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10 *Class Counsel*

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **OAKLAND DIVISION**

14 DENO MILANO,

15 Plaintiff,

16 vs.

17 INTERSTATE BATTERY SYSTEM OF  
18 AMERICA, INC.; INTERSTATE BATTERY  
19 SYSTEM INTERNATIONAL, INC.,

20 Defendants.

Case No. 10-CV-2125-CW

**NOTICE OF MOTION AND MOTION FOR  
ATTORNEYS' FEES, EXPENSES, AND  
SERVICE AWARD**

Date: June 28, 2012

Time: 2:00 p.m.

Judge: Hon. Claudia Wilken



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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

Plaintiff brought this lawsuit to address alleged unfair warranty practices by Interstate. Through more than two years of investigation, litigation, and settlement negotiations, Plaintiff and his counsel achieved a class settlement that reforms and improves Interstate's warranty practices and provides reimbursements to consumers overcharged under the old warranty. As a result, Plaintiff has a claim for attorneys' fees and litigation expenses under two California fee-shifting statutes. Rather than litigating the appropriate amount of this fee award, however, the parties have settled on \$1,050,000 for both fees and expenses—a figure that basically compensates counsel for the time and costs they have already spent advancing the class's interests and which is therefore within the range of fees that the Court might have awarded in a contested motion.

Plaintiff now requests that the Court approve the fee authorized by the parties' agreement under Federal Rule of Civil Procedure 23(h). The lodestar analysis used to calculate fees under California's fee-shifting statutes confirms that the agreed-upon fee is reasonable. Class counsel has spent 2212.45 hours over the past two years working on behalf of the class, which at their customary hourly rates amounts to a lodestar of \$989,880.75. In light of the contingency risk class counsel undertook and the positive results they achieved through the litigation, both of which support an upward adjustment to the lodestar, the \$1,050,000 Interstate has agreed to pay compares favorably. When litigation expenses of \$32,172.66 are taken into account, an \$1,050,000 award will basically compensate class counsel for their time and costs, particularly considering that Girard Gibbs will continue to devote time to this case to seek final approval of the settlement and monitor and address class member inquiries over the next 8-9 years. In other words, Interstate settled Plaintiff's statutory fee right on reasonable terms, the payment of which should therefore be approved. The parties further ask that the Court approve a service award of \$1,250 to the class representative, Deno Milano, in recognition of his contributions on behalf of similarly situated consumers.

1 **II. ARGUMENT**

2 **A. The Court's Role In Evaluating The Agreed-Upon Fee To Be Paid By Interstate.**

3 At the conclusion of a successful class action, class counsel may apply to the Court for an award  
4 of "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties'  
5 agreement." Fed. R. Civ. P. 23(h). Though the amount class counsel is requesting is the result of  
6 negotiation, the Court must still ensure that the requested fee award is reasonable. *See In re Bluetooth*  
7 *Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). The reason is that while ordinarily a  
8 defendant would never agree to pay more than a fee-shifting claim is worth, in a class action setting  
9 there is a risk that class counsel negotiated a class settlement that under-compensates class members in  
10 exchange for defendant's agreement to an inflated fee settlement. *See Staton v. Boeing Co.*, 327 F.3d  
11 938, 964 (9th Cir. 2003) ("If fees are unreasonably high, the likelihood is that the defendant obtained an  
12 economically beneficial concession with regard to the [class] merits provisions.").

13 The Court therefore should review the \$1,050,000 that Interstate has agreed to pay and ask  
14 whether it is the result of a legitimate fee settlement. "[S]ince the proper amount of fees is often open to  
15 dispute and the parties are compromising precisely to avoid litigation, the court need not inquire into the  
16 reasonableness of the fees even at the high end with precisely the same level of scrutiny as when the fee  
17 amount is litigated." *Staton*, 327 F.3d at 966. Nonetheless, the Court should conduct an explicit  
18 calculation under the applicable fee-shifting statutes so that it can determine whether \$1,050,000 "is  
19 measurably higher than [Interstate] could conceivably have to pay were the fee amount litigated"; if it is  
20 not, the fee should be approved as the result of a legitimate compromise. *Id.*; *see also Bluetooth*, 654  
21 F.3d at 943 (requiring explicit calculation or explanation for approval of a stipulated fee request).

22 **B. The Negotiated Fee Is Reasonable Under California's Lodestar Method.**

23 This is not a case where Plaintiff sought or obtained a common fund, so federal common fund  
24 doctrine does not come into play. Instead, Plaintiff's right to a fee arises under two California fee-  
25 shifting statutes that are designed to incentivize counsel to pursue consumers' interest through publicly  
26 beneficial litigation. The first statute is the California Consumers Legal Remedies Act (CLRA), Cal.  
27 Civ. Code § 1780(e). It provides that in any case brought pursuant to the CLRA, as this case was, a  
28 plaintiff who prevails through trial or settlement is entitled to an award of attorneys' fees and costs.

1 *See id.*; *Kim v. Euromotors West/The Auto Gallery*, 149 Cal. App. 4th 170, 178-79 (2007). The second  
 2 statute is California’s codification of the private attorney general doctrine, Cal. Code of Civ. Proc.  
 3 § 1021.5. It provides that plaintiffs who successfully confer a significant benefit on the general public  
 4 or a large class of persons are entitled to attorneys’ fees. *See id.*; *Graham v. DaimlerChrysler Corp.*, 34  
 5 Cal.4th 553, 578 (2004) (“It is well settled that attorney fees under section 1021.5 may be awarded for  
 6 consumer class action suits benefiting a large number of people.”).

7 Since Plaintiff’s right to a fee arises under California law, settled *Erie* principles require  
 8 application of California law in assessing the reasonable amount of that fee as well. *See Mangold v.*  
 9 *California Public Utilities Commission*, 67 F.3d 1470, 1478 (9th Cir. 1995) (in diversity actions, state  
 10 law applies “in determining not only the right to fees, but also in the method of calculating the fees”).  
 11 Under California law, the primary method for calculating statutory fee awards is the lodestar method—  
 12 a two-step process under which the lodestar is produced by multiplying the time reasonably spent on  
 13 the litigation by a reasonable hourly rate, and then may be adjusted upward or downward to take into  
 14 account a variety of other factors, such as contingency risk or the quality of the results obtained. *In re*  
 15 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009).

16 A summary of the lodestar calculation for the attorneys who represented the class in this case  
 17 appears in the following chart:

Attorney	Role	Total Hours	% of Total Hours	Billing Rate	Lodestar
Eric H. Gibbs	Sr. Partner	293.64	13%	\$675	\$198,207.00
Dylan Hughes	Jr. Partner	317.00	14%	\$545	\$172,765.00
Philip B. Obbard	Sr. Associate	413.90	19%	\$480	\$198,672.00
Geoffrey A. Munroe	Sr. Associate	151.35	7%	\$445	\$67,350.75
David Stein	Jr. Associate	735.85	33%	\$380	\$297,559.00
Amy M. Zeman	Jr. Associate	38.00	2%	\$330	\$51,122.00
Litigation Assistants		255.61	12%	\$200	\$51,122.00
<b>TOTALS</b>		<b>2205.35</b>	<b>100%</b>	<b>\$453 (blend)</b>	<b>\$998,215.75</b>

1 The reasonableness of the total hours spent by class counsel, as well as their hourly rates, is  
2 discussed in the following two sections, with an even more detailed accounting of the firm's efforts  
3 presented in the accompanying Declaration of Eric H. Gibbs. The third section then analyzes the  
4 multiplier factors that courts consider when deciding whether the lodestar should be adjusted. In this  
5 case, Interstate's decision to settle the fee for the approximate lodestar was sensible and not indicative of  
6 any behind-the-scenes collusion, as the factors very well could have justified a higher award than  
7 Interstate is paying.

8 **1. Class Counsel's Time Was Reasonably Spent.**

9 Girard Gibbs utilized the following litigation team to prosecute this case:

10 Eric H. Gibbs – As the senior partner, Mr. Gibbs took responsibility for case management and  
11 strategy decisions, final review of pleadings and briefs, and appearing on behalf of Mr. Milano and the  
12 class in Court. In this case, due largely to the complex and protracted nature of the settlement  
13 negotiations, the majority of Mr. Gibbs's time was devoted to negotiating the parties' settlement  
14 agreement.

15 Dylan Hughes – A junior partner, Mr. Hughes oversaw class counsel's pre-filing investigation  
16 and complaint-drafting. Mr. Hughes also took primary responsibility for counsel's discovery efforts and  
17 participated in the first settlement conferences. Most of Mr. Hughes' time in this case came before  
18 settlement negotiations began.

19 Philip B. Obbard – A senior associate who left Girard Gibbs in mid-2011 to take a position with  
20 the judiciary, Mr. Obbard was responsible for researching, developing, and pleading the legal theories in  
21 this case and for Plaintiff's briefing. Mr. Obbard also served as class counsel's primary interface with  
22 counsel for Defendants until settlement negotiations began.

23 Geoffrey A. Munroe – A senior associate, Mr. Munroe briefly stepped into the vacancy left by  
24 Mr. Obbard's departure and is primarily responsible for drafting Plaintiff's original preliminary approval  
25 motion and its supporting papers. Mr. Munroe also reviewed Plaintiff's mediation brief.

26 David Stein – Mr. Stein, a junior associate, was heavily involved in class counsel's pre-filing  
27 investigation, helped draft the initial complaint and Plaintiff's discovery requests, drafted many of  
28 Plaintiff's discovery-related correspondence, and reviewed many of the documents produced during

1 discovery. During the settlement talks, Mr. Stein took part in telephone negotiations, helped revise the  
2 settlement agreement, and worked with Defendants and the Settlement Administrator on the long- and  
3 short-form notice, claim forms, website content, and the other post-settlement administrative tasks.

4 Amy M. Zeman – Ms. Zeman, a junior associate, assisted primarily in the later stages of this  
5 case. She helped finalize the parties’ amended settlement and related class notice materials, and drafted  
6 Plaintiff’s second preliminary approval motion.

7 Litigation Assistants – Class counsel relied heavily on two highly competent college graduates,  
8 Samantha Elboim and John Hollis, for assistance throughout the litigation. Ms. Elboim helped primarily  
9 with the initial investigation and early litigation efforts. Mr. Hollis took over when Ms. Elboim left the  
10 firm to attend law school, and helped with investigative work and reviewing much of the more than  
11 20,000 pages of documents produced in discovery. (Gibbs Decl. ¶ 5.)

12 To assist the Court in evaluating the reasonableness of the time spent on this case, class counsel  
13 has reviewed their daily time records and submitted a detailed summary of the work performed  
14 throughout the case in the accompanying Declaration of Eric H. Gibbs. (*See id.* ¶¶ 15, 19-26.) Class  
15 counsel anticipates that this will be more helpful to the Court in assessing their time and contributions  
16 than would combing through daily records, and believes that it is sufficient as an evidentiary matter, but  
17 would be happy to provide the daily time records as well if the Court prefers. *See Winterrowd v. Am.*  
18 *Gen. Annuity Ins. Co.*, 556 F.3d 815, 827 (9th Cir. 2009) (when awarding fees under a California fee-  
19 shifting statute, “[t]estimony of an attorney as to the number of hours worked on a particular case is  
20 sufficient evidence to support an award of attorney fees”). The following descriptions of the primary  
21 stages of the litigation should also give the Court a sense of the work required to obtain relief for the  
22 class.

23 Initial Investigation and Complaint: Class counsel began investigating Interstate’s battery  
24 warranty practices in March 2010, when Mr. Milano approached Girard Gibbs with concerns about a pro  
25 rata battery replacement purchase. Following a review of Mr. Milano’s situation and his transaction  
26 documents, counsel shared Mr. Milano’s concerns and began investigating how Interstate’s pro rata  
27 warranty was administered. Counsel reviewed Interstate’s online materials, called Interstate’s customer  
28 service department, visited Interstate battery dealers, purchased an Interstate battery (onto which the old

1 warranty was shrink-wrapped), and collected other potentially relevant information such as Interstate's  
2 warranty-related advertisements. In order to evaluate Interstate's warranty practices in context, counsel  
3 also researched other warranty terms and pro rate calculation methods in the industry. Informed by their  
4 initial investigatory findings, counsel issued a demand letter pursuant to California's Consumers Legal  
5 Remedies Act and prepared a complaint alleging violations of California law. (Gibbs Decl. ¶¶ 9 & 10.)

6 Informal Discovery and Continued Investigation: After class counsel filed suit in mid-May  
7 2010, they engaged Interstate in a meet-and-confer process to jumpstart discovery and learn more about  
8 the company. Counsel held several telephone conferences with Interstate and also corresponded by e-  
9 mail and letter about Interstate's electronically stored information and databases, corporate structure,  
10 and areas for discovery. Through this informal discovery process, counsel were able to obtain an  
11 organization chart and battery price sheets at an early stage of the litigation. Counsel continued to  
12 develop their factual understanding of the case, including through independent research regarding  
13 Interstate's electronic databases and a continuing survey of nationwide battery dealers about  
14 replacement battery prices. Counsel also prepared and filed an amended complaint. (Gibbs Decl. ¶¶ 11  
15 & 12.)

16 Formal Discovery: After preparing a joint Rule 26 statement with Interstate and participating in  
17 the initial case management conference, class counsel drafted document requests and interrogatories  
18 focused on Interstate's warranty terms, pro rata calculation, and database information. After a debate  
19 between the parties ensued as to which of the many Interstate entities should be named as defendants,  
20 counsel drafted and served a second set of document requests and interrogatories focused on Interstate's  
21 corporate structure. In all, Interstate produced over 20,000 pages of documents, which counsel culled  
22 through and analyzed. (Gibbs Decl. ¶¶ 13 & 14.)

23 Motion Practice: At the case management conference on September 7, 2010, the Court set a  
24 briefing schedule and hearing date for Plaintiff's class certification motion and dispositive motions, and  
25 counsel began using the information learned through discovery to draft class certification and summary  
26 judgment motions. This work allowed counsel to work through the legal issues of the case and further  
27 develop their case strategy, which later informed their settlement position and negotiations with  
28 Interstate. (Gibbs Decl. ¶¶ 13-16.)

1           Mediation: Following an informal meeting with Interstate’s counsel to explore the possibility of  
2 settlement, class counsel engaged in three full-day mediation sessions with Interstate between February  
3 18, 2011 and March 31, 2011, before the Hon. William J. Cahill (Ret.). The first two sessions took  
4 place in San Francisco, California and the third occurred in Dallas, Texas, near Interstate’s headquarters.  
5 In preparation for the initial mediation session, counsel prepared damages models and a mediation brief,  
6 which incorporated much of the work previously directed at Plaintiff’s class certification and summary  
7 judgment motions. Each of the mediation sessions moved the parties closer to a settlement, and the  
8 third session ended with an agreement in principle. (Gibbs Decl. ¶¶ 15 & 16.)

9           Settlement Negotiations and Preliminary Approval: After reaching an agreement in principle  
10 with Interstate on March 31, 2011, class counsel focused their efforts on negotiating a final settlement  
11 agreement and preparing related documents, such as the multiple forms of class notice, claim forms, and  
12 the preliminary approval papers. The negotiations were particularly prolonged due to the need to devise  
13 comprehensive injunctive relief that was compatible with Interstate’s complex business structure and  
14 existent warranty practices. Counsel also devoted a lot of time to ensuring that the reimbursement  
15 program would be as simple to participate in as possible, with clear notice and instructions to interested  
16 class members. During this period, counsel engaged in at least 24 conference calls with Interstate’s  
17 counsel and exchanged numerous drafts of the settlement agreement with Interstate before ultimately  
18 finalizing a highly-detailed and lengthy settlement agreement in October 2011. As the negotiations  
19 continued, counsel kept Mr. Milano informed about the settlement and incorporated his feedback where  
20 appropriate. Counsel also kept the Court informed about the parties’ progress toward a final settlement,  
21 preparing and filing six stipulations to extend time, coordinating a joint case management statement with  
22 Interstate, and attending a case management conference in August 2011. (Gibbs Decl. ¶¶ 17 & 18.)

23           Amendment of the Settlement and Final Approval: Following the Court’s order granting  
24 preliminary approval of the parties’ proposed settlement on December 1, 2011, the parties began  
25 implementing the settlement agreement. Class counsel worked with Interstate to finalize the notice  
26 program, including print and audio press releases, a print advertisement in USA Today, and retailer  
27 handouts. A few weeks into the implementation process, however, Interstate informed counsel of  
28 unanticipated hurdles to carrying out the injunctive elements of the settlement. Despite the due

1 diligence of Interstate's counsel during negotiations, Interstate found it could not wholly eliminate its  
2 pro rata warranty format. Recognizing this unexpected turn of events as an opportunity to strengthen the  
3 settlement, class counsel developed a proposal that would both address Plaintiff's concerns about  
4 Interstate's old pro rata warranty and expand the reimbursement component of the agreement. Counsel  
5 engaged in renewed negotiations to amend the settlement agreement in line with their proposal. As  
6 before, counsel communicated with Mr. Milano about the negotiations and prepared and filed  
7 stipulations to keep the Court informed about the parties' progress. Counsel attended the second  
8 preliminary approval hearing on March 8, 2012. Since then, counsel has worked with Interstate and the  
9 Settlement Administrator to update documents for a second notice program, addressed consumer  
10 inquiries about the amended settlement, and will be preparing final approval papers in anticipation of the  
11 fairness hearing scheduled for June 28, 2012. (Gibbs Decl. ¶¶ 19 & 20.)

12 **2. Class Counsel's Staffing and Hourly Rates Are Reasonable and Have Been**  
13 **Previously Approved as Such In Similar Litigation.**

14 Class counsel has used similar litigation staffing in multiple consumer class action lawsuits in  
15 which courts have approved Girard Gibbs' requests for attorneys' fees and expenses. (See Gibbs Decl.  
16 ¶¶ 22 & 23.) For example, Mr. Gibbs, Mr. Hughes, Mr. Munroe and Ms. Zeman recently worked  
17 together to litigate and ultimately settle claims regarding expanding motorcycle fuel tanks in *Sugarman*  
18 *v. Ducati North America, Inc.*, and Judge Fogel approved attorneys' fees calculated with the same  
19 hourly rates applied by these four attorneys in this matter. See *Sugarman*, No. 5:10-CV-05246, 2012  
20 WL 113361, at \*6 (N.D. Cal. Jan. 12, 2012); *id.*, Dkt. No. 81 (Decl.) 7. The fee award in *Sugarman*  
21 also included time billed by Girard Gibbs' litigation assistants at \$200 an hour, the same rate as applied  
22 in the current action. *Id.* As another example, five of the six attorneys who worked on this matter, Mr.  
23 Gibbs, Mr. Hughes, Mr. Obbard, Mr. Munroe, and Mr. Stein, all worked together on a consumer class  
24 action against Honda in which Judge Morrow approved attorneys' fees calculated with the same hourly  
25 rates applied here. See *Browne v. American Honda Motor Co.*, No. 09-CV-06750 (C.D. Cal. 2010),  
26 Dkt. No. 62 (Order) 13, 22-23. And in *Parkinson v. Hyundai Motor America*, Judge Stotler approved  
27 attorneys' fees calculated with the same hourly rates for Mr. Gibbs, Mr. Hughes, Mr. Munroe, and Mr.  
28 Stein. See *Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160, 1172-73 (C.D. Cal. 2010);

1 *Parkinson*, No. 8:06-CV-00345, Dkt. No. 289 (Gibbs Decl.) 5-6.

2 A review of a few of the more recent fee approvals issued by Northern District judges further  
3 demonstrates that the hourly rates charged by class counsel are in line with the prevailing rates in the  
4 community for complex class action litigation.

- 5 • In August 2011, Judge Chen approved attorneys' fees calculated with hourly rates  
6 ranging from \$500-\$675 for attorneys and \$125-\$225 for professional staff. *In re Wells*  
7 *Fargo Loan Processor Over-Time Pay Litigation*, No. C-07-1841, 2011 WL 3352460, at  
8 \*10 (N.D. Cal. Aug. 2, 2011); *Wells Fargo*, Dkt. No. 181 (Decl.) 7.
- 9 • In July 2011, Judge Breyer approved attorneys' fees checked against a lodestar  
10 calculated with hourly rates ranging from \$350-\$500 for associates and \$500-\$700 for  
11 partners. *In re Nuvelo, Inc. Securities Litig.*, No. C-07-04056, 2011 WL 2650592, at \*3  
12 (N.D. Cal. July 6, 2011); *Nuvelo*, Dkt. No. 159-4 (Decl.), Exh. 2.
- 13 • In June 2011, Judge Koh approved attorneys' fees calculated with hourly rates ranging  
14 from \$140-\$175 for paralegals and \$290-\$740 for attorneys. *Buccellato v. AT&T*  
15 *Operations, Inc.*, No. C-10-00463, 2011 WL 4526673, at \*4 (N.D. Cal. June 30, 2011);  
16 *Buccellato*, Dkt. No. 66 (Decl.), Exh. A.
- 17 • In April 2011, Judge Alsup approved attorneys' fees checked against a lodestar  
18 calculated with hourly rates ranging from \$150 for paralegals, \$325-\$425 for associates,  
19 and \$380-\$650 for partners. *In re Charles Schwab Corp. Securities Litig*, No. 08-01510,  
20 2011 WL 1481424, at \*8 (N.D. Cal. Apr. 19, 2011); *see Schwab*, Dkt. No. 853 (Decl.)  
21 18.

22 **3. Class Counsel's Work in this Case Justifies the Slight Upward Adjustment**  
23 **Requested.**

24 The Ninth Circuit has identified the following factors as relevant to whether the lodestar amount  
25 should be adjusted: (1) time limitations imposed by the client or the circumstances, (2) the amount  
26 involved and the results obtained, (3) the experience, reputation, and ability of the attorneys, (4) the  
27 "undesirability" of the case, (5) the nature and the length of the professional relationship with the client,  
28 and (6) awards in similar cases. *See Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1976);

1 *Morales v. City of San Rafael*, 96 F.3d 359, 634 n.9 (9th Cir. 1997); *City of Burlington v. Dague*, 505  
2 U.S. 557, 567 (1992); *see also Lara*, 2010 WL 6002521 at \*3-4 (identifying 6 of the 12 factors listed in  
3 *Kerr* that the Ninth Circuit has since held to be subsumed in the initial lodestar calculation and thus  
4 inappropriate for consideration when evaluating an adjustment). Upward multipliers are common in  
5 class action fee awards. *See, e.g., Grannan v. Alliant Law Group, P.C.*, C-11/02803, 2012 WL 216522,  
6 at \*10 (N.D. Cal. Jan. 24, 2012) (“In class actions, where counsel works on a contingency basis and  
7 risks receiving nothing for the time and effort expended, it is reasonable to apply a multiplier to the  
8 lodestar value.”).

9 Plaintiff’s fee request is very close to class counsel’s lodestar, incorporating only a 1.03  
10 multiplier to upwardly adjust the lodestar. Such an adjustment is reasonable under each of the Ninth  
11 Circuit factors. As is discussed in more detail in the settlement approval papers, this case involves  
12 Interstate’s calculation of replacement battery costs under its old pro rata warranty and overpayments by  
13 consumers due to that calculation. Class counsel litigated aggressively to provide relief as quickly as  
14 possible, and diligently pursued settlement negotiations once it became apparent that the class claims  
15 could be resolved through compromise. Consumers nationwide will benefit from the reforms to  
16 Interstate’s warranty practices pursuant to the injunctive component of the settlement. These  
17 modifications will ensure that customers are provided a clear explanation of how Interstate’s pro rata  
18 warranty calculations will be performed and will ensure that the calculations will no longer be based on  
19 a “List Price” that is not the actual or suggested retail price of the batteries. Furthermore, class members  
20 will have the right to claim reimbursements ranging from \$5-12 (compared to an average estimated  
21 overcharge of \$7.50-9.50 under the old warranty). And class members are giving up very little in  
22 exchange for this relief. On a classwide basis only equitable claims will be released under the settlement,  
23 and, for class members who purchased a replacement battery on or before April 30, 2012, the class  
24 action device will be waived for claims that were or could have been brought in this action. Only those  
25 class members who submit a claim for reimbursement will release their non-equitable claims related to  
26 their original or replacement batteries, though even this individual release will not affect claims for  
27 personal injury or property damage.

28

1 The remaining factors further support an upward adjustment. Class counsel has extensive  
2 experience litigating consumer class actions and has achieved a number of significant results for clients  
3 in a broad range of consumer protection cases. See Dkt. No 29-1 (Gibbs Decl. re: Appt. of Interim  
4 Counsel) ¶ 4; *id.*, Exh. A (Girard Gibbs Firm Resume). This case involved relatively small individual  
5 damages and it is unlikely an individual plaintiff would have invested the funds necessary to pursue  
6 action against Interstate. But under the class settlement, consumers will receive an improved and fairly  
7 calculated warranty on new purchases of Interstate batteries, and consumers whose existing batteries  
8 remain covered by Interstate’s old pro rata warranty will have access to a refund program until  
9 December 31, 2020. Finally, courts within the Ninth Circuit have awarded fees with similar, and even  
10 greater, upward adjustments. See *Grannan*, 2012 WL 216522 at \*10 (finding a multiplier of 1.47 “well  
11 within the range of permissible multiples”); *Vizcaino v. Microsoft Corp.*, 290 F3d 1043 (9th Cir.)  
12 (finding a 3.65 multiplier appropriate); see also *Browne v. American Honda Motor Co.*, No. 09-CV-  
13 06750 (C.D. Cal. 2010), Dkt. No. 62 (Order) 22 (finding enhancement of a Girard Gibbs lodestar with a  
14 1.5 multiplier to be reasonable).

15 **C. The Service Award Requested Is Also Reasonable and Appropriate.**

16 The Court has discretion to approve service awards (sometimes referred to as “incentive  
17 awards”) to compensate class representatives for work done on behalf of the class. *Rodriguez v. West*  
18 *Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (“Incentive awards are fairly typical in class action  
19 cases.”). Here, Plaintiff seeks a service award of \$1,250—a reasonable amount considering his  
20 contributions to the litigation and well within the range of awards approved in recent class action  
21 litigation. See, e.g., *Sugarman v. Ducati North America, Inc.*, No. 5:10-CV-05246, 2012 WL 113361, at  
22 \*6 (N.D. Cal. Jan. 12, 2012) (approving service awards of \$1,500); *Kent v. Hewlett-Packard Company*,  
23 No. 5:09-CV-05341, 2011 WL 4403717, at \*4 (N.D. Cal. Sept. 20, 2011) (approving service awards not  
24 to exceed \$2,000 per named Plaintiff); *In re Wells Fargo Loan Processor Over-Time Pay Litigation*, No.  
25 C-07-1841, 2011 WL 3352460, at \*11 (N.D. Cal. Aug. 2, 2011) (finding \$7,500 service awards  
26 reasonable).



1 Eric H. Gibbs (State Bar No. 178658)  
David Stein (State Bar No. 257465)  
2 Amy M. Zeman (State Bar No. 271300)  
3 **GIRARD GIBBS LLP**  
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4 San Francisco, California 94104  
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7 *Class Counsel*

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11 DENO MILANO,

12 Plaintiff,

13 vs.

14 INTERSTATE BATTERY SYSTEM OF  
15 AMERICA, INC.; INTERSTATE BATTERY  
16 SYSTEM INTERNATIONAL, INC.,

17 Defendants.

Case No. C 10-02125 CW

**DECLARATION OF ERIC H. GIBBS  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR ATTORNEYS' FEES,  
EXPENSES, AND SERVICE AWARD**

1 I, Eric H. Gibbs, declare as follows:

2 1. I am a partner at Girard Gibbs LLP, the law firm appointed to serve as Class Counsel in  
3 this case. I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses, and  
4 Service Award. I have personal knowledge of the facts below and, if called upon to do so, could and  
5 would testify competently thereto.

6 2. I have organized this declaration into three parts. First, I provide an overview of the  
7 number of hours worked by my firm in this litigation, and explain how we staffed this case. Second, I  
8 provided a summary of our efforts and achievements throughout the course of the litigation, and  
9 summarize the costs my firm incurred during the litigation. Finally, I review examples of my firm's past  
10 successes in consumer class actions, in which we were able to confer significant benefits to the class and  
11 in which our billing rates and approach to class representation were approved.

12 **I. OVERVIEW**

13 **A. Girard Gibbs LLP's Lodestar**

14 3. My law firm worked a total of 2212.45 hours in this litigation, with a total lodestar of  
15 \$989,880.75 and an overall blended rate (lodestar divided by total hours) of \$447 an hour. We have also  
16 incurred \$32,172.66 in expenses on this matter, resulting in a total of \$1,022,053.41 incurred or spent  
17 prosecuting this litigation on behalf of the class. Our lodestar will continue to grow as we continue to  
18 work on the case. Specifically, we will spend time in the coming weeks to prepare a motion for final  
19 approval of the proposed settlement and attend the fairness hearing and to address consumer inquiries  
20 about the settlement.

21 4. I have personally reviewed my firm's time records, which have been maintained  
22 contemporaneously since we began working on this matter. In reviewing the time records, I removed  
23 any duplicate entries and exercised billing discretion to reduce the lodestar by 48.2 hours and \$11,124. I  
24 can confidently assert that the lodestar and hours reported in this declaration are reasonable, particularly  
25 in light of our efforts and accomplishments in this litigation.

26 **B. Girard Gibbs LLP's Staffing**

27 5. Girard Gibbs' lodestar is based on the following work allocation among our primary  
28 litigation team for this case:

1           Eric. H. Gibbs – As the senior partner, I took responsibility for case management and strategy  
2 decisions, final review of pleadings and briefs, and appearing on behalf of Mr. Milano and the class in  
3 court. In this case, due largely to the complex and protracted nature of the settlement negotiations in this  
4 case, the majority of my time was devoted to negotiating the initial and amended settlement agreements.

5           Dylan Hughes – A junior partner, Mr. Hughes runs our investigation and discovery efforts. In  
6 this case, Mr. Hughes oversaw our pre-filing investigation and complaint-drafting. Mr. Hughes also  
7 took primary responsibility for our informal and formal discovery efforts and participated in the first  
8 settlement conferences. Most of Mr. Hughes’ time in this case came before settlement negotiations  
9 began.

10           Philip B. Obbard – A senior associate who left Girard Gibbs in mid-2011 to take a position with  
11 the judiciary, Mr. Obbard was responsible for researching, developing, and pleading our legal theories in  
12 this case and for our briefing. Mr. Obbard also served as our firm’s primary interface with counsel for  
13 Defendants until settlement negotiations began.

14           Geoffrey A. Munroe – A senior associate, Mr. Munroe briefly stepped into the vacancy left by  
15 Mr. Obbard’s departure and is primarily responsible for drafting Plaintiff’s original preliminary approval  
16 motion and its supporting papers. Mr. Munroe also reviewed Plaintiff’s mediation brief.

17           David Stein – Mr. Stein, a junior associate, was heavily involved in our pre-filing investigation,  
18 helped draft the initial complaint and Plaintiff’s discovery requests, drafted much of Plaintiff’s  
19 discovery-related correspondence, and reviewed many of the documents produced during discovery.  
20 During the settlement talks, Mr. Stein took part in telephone negotiations, helped revise the settlement  
21 agreement, and worked with Defendants and the Settlement Administrator on the long- and short-form  
22 notice, claim forms, website content, and the other post-settlement administrative tasks.

23           Amy M. Zeman – Ms. Zeman, a junior associate, assisted during the later stages of this case,  
24 including by helping to finalize the parties’ amended settlement and related class notice materials. She  
25 also drafted Plaintiff’s second preliminary approval motion and the brief and declaration in support of  
26 Plaintiff’s fee application.

27           Litigation Assistants – We relied heavily on two highly competent college graduates, Samantha  
28 Elboim and John Hollis, for assistance throughout the litigation. Ms. Elboim helped primarily with our

1 initial investigation and early litigation efforts. Mr. Hollis took over when Ms. Elboim left the firm to  
 2 attend law school, and helped with investigative work and reviewing much of the more than 20,000  
 3 pages of documents produced in discovery. Mr. Hollis will continue to assist on this case as necessary  
 4 until his departure for law school this fall.

5 6. This allocation of work typically leads to a pyramidal structure in the number of hours  
 6 worked by our attorneys. In this case, as the following table reflects, our associate attorneys and  
 7 litigation assistants accounted for over 70% of our time, with junior associate Mr. Stein billing the  
 8 greatest number of hours:

Attorney	Role	Total Hours	% of Total Hours	Billing Rate	Lodestar
Eric H. Gibbs	Sr. Partner	293.64	13%	\$675	\$198,207.00
Dylan Hughes	Jr. Partner	317.00	14%	\$545	\$172,765.00
Philip B. Obbard	Sr. Associate	413.90	19%	\$480	\$198,672.00
Geoffrey A. Munroe	Sr. Associate	151.35	7%	\$445	\$67,350.75
David Stein	Jr. Associate	781.30	35%	\$380	\$296,894.00
Amy M. Zeman	Jr. Associate	38.00	2%	\$330	\$12,540.00
Litigation Assistants		217.26	10%	\$200	\$43,452.00
<b>TOTALS</b>		<b>2212.45</b>	<b>100%</b>	<b>\$447 (blend)</b>	<b>\$989,880.75</b>

19 7. This work allocation, with slight variations, has proven successful for Girard Gibbs in  
 20 past consumer cases. *See, e.g., See, e.g., Sugarman v. Ducati North America, Inc.*, No. 5:10-0CV-  
 21 05246, 2012 WL 113361, at \*6 (N.D. Cal. Jan. 12, 2012) (approving settlement in which “class counsel  
 22 negotiated a compromise that addresses class members’ primary concerns” and awarding fees pursuant  
 23 to the parties’ agreement); *Browne v. American Honda Motor Co.*, No. 09-CV-06750 (C.D. Cal. 2010),  
 24 Dkt. No. 62 (Order) (attorneys’ fees approved after “class counsel succeeded in negotiating significant  
 25 compensation for class members within in a year of filing the case”); *Parkinson v. Hyundai Motor*  
 26 *America*, No. 06-CV-345 (C.D. Cal. 2010), Dkt. No. 330-1 (Order) (attorneys’ fee awarded following  
 27 successful classwide resolution).  
 28

1 **II. DETAILED REVIEW OF MY FIRM'S WORK**

2 8. To provide the Court with an accounting of the work done by Girard Gibbs in this case,  
3 without requiring the review of our voluminous time records themselves,<sup>1</sup> I divide my firm's work into  
4 the following six categories:

5 <b>Category</b>	<b>Time Frame</b>	<b>Hours Worked</b>	<b>Percent of Total</b>
6 Investigation & Pleadings	03-26-2010 — 05-18-2010	155.15	7%
7 Informal Discovery & Early Litigation	05-19-2010 — 08-31-2010	210.92	10%
8 Formal Discovery & Continued Litigation	09-01-2010 — 01-20-2011	840.93	38%
9 Transition from Litigation to Settlement	01-21-2011 — 03-31-2011	333.30	15%
10 Settlement Finalization & Prelim. Approval	04-01-2011 — 12-31-2011	505.90	23%
11 Settlement Amendment and Finalization	01-01-2012 — 03-31-2012	167.80	7%
12	<b>TOTAL</b>	<b>2214</b>	<b>100%</b>

13 **A. Investigation & Pleadings**

14 9. This first category spans from late-March 2010, when we first began our investigation,  
15 through May 18, 2010, when we filed the class action complaint. My firm's time during this period was  
16 heavily weighted toward our pre-filing investigation and then drafting the complaint. Accordingly, Mr.  
17 Hughes, who headed up these projects, and the junior associate (Mr. Stein) and litigation assistants he  
18 supervised, together account for almost 80% of our time during this period. Mr. Obbard took  
19 responsibility for researching and drafting the portions of the complaint pertaining to the procedural and  
20 substantive legal allegations. I led strategy discussions and performed the final review and edits of the  
21 complaint before it was filed.  
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28 <sup>1</sup> I have found this summary method to be more accessible and useful in evaluating my firm's efforts on behalf of a class than providing full time records. However, time records are readily available for submission should the Court prefer.

<b>A. Investigation &amp; Pleadings: March 26, 2010 – May 18, 2010</b>				
<b>Attorney</b>	<b>Total Hours</b>	<b>% of Total Hours</b>	<b>Billing Rate</b>	<b>Lodestar</b>
Eric H. Gibbs	7.00	5%	\$675	\$4,725.00
Dylan Hughes	39.50	25%	\$545	\$21,527.50
Phillip B. Obbard	28.40	18%	\$480	\$13,632.00
David Stein	61.75	40%	\$380	\$23,465.00
Litigation Assistants	118.50	12%	\$200	\$3,700
<b>TOTALS</b>	<b>155.15</b>	<b>100%</b>	<b>\$432 (blend)</b>	<b>\$67,049.50</b>

10 To provide the Court with greater insight into my firm's efforts during this period, I  
11 provide the following break-down which, though not comprehensive, provides an overview of the most  
12 noteworthy events and accomplishments:

13 Client Interviews and Document Review: Our investigation began when we spoke with Mr.  
14 Milano about his pro-rata warranty transaction and obtained and reviewed his documents. We had  
15 several conferences with Mr. Milano, discussing not only his experiences, but also what his obligations  
16 would be as a proposed class representative. We stayed in contact with Mr. Milano throughout the  
17 litigation, typically speaking with him about once a month to keep him apprised of the case.

18 Interstate's Warranty Representations: Mr. Milano believed he had been overcharged for his  
19 pro-rata replacement battery, so our initial investigation centered on understanding how Interstate's  
20 warranty works. We visited Interstate's website and called Interstate's customer service department to  
21 learn about the warranty. We also bought an Interstate battery to get a copy of the shrink-wrap  
22 packaging that contained warranty language.

23 Interstate's Warranty Marketing: Since the warranty language on the shrink-wrap was different  
24 from the language on Interstate's website and call center, and none of the language was clear enough to  
25 reconstruct with certainty how Interstate dealers were calculating pro-rata replacement prices, we  
26 investigated other statements by Interstate for information. In particular, we reviewed Interstate's press  
27 releases, advertisements, and miscellaneous website representations.

1           Interstate Battery Retailers: Since nothing from Interstate’s corporate entities clearly established  
2 how the warranty calculations were being performed, we began visiting and surveying Interstate’s  
3 dealers. We visited an Interstate-owned All Battery Center as well as an independent mechanic, to see  
4 what information was on hand for Interstate’s customers to see. We also began calling Interstate  
5 retailers around the country to find out how much they were charging for pro-rata replacement batteries  
6 and what formula they were using.

7           Automobile Battery Warranties Industry-wide: Once we determined that Interstate retailers  
8 appeared to be commonly using Interstate’s higher “List Price” in the pro-rata calculations, rather than  
9 the actual sales price or manufacturer’s suggested retail price (MSRP), we suspected this would be  
10 contrary to most consumers’ expectations. To substantiate this for the complaint, we obtained and  
11 reviewed a number of other automobile battery warranties used by Interstate’s competitors. We also  
12 researched the major car battery manufacturers and the expected life-span of the various batteries made  
13 by Johnson Controls (the manufacturer of Interstate’s batteries).

14           Interstate Corporate Structure: During our investigation, we learned that there were more than a  
15 dozen Interstate corporate entities. We researched the various entities and identified Defendants as the  
16 most likely to be actively involved in Interstate’s warranty practices. The identification of the proper  
17 defendants was a recurring and hotly contested issue throughout the litigation, though ultimately the two  
18 named Defendants remained unchanged.

19           Demand Letter: We drafted and sent Interstate a demand letter pursuant to California’s  
20 Consumers Legal Remedies Act (CLRA) on behalf of Mr. Milano and the proposed class.

21           Complaint: We researched, drafted, and then filed the complaint and CLRA declaration on May  
22 18, 2010. A variety of factors made pleading the complaint challenging. As the Federal Trade  
23 Commission has recognized, pro-rata warranties are inherently complex, and it took time to describe  
24 Interstate’s conduct in an easily understandable manner. This proved particularly complicated because  
25 there are multiple Interstate entities, multiple Interstate warranties, and different iterations of the  
26 warranty language.

1           **B.     Informal Discovery & Early Litigation**

2           11.     This second category spans from May 19, 2010, the day after the complaint was filed,  
3 through August 31, 2010, when the parties filed their joint Rule 26 statement. A major component of  
4 our efforts during this period was the informal discovery process—we initiated contact with Interstate’s  
5 counsel on June 3, 2010, and held a series of meet-and-confer calls and exchanged correspondence  
6 during the month of August, before filing the Rule 26 statement on August 31, 2010. Also during this  
7 period, we continued our independent factual investigation, both to buttress our discovery efforts and to  
8 help lay the groundwork for the First Amended Complaint, filed on July 16, 2010. Mr. Obbard drafted  
9 many of the revisions in the amended complaint, took primary responsibility for Plaintiff’s portion of the  
10 Rule 26 statement and Plaintiff’s Initial Disclosures, and served as the primary interface with Interstate’s  
11 lawyers, thus accounting for almost half of our time during this period. Mr. Hughes focused primarily  
12 on our discovery efforts—he participated in each meet-and-confer discussion and managed the  
13 discovery-related correspondence from our office. Mr. Stein was responsible for much of our continued  
14 investigation and research efforts; he conducted legal research, drafted correspondence, and assisted  
15 with several stipulations filed during this period. My time during this period reflects significant  
16 involvement in shaping the amended complaint and my participation in the Rule 26 conference.

17

<b>B. Informal Discovery &amp; Early Litigation: May 19, 2010 – August 31, 2010</b>				
<b>Attorney</b>	<b>Total Hours</b>	<b>% of Total Hours</b>	<b>Billing Rate</b>	<b>Lodestar</b>
Eric H. Gibbs	25.60	12%	\$675	\$17,280.00
Dylan Hughes	30.81	15%	\$545	\$16,791.45
Phillip B. Obbard	102.10	49%	\$480	\$49,008.00
David Stein	45.90	22%	\$380	\$17,442.00
Litigation Assistants	4.76	2%	\$200	\$952.00
<b>TOTALS</b>	<b>209.17</b>	<b>100%</b>	<b>\$485 (blend)</b>	<b>\$101,473.45</b>

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26           12.     To provide the Court with greater insight into my firm’s efforts during this period, I  
27 provide the following break-down which, though not comprehensive, provides an overview of the most  
28 noteworthy events and accomplishments:

1           Early Rule 26 Process: Our focus during the Rule 26 process was on Interstate's databases and  
2 electronically stored information. We recognized that to establish classwide damages, the existence of a  
3 consistent nationwide warranty policy, and other aspects of our case, we would need to fully understand  
4 what data was available. We sent letters to Interstate on June 3, 2010, and on August 3, 2010, engaging  
5 Interstate on these issues. We also made it a priority to learn about Interstate's corporate structure to  
6 ensure the proper Interstate entities were named as defendants. We engaged in the Rule 26 conference  
7 on August 31st and negotiated and drafted Plaintiff's portion of the Rule 26 statement.

8           ESI Investigation: Because Interstate expressed great reluctance to provide concrete information  
9 about its databases, we undertook efforts to learn this information independently. Ultimately we were  
10 able to learn about Interstate's databases and data warehouse through a variety of avenues, such as press  
11 releases and independent contractor advertising. This allowed us to put additional pressure on Interstate  
12 to voluntarily provide database information. Notably, Interstate's database information remained the  
13 subject of significant dispute for much of this litigation.

14           Informal Discovery: Throughout the month of August, we were heavily engaged in meet-and-  
15 confer negotiations and informal discovery efforts. Mr. Obbard and Mr. Hughes participated in a  
16 number of phone calls and exchanged correspondence (on an often daily basis) with Interstate's counsel.  
17 Through these efforts, we persuaded Interstate to produce over 100 pages of documents before discovery  
18 officially opened, including an organization chart and battery price sheets.

19           Continued Factual Investigation: During this period, we continued to investigate Interstate's  
20 warranty practices, including by surveying warranty dealers nationwide to catalog the prices they were  
21 charging for pro-rata replacement batteries. We also located and interviewed several former Interstate  
22 employees, who were able to provide valuable insight into the logistics of Interstate's warranty-related  
23 business practices.

24           Stipulations: We negotiated, drafted, and filed two scheduling stipulations concerning  
25 Interstate's answer deadline and Plaintiff's deadline to amend his pleading, as well as the requisite ADR  
26 Stipulation.

1 Amended Complaint: We researched and prepared a substantially modified First Amended  
2 Complaint, which we filed in July 2010. We also served a demand letter pursuant to the Magnusson  
3 Moss Warranty Act.

4 Review of Interstate's Answer: We believe the strength of the amended complaint led directly to  
5 Interstate's decision to answer the pleading, rather than move to dismiss.

6 Initial Disclosures: We prepared and served Plaintiff's initial disclosures and served Plaintiff's  
7 documents.

8 Rule 23(g) Motion: We prepared a motion for the appointment of interim counsel after  
9 Interstate's counsel expressed opposition to a stipulation on the subject.

10 **C. Formal Discovery & Continued Litigation**

11 13. This third category spans from September 1, 2010, just before the parties initial case  
12 management conference with the Court, to January 20, 2011, after which the parties began exploring  
13 settlement possibilities. Our work during this period focused on discovery: we served two sets of  
14 interrogatories and requests for documents, met and conferred with Interstate regarding our discovery  
15 requests, and began working through the tens of thousands of documents produced by Interstate. In  
16 addition, we met and conferred repeatedly with Interstate about Defendants' corporate relationships and  
17 the identification of proper parties to our lawsuit. In keeping with the briefing schedule set by the Court  
18 at the September 07, 2011, case management conference, we also began drafting Plaintiff's class  
19 certification motion and a motion for summary judgment.

20 **C. Formal Discovery & Continued Litigation: September 01, 2010 – January 20, 2011**

Attorney	Total Hours	% of Total Hours	Billing Rate	Lodestar
Eric H. Gibbs	15.24	2%	\$675	\$10,287.00
Dylan Hughes	165.59	20%	\$545	\$90,246.55
Phillip B. Obbard	193.80	23%	\$480	\$93,024.00
David Stein	293.40	35%	\$380	\$111,492.00
Litigation Assistants	172.90	21%	\$200	\$34,580.00
<b>TOTALS</b>	<b>840.93</b>	<b>100%</b>	<b>\$404 (blend)</b>	<b>\$339,629.55</b>

1 14. The following summary, though not comprehensive, provides an overview of my firm's  
2 most noteworthy accomplishments during this time frame:

3 Case Management Conference: Mr. Obbard and I participated in the Rule 26 Case Management  
4 Conference on September 7, 2010, at which I informed the Court of Plaintiff's intention to file our  
5 motion to appoint interim counsel.

6 Stipulations: Following the case management conference, the parties' revisited the value of  
7 interim counsel to efficient case management, and Interstate ultimately agreed to stipulate to my firm's  
8 appointment. Mr. Obbard prepared and filed the stipulation. In addition, we negotiated and filed a  
9 stipulated protective order.

10 Plaintiff's Discovery Requests: Plaintiff propounded his first set of document requests and  
11 interrogatories in September 2010, focusing primarily on Interstate's warranty terms, pro rata  
12 calculation, and database information. Plaintiff propounded his second set of document requests and  
13 interrogatories in November 2010, focusing on Interstate's corporate structure and the identification of  
14 proper defendants. Interstate served responses in November and December 2010. Later, we drafted and  
15 prepared to serve a third set of document requests and interrogatories, but ultimately did not serve them  
16 because of the progress made during the parties' first mediation session.

17 Document Review: Interstate began producing documents on August 31, 2010, and continued  
18 doing so in September 2010, December 2010 and January 2011. In all, Interstate produced over 20,000  
19 pages of documents. Documents produced during the litigation include warranties, pro rata transaction  
20 data, a large number and variety of price sheets, battery labels and shrink wrap materials, internal e-  
21 mails and memos, portions of Interstate's Distributor's Manual and All Battery Store Manual, marketing  
22 materials, market research and analysis, customer complaints and related correspondence, dealer  
23 complaints, distributor contracts and handbooks, and training manuals. Mr. Stein, aided by litigation  
24 assistants, took the lead role in reviewing and analyzing the productions.

25 Proper Defendants: As discussed above, the identification of which of Interstate's various  
26 entities should properly be named as defendants was a highly contentious issue in this litigation.  
27 Though Interstate requested that Plaintiff dismiss Interstate Battery System International, Inc., Plaintiffs  
28 balked when Defendants refused to provide necessary assurances or documents confirming that

1 dismissal was appropriate. To effectively pursue his claims, Plaintiff needed to be sure that the named  
2 defendants are the Interstate entities that direct and control the warranty practices (or, alternatively, that  
3 they are acting as alter egos of those entities). The parties met and conferred on several occasions about  
4 these issues and Plaintiff's second set of discovery requests sought information about the relationships  
5 and roles of the different Interstate entities. When Defendants refused to provide the requested  
6 information, Mr. Obbard drafted a motion to compel production of the desired discovery. Faced with  
7 the motion to compel, Defendants agreed to engage in further negotiations and ultimately the parties  
8 entered into a stipulation on October 29, 2010, (Dkt. No. 31), resolving the issues.

9 Research: At the same time we were negotiating discovery issues with Interstate, we  
10 independently investigated Interstate's corporate structure. Mr. Obbard reviewed financial information  
11 about the Interstate entities and researched board memberships across the entities. Legal research  
12 conducted by Mr. Obbard focused on the alter ego doctrine, piercing the corporate veil and jurisdictional  
13 issues.

14 ESI Investigation: We continued investigating Interstate's databases to determine the  
15 functionality and capabilities of Interstate's systems and to learn what electronically stored information  
16 would be available to support the class claims. From our perspective, Interstate remained  
17 unforthcoming with relevant information, and we consulted with an ESI expert to help further develop  
18 our understanding of Interstate's databases and data warehouse.

19 Meet & Confer: We actively engaged with Interstate's counsel during this period, holding meet-  
20 and-confer calls on a regular basis between September 2010 and January 2011. We also drafted and sent  
21 a number of e-mails and letters regarding discovery. The main topics of discussion were information  
22 about Interstate's databases and its corporate structure.

23 Class Certification and Motion for Summary Judgment: At the initial case management  
24 conference on September 07, 2010, the Court set a May 12, 2011 hearing date for class certification and  
25 other case-dispositive motions, including a motion for summary judgment contemplated by Interstate  
26 and a possible counter motion for summary judgment by Plaintiffs. With the briefing schedule required  
27 for this hearing date in mind, Mr. Obbard spent time drafting Plaintiff's motion for class certification  
28 and conducting related legal research. Mr. Obbard also drafted a summary judgment motion regarding

1 the interpretation of Interstate's warranty terms. While these motions were not ultimately filed, the  
2 work done by Mr. Obbard proved valuable during the mediation process.

3 **D. Transition from Litigation to Settlement**

4 15. This fourth category spans from January 21, 2011, about the time the parties began  
5 contemplating settlement talks, until March 31, 2011, when they reached an agreement in principle. The  
6 bulk of our time was expended on developing our settlement position and strategy, though we continued  
7 to prepare for the class certification and dispositive motion deadlines until it became evident we would  
8 be able to reach a mutually agreeable settlement. As part of this effort, we analyzed possible damages  
9 models and worked through potential settlement proposals. We drafted a mediation brief that set forth  
10 our factual and legal theories of the case and identified supporting exhibits, then participated in three  
11 full-day mediation sessions. As the partner with primary responsibility for settlement negotiations, I  
12 took an active role in the mediation process, accounting for almost one-fifth of my firm's time in this  
13 category. We also continued evaluating Interstate's document production and conducted legal research  
14 as necessary to craft a successful and enforceable settlement.

15

<b>D. Transition from Litigation to Settlement: January 21, 2011 – March 31, 2011</b>				
<b>Attorney</b>	<b>Total Hours</b>	<b>% of Total Hours</b>	<b>Billing Rate</b>	<b>Lodestar</b>
Eric H. Gibbs	57.2	17%	\$675	\$38,610.00
Dylan Hughes	73.70	22%	\$545	\$40,166.50
Phillip B. Obbard	84.00	25%	\$480	\$40,320.00
Geoffrey A. Munroe	1.75	<1%	\$445	\$778.75
David Stein	99.45	30%	\$380	\$37,791.00
Litigation Assistants	17.20	5%	\$200	\$3,440.00
<b>TOTALS</b>	<b>333.30</b>	<b>100%</b>	<b>\$483 (blend)</b>	<b>\$161,106.25</b>

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26 16. The following summary, though not comprehensive, provides an overview of my firm's  
27 most noteworthy accomplishments during this time frame:  
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1           Settlement Conference: Mr. Hughes, Mr. Obbard, and I met with several of Interstate’s attorneys  
2 on January 24, 2011, for an exploratory settlement discussion. Prior to this meeting, our litigation team  
3 worked together to develop a settlement strategy.

4           Mediation: Following our exploratory settlement conference, the parties moved forward with  
5 three mediation sessions before the Hon. William J. Cahill (Ret.). Mr. Stein researched and developed  
6 potential damages theories, and Mr. Obbard drafted our mediation brief, which entailed converting much  
7 of the class certification and summary judgment briefing he had been working on. Mr. Hughes, Mr.  
8 Munroe, Mr. Stein, and I provided input for the brief and reviewed the draft as it progressed. We  
9 engaged in two mediation sessions in February and March in San Francisco, and on March 31, 2011,  
10 Mr. Stein and I attended the final mediation session near Interstate’s headquarters in Dallas, Texas.

11           Motions: Before the parties reached an agreement in principle to resolve the litigation in late  
12 March, Mr. Obbard continued drafting Plaintiff’s motions for class certification and summary judgment.  
13 This work was necessary to ensure we could meet our briefing deadlines should the settlement  
14 negotiations fall through, and also assisted our understanding of the issues as we continued to negotiate.

15           Legal Research: The nature of the settlement and changing circumstances in the law, including  
16 the issuance of *Dukes v. Wal-Mart*, 131 S. Ct. 2541 (2011), required legal research into several areas.  
17 Mr. Stein and Mr. Obbard conducted the necessary research into issues such as the class waiver  
18 mechanism, damages awards in Rule 23(b)(2) settlements, ascertainability, and inclusion of future class  
19 members, and reviewed comparable consumer class action settlements.

20           Document Review: Our document review efforts early on during this period shifted to  
21 identifying “hot” documents and information we could use in the class certification motion. We also  
22 evaluated the production to determine where information gaps existed, both to develop additional  
23 discovery requests and to assess our strengths and weaknesses from a settlement perspective. A  
24 litigation assistant conducted much of the document review work, along with Mr. Stein and Mr. Obbard.

25           Stipulations: We drafted and filed two stipulations to afford the time necessary to conduct the  
26 three mediation sessions.  
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1           **E. Settlement Finalization & Approval**

2           17. This fifth category spans from April 1, 2011, immediately after we reached an agreement  
3 in principle with Interstate, through December 15, 2011, shortly after the Court issued its first  
4 preliminary approval order. I continued in my role as the chief negotiator with Interstate, engaging in  
5 frequent telephone conferences with defense counsel as we ironed out the details and exchanged  
6 revisions to the settlement agreement. My efforts thus account for almost a quarter of my firm's time  
7 during this period. Mr. Stein assisted me throughout the negotiations, participating in many of the  
8 telephone conferences and reviewing and revising several iterations of the settlement agreement. He  
9 also took a lead role in drafting the class notice and worked with Interstate and the Settlement  
10 Administrator on the press releases, short-form notice, and other notice-related documents. Following  
11 Mr. Obbard's departure to take a position with the judiciary, Mr. Munroe stepped in to draft Plaintiff's  
12 original preliminary approval motion.

13

<b>E. Settlement Finalization &amp; Approval: April 01, 2011 – December 15, 2011</b>				
<b>Attorney</b>	<b>Total Hours</b>	<b>% of Total Hours</b>	<b>Billing Rate</b>	<b>Lodestar</b>
Eric H. Gibbs	125.80	25%	\$675	\$84,915.00
Dylan Hughes	7.40	1%	\$545	\$4,033.00
Phillip B. Obbard	5.60	1%	\$480	\$2,688.00
Geoffrey A. Munroe	133.20	26%	\$445	\$59,274.00
David Stein	233.60	46%	\$380	\$88,768.00
Litigation Assistants	0.50	<1%	\$200	\$60.00
<b>TOTALS</b>	<b>506.10</b>	<b>100%</b>	<b>\$474 (blend)</b>	<b>\$239,778.00</b>

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23           18. The following break-down, though not comprehensive, provides an overview of the most  
24 noteworthy events and accomplishments during this period:

25           Negotiations: The parties reached an agreement in principle on March 31, 2011, but further  
26 negotiations were required to finalize the settlement agreement. Negotiations continued from early  
27 April through late October, during which the parties engaged in at least 24 telephone conferences and  
28 one in-person meeting and exchanged numerous revisions to the draft settlement agreement. Ultimately,

1 the settlement agreement presented to the Court on October 31, 2011, counted 52 pages plus almost 30  
2 pages of exhibits. The negotiations proved particularly time consuming due to the comprehensive  
3 changes contemplated to Interstate's warranty practices and our efforts to ensure the reimbursement  
4 component was simple and understandable for interested class members.

5 Stipulations: Because of the protracted nature of the settlement negotiations, several  
6 adjustments to the case management schedule were necessary. We filed a total of six stipulations to  
7 keep the Court apprised of our progress and to request extensions of time. Mr. Obbard prepared the first  
8 two stipulations, and Mr. Stein prepared the later filings.

9 Settlement Administration: In addition to drafting the settlement agreement, we also worked with  
10 Interstate and the Settlement Administrator to prepare related documents, such as short and long form  
11 versions of class notice, print and audio press releases, retailer handouts, and the official settlement  
12 website to be hosted by the administrator. Mr. Stein was our primary contributor to drafting, reviewing,  
13 and revising these documents, with occasional input from other team members.

14 Client Outreach: Throughout the settlement negotiations, Mr. Stein kept Plaintiff Milano  
15 apprised of the situation. Mr. Milano was particularly meticulous about reviewing the precise settlement  
16 terms and provided valuable input that we utilized in shaping the final agreement.

17 Case Management Conference: Mr. Stein prepared Plaintiff's portion of the Joint Case  
18 Management Report, finalized the document in coordination with Interstate, and supervised the filing on  
19 August 19, 2011. Mr. Munroe and I attended the case management conference held on August 25, 2011.

20 Preliminary Approval: In Mr. Obbard's absence, Mr. Munroe stepped in to draft Plaintiff's  
21 preliminary approval motion and supporting papers. Mr. Stein assisted him as necessary and later  
22 helped me prepare for the preliminary approval hearing, which I attended with Mr. Munroe. Following  
23 the Court's entry of an order granting preliminary approval, Mr. Stein and Mr. Munroe began  
24 strategizing about Plaintiff's final approval motion and conducted relevant legal research.

25 **F. Settlement Amendment & Approval**

26 19. This sixth category spans from December 16, 2011, when Interstate notified Plaintiffs of  
27 problems implementing the preliminarily approved settlement, through March 31, 2012, shortly after the  
28 Court issued its second preliminary approval order. With my oversight, Mr. Munroe and Mr. Stein

1 worked through the issues and developed a proposal to both resolve the implementation problems and  
 2 strengthen the settlement. After the parties exchanged a few initials drafts of an amended settlement, I  
 3 guided our negotiations to finalize the agreement. In all, we engaged in two in-person meetings and at  
 4 least 7 phone conferences with Interstate's counsel during this period to amend the settlement and seek  
 5 preliminary approval of the changes. Ms. Zeman prepared Plaintiff's second preliminary approval  
 6 motion and worked with the Settlement Administrator and Interstate to finalize the class notice materials  
 7 after the Court granted the motion.

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<b>F. Settlement Amendment &amp; Approval: December 16, 2011 – March 31, 2012</b>				
<b>Attorney</b>	<b>Total Hours</b>	<b>% of Total Hours</b>	<b>Billing Rate</b>	<b>Lodestar</b>
Eric H. Gibbs	62.80	37%	\$675	\$42,390.00
Geoffrey A. Munroe	16.40	10%	\$445	\$7,298.00
David Stein	47.20	28%	\$380	\$17,936.00
Amy M. Zeman	38.00	23%	\$330	\$12,540.00
Litigation Assistants	3.40	2%	\$200	\$680.00
<b>TOTALS</b>	<b>167.80</b>	<b>100%</b>	<b>\$482 (blend)</b>	<b>\$80,844.00</b>

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18 20. The following break-down, though not comprehensive, provides an overview of the most  
 19 noteworthy events and accomplishments during this period:

20 Renewed Negotiations: Interstate's counsel came to San Francisco to meet with Mr. Stein and  
 21 me to inform us about difficulties encountered by Interstate in implementing the parties' original  
 22 settlement agreement. Though disappointed that Interstate' prior due diligence had failed to identify  
 23 these issues during our initial negotiations, we viewed the situation as an opportunity to improve the  
 24 settlement. Mr. Munroe, Mr. Stein, and I developed an overarching strategy to amend the settlement,  
 25 and Mr. Munroe and Mr. Stein worked through the details and prepared a revised settlement agreement.  
 26 Once we had general agreement with Interstate, I took on the principle role in negotiating the amended  
 27 settlement to finalization.

28

1           Settlement Administration: Interstate implemented most of the class notice plan pursuant to the  
2 Court's preliminary approval order, and we agreed to utilize a substantially similar program to notify  
3 class members of the amended settlement. Mr. Stein worked through revisions to the class notice, print  
4 and audio press releases, retailer handouts, and the official settlement handout, and Ms. Zeman later  
5 worked with the Settlement Administrator and Interstate to finalize the materials for distribution  
6 following the Court's second preliminary approval order.

7           Stipulations: Mr. Stein prepared a stipulation in December 2011 to inform the Court of the  
8 issues encountered implementing the settlement and the parties' efforts to develop an amended  
9 settlement. He also prepared a stipulation in January 2012 to inform the Court of the parties' progress  
10 and to request a brief extension of time to file new preliminary approval documents.

11           Client Outreach: Mr. Stein communicated with Mr. Milano regarding the status of the  
12 settlement, the progress of negotiations, and his approval of the final agreement.

13           Legal Research: Mr. Stein conducted legal research to support changes to the agreed-upon  
14 injunction.

15           **G.    Litigation Expenses**

16           21.    In addition to devoting the time and efforts described above on behalf of the class, Girard  
17 Gibbs also incurred \$32,172.66 in expenses, for which we are requesting reimbursement to the extent  
18 they fall within the \$1,050,000 fee and expense cap negotiated by the parties. The following chart  
19 details the amounts expended:

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<b>EXPENSE CATEGORY</b>	<b>AMOUNT</b>
Filing Fee and Service Costs	\$164.50
Messenger, Courier and Postage Costs	\$2,653.35
Expert Fees/Consultants	\$475.00
Mediation	\$15,956.01
Research	\$8,756.10
Travel (Transportation, Lodging, and Meals)	\$2,644.94
Meals – In Town	\$158.31
Telephone Charges	\$166.04
Transcripts	\$61.80
Copies	\$876.60
Other	\$260.00
<b>TOTAL</b>	<b>\$32,172.66</b>

### **III. GIRARD GIBBS' HOURLY RATES ARE REASONABLE**

22. The average hourly rate for all Girard Gibbs' timekeepers is \$443. The hourly rates of the attorneys who worked on this matter range from \$330 to \$675. The hourly rate for the litigation assistants is \$200.

Based on my years of experience litigating consumer class cases and my knowledge of the caliber of work done in this litigation, I believe my firm's billing rates are commensurate with the rates charged by other firms with similar experience and expertise in the field in this market. Notably, in January 2012, Judge Fogel approved attorneys' fees requested by Girard Gibbs LLP calculated with hourly rates ranging from \$330-\$675 for four attorneys (Mr. Hughes, Mr. Munroe, Ms. Zeman and myself) who also worked on this matter at the same rates. *See Sugarman v. Ducati North America, Inc.*, No. 5:10-CV-05246, 2012 WL 113361, at \*6 (N.D. Cal. Jan. 12, 2012); *Sugarman*, Dkt. No. 81 (Decl.) 7. In the Central District, Judge Morrow approved attorneys' fees requested by Girard Gibbs LLP with hourly rates ranging from \$380-675 for five of the attorneys (Mr. Hughes, Mr. Obbard, Mr. Munroe, Mr. Stein, and myself) who worked on this matter at the same rates and found a 1.5 multiplier on the lodestar appropriate. *Browne v. American Honda Motor Co.*, No. 09-CV-06750 (C.D. Cal. 2010), Dkt. No. 62

1 (Order) 13, 22-23. Judge Stotler of the Central District of California has approved fees calculated at the  
2 same rates for four attorneys (Mr. Hughes, Mr. Munroe, Mr. Stein, and myself) who worked on this  
3 case. *See Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160, 1172-73 (C.D. Cal. 2010)  
4 (awarding fees over defendants' objection and finding reasonable Girard Gibbs' attorneys' hourly rates  
5 ranging from \$345-\$675); *Parkinson*, No. 8:06-CV-00345, Dkt. No. 289 (Gibbs Decl.) 5-6.

6 23. A few examples of recent approvals of fees calculated with similar rates in the  
7 community are listed here:

- 8 • In August 2011, Judge Chen approved attorneys' fees calculated with hourly rates  
9 ranging from \$500-\$675 for attorneys and \$125-\$225 for professional staff. *In re Wells*  
10 *Fargo Loan Processor Over-Time Pay Litigation*, No. C-07-1841, 2011 WL 3352460,  
11 at \*10 (N.D. Cal. Aug. 2, 2011); *Wells Fargo*, Dkt. No. 181 (Decl.) 7.
- 12 • In July 2011, Judge Breyer approved attorneys' fees checked against a lodestar  
13 calculated with hourly rates ranging from \$350-\$500 for associates and \$500-\$700 for  
14 partners. *In re Nuvelo, Inc. Securities Litig.*, No. C-07-04056, 2011 WL 2650592, at \*3  
15 (N.D. Cal. July 6, 2011); *Nuvelo*, Dkt. No. 159-4 (Decl.), Exh. 2.
- 16 • In June 2011, Judge Koh approved attorneys' fees calculated with hourly rates ranging  
17 from \$140-\$175 for paralegals and \$290-\$740 for attorneys. *Buccellato v. AT&T*  
18 *Operations, Inc.*, No. C-10-00463, 2011 WL 4526673, at \*4 (N.D. Cal. June 30, 2011);  
19 *Buccellato*, Dkt. No. 66 (Decl.), Exh. A.
- 20 • In April 2011, Judge Alsup approved attorneys' fees checked against a lodestar  
21 calculated with hourly rates ranging from \$150 for paralegals, \$325-\$425 for associates,  
22 and \$380-\$650 for partners. *In re Charles Schwab Corp. Securities Litig.*, No. 08-01510,  
23 2011 WL 1481424, at \*8 (N.D. Cal. Apr. 19, 2011); *see Schwab*, Dkt. No. 853  
24 (Decl.) 18.

25 24. The hourly rates applied by my firm are the same as the regular current rates charged for  
26 our services in non-contingent matters and which have been accepted in other class action litigation.  
27 Girard Gibbs sets its hourly rates based on our review of the hourly rates charged by other plaintiffs'  
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1 attorneys in contingent class actions and those published in surveys conducted by the National Law  
2 Journal.

3 25. Based on my experience litigating consumer protection and warranty claims in class  
4 actions, I believe that the hours expended and expenses incurred in this matter are reasonable. The  
5 settlement we achieved through this work provides valuable benefits to consumers in the form of check  
6 refunds and product vouchers for pro rata battery transactions and injunctive relief under which  
7 Interstate will reform its warranty practices.

8 I declare under penalty of perjury under the laws of the United States of America that the  
9 foregoing is true and correct. Executed this 13th day of April 2012, at San Francisco, California.

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12 /s/ Eric H. Gibbs  
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1 Eric H. Gibbs (State Bar No. 178658)  
David Stein (State Bar No. 257465)  
2 Amy M. Zeman (State Bar No. 271300)  
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6 Email: ehg@girardgibbs.com

7 *Class Counsel*

8  
9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **OAKLAND DIVISION**

12 DENO MILANO,

13 Plaintiff,

14 vs.

15 INTERSTATE BATTERY SYSTEM OF  
16 AMERICA, INC.; INTERSTATE BATTERY  
SYSTEM INTERNATIONAL, INC.,

17 Defendants.  
18  
19

Case No. 10-CV-2125-CW

**DECLARATION OF DENO MILANO  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR A SERVICE AWARD**

1 I, Deno Milano, declare as follows:

2 1. I am the named plaintiff and class representative in *Milano v. Interstate Battery System*  
3 *of America, Inc.*

4 2. I purchased a replacement battery under Interstate's pro rata warranty in March 2010.  
5 When I was charged more than I anticipated for the replacement battery under the warranty, I became  
6 curious about the pro rata calculation. The calculation method did not seem fair to me, and I ultimately  
7 contacted Girard Gibbs LLP to tell them what had happened and to find out whether potential legal  
8 action might be able to change the way Interstate calculated pro rata warranty prices going forward and  
9 help interested customers recoup the amounts they had been overcharged.

10 3. I kept in touch with my attorneys as they investigated potential claims against Interstate  
11 and reviewed the complaint filed on behalf of myself and other consumers in May 2010. I also  
12 reviewed the CLRA letter sent to Interstate on my behalf.

13 4. I understood that as a representative of the class I would likely need to participate in  
14 discovery. As part of that, I looked for any documents relevant to my original battery purchase or  
15 replacement battery purchase and provided them to my lawyers. I also preserved my replacement  
16 battery in order to safeguard potential evidence for the case. As the litigation progressed, I kept in  
17 touch with my lawyers on about a monthly basis to stay informed about the case.

18 5. I consulted with my attorneys after the first round of settlement discussions and  
19 contributed my perspective to the proposed terms. I reviewed the initial settlement agreement once it  
20 was nearly finalized and prepared a list of questions and comments which I discussed with my lawyers.  
21 I continued to stay in contact with my attorneys as the second round of settlement negotiations ensued,  
22 and I reviewed the amended settlement agreement and discussed the impact of the new changes with  
23 my lawyers as well.

24 I declare under penalty of perjury under the laws of the United States of America that the  
25 foregoing is true and correct. Executed this 13 day of April 2012, at Foster City, California.

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Deno Milano