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14 [Additional Counsel Appear on Signature Page]

15 Attorneys for Plaintiffs and the putative Class

16
17 **IN THE UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

19 BRIAN WARNER, KENNETH
MACLEOD, MICHAEL MEADE,
20 MICHAEL WATSON, JAMES
FULLER, and DALE FRANQUET,
21 individually and on behalf of all
others similarly situated,

22 Plaintiffs,

23 TOYOTA MOTOR SALES, U.S.A.,
24 INC., a California corporation

25 Defendant.

) No. 2:15-cv-02171-FMO-(FFMx)

) **CLASS ACTION**

) **DECLARATION OF PHILLIP
MILLIGAN IN SUPPORT OF
AN AWARD FOR ATTORNEY'S
FEES AND EXPENSES**

) Date: April 27, 2017
) Time: 10:00 a.m.

) USDJ: Fernando M. Olguin
) Ctrm: 22, 5th Floor - Spring
) USMJ: Frederick F. Mumm
) Ctrm: E, 9th Floor - Spring

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28 OF ATTORNEYS FEES AND EXPENSES

} JURY TRIAL DEMANDED
} Complaint filed: March 24, 2015

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2
3 STATE OF ARKANSAS)
4 COUNTY OF SEBASTIAN)ss

5 I, PHILLIP J. MILLIGAN, declare:

6 That I am an attorney in Fort Smith, Arkansas, practicing as a sole-
7 practitioner, am one of Plaintiffs' counsel in the above-captioned action,
8 and submit this Declaration in support of Declarant's Motion for Attorney's
9 Fees and Expenses, and further make this Declaration based upon my
10 personal knowledge except where otherwise indicated.

11 **I. BACKGROUND**

12 My personal background is as follows. I am a member of the
13 Arkansas Bar Association, and admitted in the United States District
14 Courts of Arkansas. I received a B.S. Degree in Biological Science from
15 Arkansas Tech University in 1985, and a J.D. in 1988 from the University of
16 Arkansas (Fayetteville). After graduating from Law School, I immediately
17 accepted a position as a special agent with the Federal Bureau of
18 Investigation and served in that capacity in Milwaukee, Wisconsin, from
19 1988 through 1992. In 1992, I returned to my hometown of Fort Smith,
20 Arkansas to start my practice. My practice, since that time, has consisted
21 primarily of litigation at the State and Federal levels, and I have tried to the
22 conclusion over thirty (30) jury trials in a myriad of legal areas, including,
23 personal injury, medical malpractice, business and contract, as well as
24 other commercial litigation.

25 I have successfully prosecuted medical malpractice claims for injured
26 patients and have personally tried medical malpractice cases, primarily in

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1 the State of Arkansas. I have secured multiple million dollar verdicts in my
2 trial practice for successful plaintiff litigants, but I have also represented
3 both plaintiffs and defendants in complex business and commercial
4 litigation.

5 II. TOYOTA LITIGATION

6 I originally began working on potential litigation against Toyota Motor
7 Sales in connection with its ongoing rust related issues to the frames of its
8 Toyota Tacomas dating back as early as 1996. In the early Spring of
9 2014, I was contacted and retained by Mr. Ryan Burns regarding his 2005
10 Toyota Tacoma after having significant rust related issues to the frame and
11 other structures of the vehicle. Over the approximate next 2 months I
12 conducted an investigation into the circumstances of Toyota Tacoma frame
13 rust related issues. My investigation included numerous conferences with
14 Mr. Burns, as well as reviewing client provided documentation,
15 photographs of the frame and other structural rust damage. I conducted
16 internet research, including general internet searches regarding Toyota's
17 ongoing frame rust related issues. I also read and reviewed the National
18 Highway Transportation Safety Association complaint filed against Toyota,
19 as well as secured copies of those complaints. I reviewed the Toyota
20 Tacoma rust blogs, and further personally observed many videos of Toyota
21 Tacoma owners profiling their ongoing rust related issues with their
22 Tacoma vehicles.

23 Declarant conducted significant legal research, researching both
24 Arkansas successful class action causes of action against car
25 manufacturers and other defendants and considered other causes of
26 action, including but not limited to Arkansas' Deceptive Trade Practices

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1 Act. I further conducted significant Federal legal research on successful
2 causes of action for class actions against car manufacturers under various
3 theories and causes of action. My investigation entailed more than one
4 hundred (100) hours before seeking to associate other counsel to assist in
5 an effort to successfully institute a class action against Toyota. Because of
6 the number of injured Toyota Tacoma owners, the common issues
7 presented, the resources of the Defendant and other factors, it was my
8 professional judgment from the outset that this matter could most
9 effectively and efficiently proceed on a class basis. That continues to be
10 my judgment regarding this matter.

11 Ultimately, I associated Ben Barnow of Barnow and Associates to
12 assist in the complex class litigation against Toyota. On October 3, 2014,
13 Milligan Law Offices and Barnow and Associates instituted the first class
14 action proceeding in the litigation process. Ryan Burns, who initially
15 contacted my office, served as the Plaintiff in *Burns v. Toyota*, United
16 States District Court, Western District of Arkansas, Fort Smith Division,
17 2:14-CV-02208-PKH. Declarant was involved in every aspect of the *Burns*
18 litigation. Ryan Burns served as the first plaintiff, seeking damages as a
19 potential class representative in the Toyota litigation.

20 During the *Burns* litigation, additional Toyota owners contacted
21 Declarant about potential class representative status, and expressed
22 willingness and interest in pursuing the class litigation in any capacity
23 necessary to remedy their concerns about Toyota excessive frame rust
24 issues. Ultimately, the Declarant and Mr. Barnow agreed to associate
25 additional counsel, including Mr. Tim Blood of Blood, Hurst & O'Reardon,
26 LLP. Six (6) out of the total eight (8) plaintiff class representatives,

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1 including Brian Warner, Michael Meade, Michael Watson, Ryan Burns,
2 James Fuller, and James Good initially and originally contacted Milligan
3 Law Offices for legal assistance in resolving their Toyota frame rust issues.

4 Throughout the litigation process in both the *Burns* and *Warner*
5 cases, the Declarant's office has been contacted by in excess of one
6 hundred fifty (150) potential class members and representatives, and
7 Declarant has counseled the members and assisted them as needed and
8 appropriate. Declarant, since preliminary settlement approval on December
9 2, 2016, has personally counseled, been contacted by, instructed class
10 members, and otherwise assisted class members in filing claims as
11 appropriate and warranted. To date, since preliminary settlement approval,
12 Declarant has assisted approximately 30 class members in filing claims or
13 instructing class members about the appropriate steps of the claim
14 process. Declarant anticipates expending an additional twenty (20) to thirty
15 (30) hours in assisting class members in filing appropriate claims based
16 upon the number of class members seeking Declarant's assistance since
17 preliminary approval.

18 Since the outset of my involvement in the cases, I have proceeded
19 on a contingent basis, i.e., I have received no compensation, to date, for
20 my work in this matter over the past approximately three (3) years, and
21 have understood that I would only be compensated if this matter was
22 resolved in a manner favorable to the plaintiffs. During this period of
23 approximately three (3) years, I have not been compensated for my time
24 on this matter.

25 I have coordinated my work closely during this period with associated
26 counsel at Barnow and Associates, and Blood, Hurst & O'Reardon, LLP,

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1 so that the work would proceed as proficiently as possible and I provided
2 needed expertise and support on this matter, based upon my
3 understanding of Arkansas Law, and specific factual issues pertaining to
4 Toyota frame rust difficulties. I am admitted Pro Hac Vice in this Court,
5 and provided necessary and appropriate time to resolution of the matter in
6 the benefit of plaintiffs as needed.

7 A summary of the tasks, I completed and anticipated completing in
8 this case, include: client interviews, both personally and telephonically,
9 review Arkansas Law regarding deceptive trade practices, assisted as
10 needed in drafting pleadings, multiple discussions with co-counsel and
11 potential class members, discussions with defense counsel, review and
12 edit pleadings, review documents produced in confirmatory discovery,
13 travel to and participate in Hearings, review proposed joint settlement
14 agreement, as well as other settlement documents, serve as liaison
15 counsel with class representatives, including Mr. Burns, counsel class
16 representatives as needed, prepare for Preliminary Approval Hearing,
17 travel to and appear at Preliminary Approval Hearing, review and edit
18 Dispositive Motions, review and edit, as needed, draft of final approval
19 motion, prepare for final approval Hearing, travel to and appear at final
20 approval Hearing, responding to class member inquiries, and any other
21 task needed to effectuate the settlement of this case.

22 In light of my sole-practitioner status, my firm's attention to this
23 difficult case was undertaken in lieu of other cases. As a small firm, we
24 cannot take on every meritorious action that comes through the door,
25 moreover the risks of taking on a class action are enormous and given
26 recent court decisions seem to grow more difficult each day. I have not


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1 been paid, and have not received any fees or reimbursement for expenses
2 in relation to this case.

3 My time and expenses in this matter are detailed in the attached
4 Exhibit 1 and are based upon records kept in the ordinary course of
5 business. These time records reflect my billing rate of four hundred ninety-
6 five dollars (\$495.00) per hour for complex class litigation given my in
7 excess of twenty-five (25) years of experience as a trial attorney in litigation
8 matters. To date, Declarant's expenses total \$3,528.28. Additional
9 expenses will be incurred for travel, lodging and associated costs in
10 attending the Hearing on final approval.

11
12 FURTHER SAYETH AFFIANT NOT.

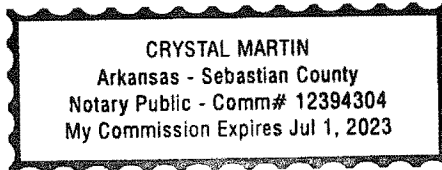
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14 DATED this 22ND day of February, 2017.

15
16 
PHILLIP J. MILLIGAN

17
18 Subscribed and sworn to before me this 22nd day of
19 February, 2017.

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21 
Notary Public

22 My Commission Expires:
23 July 1, 2023



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Exhibit 1

MILLIGAN LAW OFFICES
500 South 16th Street
P. O. Box 2347
Fort Smith, Arkansas 72902
Tel: 479/783-2213
479/783-4329 (fax)

Dated this 22nd Day of February, 2017.

<u>NAME</u>	<u>TITLE</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
Phillip Milligan	Attorney	814.95	495.00	\$403,400.25
Patsy Lund	Senior Paralegal	122.05	135.00	\$16,476.75
Cabot Brooks	Paralegal/Law Clerk	134.00	115.00	\$15,410.00
Total Hours		1071.00		\$435,287.00

Expenses:

Airfare:	\$1,286.24
Postage:	29.94
Copying:	26.25
Lodging:	898.35
Travel Meals:	265.92
Miscellaneous:	<u>1,021.58</u>
Total Expenses:	\$3,528.28

Exhibit 1

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 27, 2017.

s/ Timothy G. Blood

TIMOTHY G. BLOOD

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