHING MACHINE MARKETING,
SALES PRACTICES AND PRODUCTS
LIABILITY LITIGATION

MDL No. 2792

Hon. Timothy D. DeGiusti

**DECLARATION OF WILLIAM B. FEDERMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS**

I, William B. Federman, declare as follows:

1. I am the managing member of the law firm of Federman & Sherwood. I am admitted to this Court's general bar, and I am a member in good standing of the bars of the States of Oklahoma, Texas, New York, and the District of Columbia. I am also admitted to numerous federal courts including the Western District of Oklahoma, the Tenth Circuit Court of Appeals, and the United States Supreme Court.

2. I serve as Interim Co-Lead Counsel for the Plaintiffs ("Co-Lead Counsel") in this MDL action, pursuant to the Court's Order of December 6, 2017 (Doc. No. 52) (the "December 6, 2017 Order"). I also serve, pursuant to this Court's Order of January 8, 2019 (Doc. No. 138), as Class Counsel for the Settlement Class.¹

3. The information in this declaration regarding the time and expenses of the attorneys is taken from reports and supporting documents prepared by Plaintiffs' Counsel and submitted to Co-Lead Counsel each month for review in accordance with the Court's

¹ All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Settlement Agreement, which was filed as Exhibit A to the Joint Notice Regarding Fully Executed Global MDL Settlement (Doc. No. 92-1).

December 6, 2017 Order.²

4. I am the attorney who oversaw or conducted the day-to-day activities in this litigation, and I reviewed these materials (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of these reviews was to confirm the accuracy of the entries as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation as well as to comply with the Court's December 7, 2017 Order, which required my firm along with Lief Cabraser Heimann & Bernstein, LLP ("Lief Cabraser"), to periodically collect a summary of time and expenses expended by Plaintiffs' Counsel. As a result of these reviews, reductions were made to Plaintiffs' Counsel's time either in the exercise of "billing judgment" or to conform to the guidelines and policies established by Plaintiffs' Counsel.

5. I believe that the time reflected in Plaintiffs' Counsel's lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the fees and expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

² The term "Plaintiffs' Counsel" refers to counsel for the MDL Plaintiffs, excluding counsel that prosecuted the *Kennedy/Orenstein* action, as that action did not play a role in prosecuting, or providing benefit to, the MDL action. Counsel for plaintiffs in the *Kennedy/Orenstein* action, Bruce H. Nagel, made the strategic choice not to include the *Kennedy/Orenstein* case in the MDL.

6. As Co-Lead Counsel, Federman & Sherwood was responsible, along with Lief Cabraser, for overseeing and leading the litigation and prosecution of the Action. Co-Lead Counsel was assisted by the Plaintiffs' Steering Committee ("PSC") and other Plaintiffs' Counsel.

7. In prosecuting this case, Plaintiffs' Counsel, among other things:
- a. conducted a thorough background investigation into the issues that form the basis of this Action;
 - b. developed questionnaires and obtained information from several Samsung customers regarding their experiences with Samsung's washers;
 - c. interviewed potential expert witnesses regarding the issues experienced by Samsung customers;
 - d. interviewed multiple Samsung customers and potential supporting witnesses for the allegations in the complaints;
 - e. reviewed the information obtained by multiple Samsung customers and selected plaintiffs who could serve in a representative capacity;
 - f. prepared and filed numerous complaints that detailed the issues affecting certain models of Samsung's top loading washers;
 - g. coordinated and negotiated with counsel for Defendants regarding the scope of discovery and issues concerning electronically stored information, and submitted the proposed protocols for the Court's approval;
 - h. participated in the MDL proceeding, including successfully arguing for the washer cases to be coordinated and centralized for consolidation in the

Western District of Oklahoma;

- i. prepared for and appeared at multiple court hearings;
- j. successfully and efficiently coordinated over 28 class actions and developed a cohesive team with eight plaintiff law firms to support Co-Lead Counsel through the PSC;
- k. prepared and filed a joint motion for protective order;
- l. prepared and filed briefing in opposition to Defendants' motion to stay discovery;
- m. prepared and filed a proposed case management order with proposed protocols to govern the case going forward;
- n. prepared and submitted to neutral mediator Michael N. Ungar detailed mediation statements, which set forth thorough legal and factual arguments to support Plaintiffs' position on liability, class certification, and damages;
- o. participated in extensive settlement negotiations, including nine days of formal mediation sessions, during which Co-Lead Counsel exchanged substantive information with counsel for Defendants and had candid discussions with the mediator concerning the strengths and weaknesses of the parties' positions;
- p. participated in multiple telephone calls with counsel for Defendants and/or the mediator, both to pursue a potential settlement and, in the alternative, to advance the litigation by conferring about discovery and other procedural matters;

q. coordinated with the PSC regarding legal strategy, the efficient division of work, and the progress of, and objectives for, settlement negotiations;

r. worked to commit the parties' understanding of the Settlement to writing by working with Defendants' counsel to draft the Understanding of Key Substantive Terms and the Settlement Agreement;

s. reviewed and analyzed the confirmatory discovery produced by Samsung;

t. negotiated with counsel for Defendants regarding the parameters for the Settlement claims administration, including working to draft the Settlement notices, the various claim forms, and the Frequently Asked Questions;

u. prepared and filed the motion for preliminary approval;

v. prepared and filed multiple briefs, in this Court and in the Judicial Panel on Multidistrict Litigation, to incorporate related actions pending in the District Court of New Jersey into the consolidated MDL action;

w. prepared for and appeared at the hearing for preliminary approval of the Settlement;

x. remained in contact with Plaintiffs and other Samsung customers throughout this proceeding; and

y. responded to hundreds of phone calls and emails from Samsung customers with questions about the Settlement and/or the claim forms.

8. Summaries of the time spent and expenses incurred by Plaintiffs' Counsel

are attached hereto as Exhibits A and B, respectively.³

9. The number of hours spent on this litigation by Plaintiffs' Counsel from the formation of the MDL (on October 4, 2017) through March 31, 2019 is 4,168.40 hours, not including the hours spent preparing the motion for attorneys' fees and expenses. Prior to the consolidation of the actions into the MDL proceeding, Plaintiffs' Counsel spent an additional 1,062.9 hours devoted to: responding to defendants' motions to dismiss or motions for summary judgment; preparing for and attending formal mediation; and selecting and working with expert witnesses. Each of these pre-MDL tasks were particularly helpful to the prosecution of the Action following the formation of the MDL. Accordingly, the total number of hours spent by Plaintiffs' Counsel for work that specifically advanced the prosecution of this Action and substantially benefited the Class is 5,231.3 hours. This does not include the pre-MDL hours spent by Plaintiffs' Counsel that advanced only their individual actions. It also does not include time from any firm that billed less than 10 hours on work falling within the aforementioned approved parameters. Finally, this does not include time that will be spent by Plaintiffs' Counsel on continuing services to the Settlement Class, including responding to class members' inquiries, supervising the settlement administrator in the review and processing of claims, attending the final Settlement hearing, and overseeing the distribution of Settlement benefits to class members.

³ Detailed time and expense records can be provided to the Court for *in camera* review if the Court so requests.

10. The total lodestar for the 5,231.3 hours of combined attorney and paraprofessional time based on the firm's/attorney's current rates is \$2,573,424.66. *See* Exhibit A. The hourly rates are the usual and customary rates set by each firm for each individual in this type of litigation. These rates have been evaluated and approved by courts in class actions and complex litigations.

11. The requested rates are reasonable for this case considering the geographical diversity, experience, and expertise these particular lawyers have in this area of law. Moreover, the value of the Settlement obtained for the benefit of Plaintiffs and the Settlement Class strongly supports the reasonableness of the requested fees.

12. As a result of the time devoted to prosecuting this case on behalf of the Class, Plaintiffs' Counsel were, to some degree, prevented from pursuing work in other cases. For example, because of my commitment as Co-Lead Counsel in this Action, I withdrew

13. The requested \$5,996,079.46 attorneys' fee award represents a reasonable multiplier of 2.33 on the \$2,573,424.66 lodestar for time through March 31, 2019. The additional work required to obtain approval and close out the Settlement will further reduce the multiplier.

14. Plaintiffs' Counsel are attorneys from across the country, with experience litigating complex consume and class action cases. Plaintiffs' Counsel invested substantial time, effort, and resources in litigating this risky case on a pure contingency basis with no guarantee or promise that such time and effort would be compensated.

15. In addition, Plaintiffs' Counsel seeks reimbursement of costs and expenses in the amount of \$242,764.47 for expenses incurred in connection with the prosecution of this case.⁴ Those expenses and charges are summarized by category in Exhibit B hereto.

16. The expenses pertaining to this case are reflected in the books and records of each of the respective law firms. The total of the expenses for which Plaintiffs' Counsel seeks reimbursement was calculated from receipts, expense vouchers, check records and other documents maintained by the law firms or submitted to me as Co-Lead Counsel and are represented to be an accurate record of the expenses.

17. Each of these expenses were reasonably and necessarily incurred by Plaintiffs' Counsel in the prosecution of this case.

18. Plaintiffs also seek service awards in the amount of \$2,380.95 for each of the 42 Class Representatives who devoted their time and effort to serving as named plaintiffs and overseeing this litigation for the benefit of the Class. Among other things, these Class Representatives: answered detailed questionnaires and/or provided essential information to Plaintiffs' Counsel; collected documents and other evidence that supported the claims alleged in this case; reviewed pleadings and coordinated with Plaintiffs' Counsel as to the status of, and strategy for, the action; and agreed to face invasive and time consuming discovery, including depositions, if necessary. Additionally, many of the Class Representatives worked with Plaintiffs' Counsel to have their Samsung washers removed from their homes and stored as evidence or they made their washers available

⁴ We are not seeking to be reimbursed for contributions to the MDL Plaintiffs' common litigation fund where money has not been spent.

for in-home inspections by Plaintiffs' Counsel. The \$2,380.95 amount is reasonable in light of the Class Representatives' substantial contributions to the case. The active participation and efforts expended by the Class Representatives in prosecuting this case materially aided, and indeed were necessary to, the Settlement achieved.

19. I declare under penalty of perjury of the laws of Oklahoma and the United States that the foregoing is true and correct, and that this declaration was executed in Oklahoma City, Oklahoma on April 15, 2019.



William B. Federman

EXHIBIT A

Summary Report of Time by Firm and Biller								
TOTALS								
Firm	Total Firm Hours	Total Firm Fees	Billor	Position	Grad Year	Rate	Hours Billed	Total Attorney Fees
Ademi & O'Reilly LLP	29.2	\$ 17,737.50	Ademi, Shpetim	Partner	1996	\$700.00	19.8	\$13,860.00
			Blythin, John D.	Associate	2003	\$450.00	4.7	\$2,115.00
			Eldridge, Mark A.	Associate	2014	\$375.00	4.7	\$1,762.50
Barrasso Usdin Kupperman Freeman & Sarver, L.L.C.	39.3	\$ 21,815.00	Kupperman, Stephen	Partner	1977	\$750.00	12.7	\$9,525.00
			Landeaver, David	Associate	1995	\$650.00	1.6	\$1,040.00
			McFall, Shaun	Associate	2013	\$450.00	25	\$11,250.00
Berger & Montague. P.C	129.2	\$ 91,477.00	Carson, Shanon J.	Partner	2001	\$795.00	27.1	\$21,544.50
			Fantini, Michael T.	Partner	1990	\$685.00	101.7	\$69,664.50
			Lechtzin, Eric	Partner	1991	\$670.00	0.4	\$268.00
Federman & Sherwood	2282	\$ 1,138,740.90	Bolton, Allicia	Paralegal	N/A	\$250.00	147.7	\$36,925.00
			Conner, Megan	Legal Clerk	N/A	\$150.00	8.1	\$1,215.00
			Federman, William	Partner	1982	\$850.00	606.4	\$515,327.50
			Hester, Robin	Paralegal	N/A	\$250.00	20.8	\$5,200.00
			Hollingsworth, Dillon	Legal Clerk	N/A	\$150.00	1.1	\$165.00
			Johnson, Nicole	Associate	2016	\$350.00	154.9	\$54,215.00
			King, Jared	Paralegal	N/A	\$250.00	526.2	\$131,550.00
			Marcussen, Carin	Associate	2003	\$510.00	5.2	\$2,468.40
			Murphy, Brooke	Associate	2010	\$500.00	341.4	\$170,700.00
			Traylor, Frandelind	Paralegal	N/A	\$250.00	1	\$250.00
			Trechter, Reed	Legal Clerk	N/A	\$150.00	6.6	\$990.00
Wells, Joshua	Associate	2008	\$475.00	462.6	\$219,735.00			
Green & Noblin, P.C.	33	\$ 24,750.00	Green, Robert	Partner	1984	\$750.00	33	\$24,750.00
Greg Coleman	131.5	\$ 94,743.31	Coleman, Greg	Partner	1990	\$775.00	87.3	\$67,618.31
			Holt, Dawn	Paralegal	N/A	\$250.00	1.2	\$290.00
			Ladnier, Will	Associate	2015	\$350.00	6.6	\$2,310.00
			Lemly, Ben	Associate	2017	\$450.00	0.2	\$90.00
			Silvey, Mark	Associate	1988	\$675.00	25.3	\$17,077.50
			White, Lisa	Associate	2007	\$675.00	10.9	\$7,357.50
Halunen Law	181	\$ 82,620.00	Boyle, Amy E.	Partner	2011	\$425.00	61.1	\$25,967.50
			Pasterski, Colin J.	Associate	2016	\$325.00	55.1	\$17,907.50
			Vukelich-Seltz, Jennifer M.	Paralegal	N/A	\$175.00	1.8	\$315.00
			Weiner, Melissa S.	Partner	2007	\$610.00	63	\$38,430.00

Summary Report of Time by Firm and Biller								
TOTALS								
Firm	Total Firm Hours	Total Firm Fees	Biller	Position	Grad Year	Rate	Hours Billed	Total Attorney Fees
Levin Sedran & Berman	153.1	\$ 115,150.70	Levin, Daniel	Partner	1997	\$850.00	67.7	\$58,695.00
			Schaffer, Charles	Partner	1995	\$850.00	2.9	\$2,830.70
			Serianni, Nicola	Associate	2006	\$650.00	82.5	\$53,625.00
Lieff Cabraser Heimann & Bernstein, LLP	1875.1	\$ 832,748.00	Anderson, Corrie	Paralegal	N/A	\$360.00	2.5	\$900.00
			Beltran, Eileen	Paralegal	N/A	\$360.00	2.6	\$936.00
			Belushko Barrows, Nikki	Paralegal	N/A	\$360.00	1.7	\$612.00
			Blaisdell, Max	Paralegal	N/A	\$355.00	129.6	\$41,526.50
			Brodi, Triniti	Paralegal	N/A	\$330.00	0.6	\$192.00
			Brown, Aiden	Paralegal	N/A	\$345.00	8	\$2,760.00
			Cabraser, Elizabeth	Partner	1978	\$1,025.00	4.3	\$4,422.50
			Carnam, Todd	Paralegal	N/A	\$360.00	7.7	\$2,779.50
			Cudos, Florencia	Paralegal	N/A	\$390.00	0.4	\$156.00
			Halfon, Avery	Associate	2015	\$440.00	274.9	\$106,670.00
			Heiman, Laura	Associate	2011	\$455.00	23.8	\$10,611.50
			Heller, Roger	Partner	2001	\$700.00	2.2	\$1,490.00
			Kaufman, Andrew	Associate	2012	\$480.00	15.8	\$7,471.50
			Kaynor, Camille	Paralegal	N/A	\$350.00	18.4	\$6,495.50
			Keenley, Elizabeth	Paralegal	N/A	\$365.00	1	\$365.00
			Lichtman, Jason	Partner	2006	\$615.00	446.4	\$258,248.50
			Lovell, Emily	Paralegal	N/A	\$330.00	4.8	\$1,584.00
			McBride, Katherine	Associate	2015	\$370.00	3.5	\$1,295.00
			Moorhead, Jarobi	Paralegal	N/A	\$315.00	4.3	\$1,354.50
			Mukherji, Renee	Paralegal	N/A	\$375.00	1	\$375.00
			Orsland, Kristin	Paralegal	N/A	\$360.00	7.8	\$2,808.00
			Petterson, Sean	Associate	2015	\$420.00	2	\$840.00
			Poole, Amanda	Paralegal	N/A	\$335.00	2	\$670.00
			Rudnick, Jennifer	Paralegal	N/A	\$360.00	0.5	\$180.00
			Schnitzer, Ariel	Paralegal	N/A	\$315.00	45.1	\$14,214.00
			Selbin, Jonathan	Partner	1993	\$875.00	22.2	\$19,192.50
Selhorst, Hannah	Paralegal	N/A	\$370.00	229.5	\$76,519.50			
Sragens, John	Associate	2012	\$480.00	579.5	\$257,604.00			
Vishwanath, Ajay	Paralegal	N/A	\$315.00	33	\$10,475.00			
Robert Peirce & Associates P.C.	24.3	\$ 5,678.75	Howell, Cynthia	Paralegal	N/A	\$125.00	18.1	\$2,268.75
			Rihn, Aaron	Partner	2000	\$550.00	6.2	\$3,410.00
Shepherd, Finkelman, Miller & Shah, LLP	125.3	\$ 42,408.50	Finestone, Emily	Associate	2015	\$350.00	12.3	\$4,305.00
			Goldstein, Jayne A.	Partner	19986	\$775.00	4.8	\$3,720.00
			Landis, Ashley	Legal Clerk	N/A	\$75.00	29.6	\$2,220.00
			Moss, Sue	Paralegal	N/A	\$475.00	0.3	\$58.50
			Reinhard, Jaclyn	Associate	2017	\$250.00	41.4	\$10,350.00

Summary Report of Time by Firm and Biller								
TOTALS								
Firm	Total Firm Hours	Total Firm Fees	Billor	Position	Grad Year	Rate	Hours Billed	Total Attorney Fees
			Shah, James C.	Partner	1997	\$850.00	15.3	\$11,495.00
			Tang, Kolin C.	Associate	2011	\$475.00	21.6	\$10,260.00
Starr Austen & Miller, LLP	149.3	\$ 65,723.50	Brizzi, Carl	Partner	1994	\$330.00	20	\$6,600.00
			Greiner, Terri	Paralegal	N/A	\$140.00	22.9	\$3,206.00
			Miller, Andrew	Partner	1996	\$500.00	33.7	\$16,850.00
			O'Brien Jacob	Associate	2013	\$275.00	14.1	\$3,877.50
			Starr, Scott	Partner	1980	\$600.00	58.7	\$35,190.00
Wexler Wallace LLP	67.9	\$ 30,846.50	Keller, Amy E.	Associate	2008	\$485.00	52.9	\$25,656.50
			Magas, Evangeline	Paralegal	N/A	\$275.00	0.8	\$220.00
			Story, Tyler	Associate	2012	\$350.00	14.2	\$4,970.00
Zelbst, Holmes & Butler	11.1	\$ 8,985.00	Butler, David	Partner	1997	\$600.00	0.2	\$120.00
			Zelbst, Clay	Partner	2014	\$350.00	0.8	\$280.00
			Zelbst, John	Partner	1980	\$850.00	10.1	\$8,585.00
All Firm Totals:	5231.3	\$ 2,573,424.66						

EXHIBIT B

All Firms Expenses by Category**TOTALS**

Expense Category	Amount
Expert Fees	\$100,691.54
Research	\$23,306.35
Evidence Storage	\$9,033.21
Long Distance	\$6,797.87
In-House Copies	\$4,127.42
Mailings	\$2,255.47
Mediation Costs	\$49,735.18
Travel for Mediation, Court Appearances, and Expert Work	\$44,238.19
Misc. Litigation Expenses (Transcripts, Translation Services, data sharing, etc.)	\$2,579.24

TOTALS: \$242,764.47

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

IN RE: SAMSUNG TOP-LOAD WASHING
MACHINE MARKETING, SALES
PRACTICES AND PRODUCT LIABILITY
LITIGATION

MDL Case No. 17-ml-2792-D

Hon. Timothy D. DeGiusti

THIS DOCUMENT RELATES TO:
ALL CASES

**DECLARATION OF JASON L. LICHTMAN IN SUPPORT OF PLAINTIFFS’
MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND EXPENSES AND
FOR CLASS REPRESENTATIVE SERVICE AWARDS**

I, Jason L. Lichtman, declare as follows:

1. I am a partner in the law firm of Lieff Cabraser Heimann & Bernstein, LLP (“LCHB”). I am Co-Lead Class Counsel in this litigation. I am a member in good standing of the bars of Illinois, New York, and the District of Columbia. I respectfully submit this declaration in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and for Class Representative Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. I have been involved in all aspects of this litigation since its investigation and inception in 2016.

3. On December 6, 2017, this Court appointed me as Co-Lead Counsel for the Plaintiffs (“Co-Lead Counsel”) in this MDL action. Dkt. No. 52 (the “December 6, 2017

Order”). On January 8, 2019, this Court further appointed me as Class Counsel for the Settlement Class. Dkt. No. 138 at 10.

4. As Co-Lead Counsel, LCHB was responsible, along with Federman & Sherwood, for overseeing and leading the litigation and prosecution of this case. I personally performed or directed all of LCHB’s activities in fulfillment of its role as Co-Lead Counsel. Co-Lead Counsel was assisted by the Plaintiffs’ Steering Committee (“PSC”) and other Plaintiffs’ Counsel. In all tasks, Co-Lead Counsel allocated responsibility among the various firms and avoided duplicate efforts.

5. Pursuant to this Court’s December 6, 2017 Order, Co-Lead Counsel collected and reviewed monthly time and expense reports from Plaintiffs’ Counsel in this action. I implemented and oversaw this process for LCHB and personally reviewed these materials while preparing this declaration. The purpose of these reviews was to confirm the accuracy of the entries as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation.

6. As a result of these reviews, significant reductions were made to Plaintiffs’ Counsel’s time, either in the exercise of “billing judgment” or to conform to the guidelines and policies established by Co-Lead Counsel. Co-Lead Counsel’s goal in establishing these policies, undertaking these reviews, and reducing or eliminating time entries was to ensure that all attorneys’ fees sought or recovered in this action were based on work that directly and obviously contributed to the successful result for the Class. Plaintiffs’ Counsel devoted hundreds of additional hours, and tens of thousands of dollars, to investigating and prosecuting the more than 28 class actions before

consolidation, but these hours and expenditures were omitted from the conservative lodestar calculation submitted to the Court.

7. It is my professional opinion that the time reflected in Plaintiffs' Counsel's lodestar calculation and the expenses for which payment is sought as set forth in this declaration and the contemporaneously filed declaration of Co-Lead Counsel William B. Federman ("Federman Declaration") are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. The hours submitted by Class Counsel reflect meaningful efforts of a highly efficient team that contributed to the resolution of this case. Among other things, I reviewed the bills using the same practices that I would apply to a client paying our hourly rates.

8. Plaintiffs' Counsel performed many functions that were vital to the successful prosecution, and ultimate resolution, of this nationwide case on behalf of Class Members. Among these tasks, Plaintiffs' Counsel:

- a. investigated the potential claims, including reports of consumers whose Samsung washing machines exploded without explanation;
- b. researched and formulated the legal theories for relief;
- c. researched the impact of the Consumer Product Safety Commission Voluntary Recall on the litigation, including arguments that the Voluntary Recall preempted Plaintiffs' claims, eliminated Samsung's liability, zeroed out the Class's damages, and supplanted class action litigation as the superior method of handling consumer claims;

- d. identified, vetted, and worked with dozens of potential class representatives in no less than 25 states;
- e. extensively researched and drafted a consolidated master complaint, anticipating that the Court would direct Class Counsel to file one;
- f. successfully negotiated and established an agreed leadership structure for the efficient prosecution of the consolidated class action litigation, and managed that structure for the benefit of the Class;
- g. researched and drafted all written briefing that has been presented in the litigation to date, including filing pre-consolidation oppositions to motions to dismiss and for summary judgment, and filing briefing before this Court on complex issues concerning consolidated case management, discovery procedure, preliminary settlement approval, and intervention;
- h. drafted and sent written litigation and settlement discovery to Samsung and the Retail Defendants;
- i. retained and worked with multiple expert witnesses to inspect the washing machines, both in consumers' homes and in the laboratory setting; analyze the machines' failure mode and establish the root cause of the defect; and determine Class Members' damages, a highly disputed issue that posed special legal challenges to the litigation;
- j. developed numerous settlement proposals, including drafting a comprehensive mediation statement, and negotiated extensively with Samsung about the proposals, frequently with the assistance of a professional mediator;

k. worked with Named Plaintiffs and fielded questions from hundreds of Class Members about the case;

l. prepared for and appeared at multiple court hearings; and

m. negotiated and implemented the details of the Class Settlement, supervising Notice to the Class and assisting Class Members with claim filing.¹

9. In my experience, it is routine for Class Counsel to spend hundreds of additional hours implementing a product defect settlement, including working to assist Class Members with filing valid claims and obtaining and using their settlement benefits. In fact, attorneys at LCHB continue to provide legal services to class members from settlements that were finalized years ago. I expect that Class Counsel will do the same in this matter, devoting many dozens of future hours to final settlement approval, overseeing claims administration, and assisting Class Members years in the future.

10. Plaintiffs' Counsel have made a significant commitment of time and resources to the successful prosecution of the claims in this case. The number of hours spent on this litigation by Plaintiffs' Counsel from the formation of the MDL (on October 4, 2017) through March 31, 2019 is 4,168.4 hours, not including the hours spent preparing the motion for attorneys' fees and expenses. Prior to the consolidation of the actions into the MDL proceeding, Plaintiffs' Counsel spent an additional 1,062.9 hours devoted to: responding to defendants' motions for summary judgment or motions to dismiss; preparing for and attending formal mediation; and selecting and working with

¹ The contemporaneously filed Federman Declaration reports an accurate, detailed listing of Class Counsel's work in this case, and I incorporate it by reference here.

expert witnesses. Each of these pre-MDL tasks was particularly helpful to the prosecution of the Action following the formation of the MDL. Accordingly, the total number of hours spent by Plaintiffs' Counsel for work that specifically advanced the prosecution of this Action and substantially benefited the Class is 5,285.9. Eliminating firms with fewer than 10 hours' of billed time, this yields 5,231.3. This does not include the pre-MDL hours spent by Plaintiffs' Counsel that advanced only their individual actions, nor does it include the hours spent preparing the current motion for attorneys' fees and expenses. It also does not include time that will be spent by Plaintiffs' Counsel on continuing services to the Settlement Class, including responding to class members' inquiries, supervising the claims administrator in the review and processing of claims, attending the final Settlement hearing, and overseeing the distribution of Settlement benefits to class members.

11. The total lodestar for the 5,285.9 hours of combined attorney and paraprofessional time based on the firm's/attorney's current rates is \$2,604,380.16. *See* Federman Declaration, Exhibit A. After eliminating the time of firms that billed less than 10 hours, the total lodestar for the 5,231.3 hours is \$2,573,424.66. The hourly rates are the usual and customary rates set by each firm for each individual in this type of litigation. These rates have been evaluated and approved by courts in class actions and complex litigations.

12. Further, these rates have been approved by Courts throughout the United States. A sample of courts that have expressly approved LCHB's standard billing rates and attorneys' fees as reasonable are:

a. *Yarger v. Capital One, N.A.*, No. 11-154, Dkt. No. 259 (D. Del. Oct. 7, 2014) (awarding requested attorneys' fees);

b. *Steinfeld v. Discover Financial Services, et al.*, No. 3:12-cv-01118-JSW, Dkt. No. 98 (N.D. Cal. Mar. 31, 2014) ("Class counsel have submitted declarations that show the hourly rates that they have requested are reasonable and have provided the Court with information about other cases that approved their rates.");

c. *Nwabueze v. AT&T Inc.*, No. C 09-01529 SI, 2014 U.S. Dist. LEXIS 11766, at *8 (N.D. Cal. Jan. 29, 2014) ("[T]he Court also finds that the rates requested are within the range of reasonable hourly rates for contingency litigation approved in this District.");

d. *Ross v. Trex Co., Inc.*, No. 09-cv-00670-JSW (N.D. Cal. Dec. 16, 2013) (awarding requested attorneys' fees);

e. *Walsh v. Kindred Healthcare*, No. C 11-00050 JSW, 2013 U.S. Dist. LEXIS 176319, at *9 (N.D. Cal. Dec. 16, 2013) ("The Court concludes Plaintiffs have shown that the requested rates are reasonable");

f. *Moore v. Verizon Communs., Inc.*, No. 09-1823 SBA (JSC), 2013 U.S. Dist. LEXIS 170027, at *28 (N.D. Cal. Nov. 27, 2013) ("The Court concludes that the hourly rates for the attorneys who billed time on this case are reasonable given the geographic location and experience of counsel.");

g. *In re: Imprelis Herbicide Mktg., Sales Practices and Prods. Liability Litig.*, No. 11-md-02284, Dkt. No. 244 (E.D. Pa. Oct. 17, 2013) (awarding requested attorneys' fees);

h. *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 149692, at *1 (N.D. Cal. Jan. 14, 2013) (awarding requested attorneys' fees);

i. *In re AXA Rosenberg Investor Litigation*, No. 11-00536-JSW (N.D. Cal. April 2, 2012) ("The Court has also reviewed Lead Counsel's hourly rates and concludes that these rates are appropriate for attorneys in this locality of Lead Counsel's skills and experience.");

j. *Vedachalam v. Tata Consultancy Services, Ltd.*, No. C-06-0963-CW (N.D. Cal. July 18, 2013) ("Class Counsel's hourly rates are reasonable in light of their experience (as reflected in their declarations and the declarations of their peers in the field of class action litigation), and the rates charged are comparable to other attorneys in this field.");

k. *Wehlage, et al. v. Evergreen at Arvin, LLP, et al.*, No. 4:10-cv-058390-CW (N.D. Cal. Oct. 4, 2012) ("[T]he billing rates used by Class Counsel to calculate their lodestar are reasonable and in line with prevailing rates in this District for personnel of comparable experience.");

l. *Arthur, et al. v. Sallie Mae, Inc.*, No. C10-0198 JLR, Dkt. No. 265 (W.D. Wash. Sept. 17, 2012) (awarding requested attorneys' fees);

m. *Holloway v. Best Buy Co., Inc.*, No. C-05-5056 PJH (MEJ) (N.D. Cal. Nov. 9, 2011) ("The rates used by Class Counsel are reasonable.");

n. *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 794 (N.D. Ohio Mar. 31, 2010) ("Class Counsel consists of experienced attorneys with expertise specific to complex class actions on a national scale. [] With this in mind, although the

rates listed above are high compared to the average attorney, based on this Court's knowledge of attorneys' fees in complex civil litigation and multi-district litigation, the requested rates are reasonable for this case considering the experience and expertise these particular lawyers have in this particular area of law.”);

o. *Fulford v. Logitech, Inc.*, No. 08-cv-02041 MMC, 2010 U.S. Dist. LEXIS 144437, at *10 (N.D. Cal. Mar. 5, 2010) (“The Court further finds that Plaintiff’s Counsels’ hourly rates are reasonable for their skill and the work they performed.”);

p. *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, No. Civ.A. 99-20593, MDL No. 1203, 2003 WL 21641958, at *9 (E.D. Pa. May 15, 2003);

q. *Higazi v. Cadence Design Systems, Inc.*, No. 07-2813-JW (N.D. Cal. July 7, 2008);

r. *Adams v. Inter-Con Sec. Sys., Inc.*, No. C-06-5428 MHP (N.D. Cal. Feb. 28, 2008) (Docket No. 177) (Order Granting Application for Attorneys’ Fees and Costs, at 5) (“The Court has reviewed the hourly rates used by Class Counsel in calculating their lodestar fees and concludes that these rates are appropriate for attorneys in this locality of Class Counsel’s skill and experience.”);

s. *Fleming v. Kemper Nat. Services, Inc.*, 373 F. Supp. 2d 1000, 1012 (N.D. Cal. 2005);

t. *Chaid v. Glickman*, No. C98-1004-WHO (JCS), 1999 WL 33292940, at *6 (N.D. Cal. Nov. 17, 1999).

13. The time that Class Counsel and all Plaintiffs' Counsel have devoted to this case has effectively precluded us from performing work on a variety of other cases and matters. From the inception of the first class action, Plaintiffs' Counsel invested over 8,000 hours of attorney time amounting to \$3.973 million in the success of this action. This investment has been completely contingent on the outcome of the action. Plaintiffs' Counsel have not been paid for any of the time spent on the action.

14. Exhibit A to the Federman Declaration lists the personnel who worked on this case and on whom we ask the Court to base any lodestar determination. This includes the hours each individual expended and an hourly rate for each individual. The firms' hourly rates are intended to be reasonable based on the timekeepers' skill, experience, reputation, and expertise, the subject matter, complexity, and magnitude of this litigation, and the billing rates approved by courts in other similar complex class action cases, including other consumer class actions. Co-Lead Counsel scrutinized all timekeepers' billing rates and made downward adjustments where appropriate.

15. Exhibit B to the Federman Declaration lists the expenses incurred by Plaintiffs' Counsel on this litigation. These expenses are reflected in the firms' records, and they do not double-count payments made by PSC firms to a Samsung Litigation Cost Fund that was created and maintained by LCHB. It is LCHB's policy and practice to prepare records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of LCHB's and other firms' work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the firms in connection with this

litigation. These combined amounts total \$242,764.47. I note that Lead Counsel received no outside funding in connection with this litigation.

16. Contemporaneous timesheets and itemized expense reports are available for review and inspection by the Court should the Court deem it necessary or appropriate.

17. At the end of the ninth and final mediation session—only after the parties reached agreement on all substantive elements of the Settlement—Class Counsel and Samsung negotiated the attorneys' fees provision of the Settlement Agreement. They did so in order to ensure that the fee award would not reduce the recovery to the Class. While Samsung agreed that it would not oppose a fee and expense award totaling \$6.5 million, Class Counsel have not requested the full amount, believing that a conservative lodestar request and modest multiplier are sufficient to compensate Plaintiffs' counsel for their investment of time and resources and acceptance of risk.

18. In my professional opinion, the hard-fought Settlement represents an excellent result for the Class because it far exceeds Plaintiffs' damages estimates and provides substantial relief for all 2.8 million Class Members that is tailored to their individual damages. One damages consultant retained by Plaintiffs for mediation purposes preliminarily estimated the value of the disabled high-speed spin cycle on Samsung's washing machines at 7% of the purchase price. This was one of several reasonable damages estimates for Class Washers that (as Samsung frequently pointed out, and would no doubt argue at trial) still washed and cleaned consumers' clothes notwithstanding the vibration defect. This estimate approximated damages recoverable at

trial, and suggested that consumers were injured in the amount of roughly \$50 per washing machine, or \$140 million.

I declare under penalty of perjury of the laws of New York and the United States that the foregoing is true and correct. This declaration was executed in New York, New York on April 15, 2019.

/s/ Jason L. Lichtman

Jason L. Lichtman