

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

RAFAEL SUAREZ, DAISY GONZALEZ,
and RICHARD BYRD, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,

Defendant.

) Case No.: 3:21-cv-00393

) **Hon. William L. Campbell, Jr.**

) **CLASS ACTION**

**DECLARATION OF TIMOTHY N. MATHEWS IN SUPPORT
OF PLAINTIFFS' MOTION FOR ATTORNEYS'
FEES AND EXPENSES AND PLAINTIFFS' INCENTIVE AWARDS**

I, Timothy N. Mathews, declare as follows:

1. I am a partner in the law firm of Chimicles Schwartz Kriner & Donaldson-Smith LLP ("Chimicles Firm"), counsel for Plaintiffs Rafael Suarez, Daisy Gonzalez and Richard Byrd (collectively "Plaintiffs"), and Lead Counsel for the Class in this action. I respectfully submit this declaration in support of the parties' Joint Motion for Final Approval of Class Action Settlement and Final Judgement, and Plaintiffs' Motion for Attorneys' Fees and Expenses and Plaintiffs' Incentive Awards.

2. I am admitted to this Court *pro hac vice* and am a member in good standing of the bars of Pennsylvania and New Jersey. I am also admitted to practice in the United States Courts of Appeals for the Third, Fourth, Ninth, and Eleventh Circuits, and the United States District Courts for the District of New Jersey, the Eastern District of Pennsylvania, and the Eastern District of Michigan. 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. This declaration

supplements my prior declaration submitted in conjunction with Plaintiffs' motion for preliminary approval of the settlement in this action, ECF No. 15-2.

The Chimicles Firm and the Attorneys' Primarily Responsible for This Case

3. In its over three decades of existence, the Chimicles Firm has developed a national reputation for excellence as one of the leading firms of the plaintiffs' class action bar. From its offices in Haverford, Pennsylvania and Wilmington, Delaware, the Chimicles Firm prosecutes complex class actions and shareholder derivative litigation in state and federal courts throughout the nation. We have represented individuals, public pension funds, institutional investors, and businesses in hundreds of consumer protection, automotive defect, shareholder, antitrust, and other complex actions, and we have recovered billions of dollars for class members in these cases. Our partners and attorneys are regularly recognized as among the top lawyers in our profession. A copy of my firm's resume was filed in conjunction with preliminary approval at ECF No. 15-2 at 9-60.

4. My firm takes seriously its fiduciary duty to the classes it is appointed to represent, and accordingly, has a longstanding culture that strives to obtain the maximum recovery possible for our clients. The excellent result achieved in this case is consistent with that culture.

5. As reflected in my biography, I have served in a leadership role in numerous class actions where, like this one, I achieved outstanding results on behalf of the class, including several cases where I achieved full recoveries for class members. *See id.* at 20-21. I have been described as "among the most capable and experienced lawyers in the country" in consumer class action litigation. *Chambers v. Whirlpool*, 214 F. Supp 3d 877, 902 (C.D. Cal. 2016) (vacated in part on other grounds at 980 F.3d 645). I have personally served in a leadership role

in many successful class action cases in which I recovered a full, or near full, recovery for class members, including, as examples:

- *Rodman v. Safeway, Inc.* (N.D. Cal.), where I was court-appointed co-lead counsel and achieved a \$42 million judgment against Safeway, Inc., representing 100% of damages plus interest for grocery delivery overcharges;
- *Ardon v. City of Los Angeles* (Superior Court, County of Los Angeles), where I was court-appointed co-lead counsel and achieved a \$92.5 million settlement after winning a landmark decision in the Supreme Court of California;
- *In re Apple iPhone Warranty Litig.* (N.D. Cal.), where I was court-appointed co-lead counsel and achieved a \$53 million settlement and class members received on average 118% of their damages;
- *McWilliams v. City of Long Beach* (Superior Court, County of Los Angeles), where I was co-lead counsel and achieved a \$16.6 million telephone tax refund settlement;
- *Granados v. County of Los Angeles* (Superior Court, County of Los Angeles), where I was co-lead counsel and achieved a \$16.9 million telephone tax refund settlement;
- *In re 24 Hour Fitness Prepaid Memberships. Litig.* (N.D. Cal.), where I was court-appointed co-lead counsel and achieved a full-relief settlement providing over \$8 million in refunds and an estimated minimum of \$16 million in future rate reductions, for class of consumers who purchased prepaid gym memberships;
- *Livingston v. Trane U.S. Inc.* (D.N.J.), where I was court-appointed co-lead counsel and achieved a multimillion-dollar settlement providing repair

reimbursements, extended warranty coverage, and free service for owners of defective air conditioners.

These are just a few examples. Additional cases where I served in a leadership role and achieved excellent results are listed in my biography.

6. I graduated *with high honors* from Rutgers Law School, where I served as Lead Marketing Editor for the Rutgers Journal of Law & Religion, served as a teaching assistant for the Legal Research and Writing Program, received the Legal Writing Award, and received a Dean's Merit Scholarship and the Hamerling Merit Scholarship. I received my B.A. from Rutgers University *with highest honors*, where I was inducted into the Athenaeum honor society. I have worked at the Chimicles Firm since my second year as a law student, starting as a summer associate, then associate, and advancing to partnership. I have been selected as a Pennsylvania Rising Star, Pennsylvania Super Lawyer, and LawDragon 500 Leading Plaintiff Lawyer numerous times. I also take pride in my community service and have served as a member and Co-Chair of the Planning Commission for one of the largest municipalities in Pennsylvania for over five years.

7. Alex Kashurba served as the primary associate on this case and contributed substantially to its prosecution. Mr. Kashurba received his law degree from the University of Michigan Law School. While in law school, he interned for the United States Attorney's Office for the Eastern District of Pennsylvania as well as the Office of General Counsel for the United States House of Representatives. Prior to joining my Firm, Mr. Kashurba served as a law clerk in the United States District Court for the Western District of Pennsylvania, including for the Honorable Kim R. Gibson and the Honorable Nora Barry Fischer. Mr. Kashurba's biography is also included in the firm resume.

8. My associates Samantha Holbrook and Zachary Beatty and several of our paralegals and support staff also contributed significant work to this case. Their full biographies are also included in our firm resume.

Description of Work Performed By My Firm

9. The alleged defect in this case involves model year 2013-2018 Nissan Altimas manufactured with halogen headlamps. These Altimas utilize a “projector headlamp” design, where the headlight bulb is housed inside a reflective cup that reflects and focuses the light through a lens. The Complaint alleges that the headlamps are defective because the reflective cup “outgasses,” or deteriorates, resulting in loss of reflectivity and significant loss of headlight brightness. Repair requires replacement of the entire headlamp assembly.

10. My firm and I began conducting investigation into the factual and legal issues related to this defect on behalf of putative class members beginning in July 2018. Over the course of several months, we corresponded with numerous consumers about the defect and conducted factual and legal research. This was a novel potential case, and the root cause of the defect was not immediately clear. Unlike some other automotive defects that give rise to frequent litigation (such as alleged transmission and oil consumption defects), there have been few cases involving allegedly defective headlamps.

11. In May 2019, we sent Nissan North America, Inc. (“NNA”) a formal notice of claims for breach of express and implied warranty and violation of consumer protection laws and a demand for relief on behalf of our Rafael Suarez and all others similarly situated.

12. In response to our demand letter, we engaged in several direct discussions with NNA’s inside counsel, and subsequently outside counsel hired by NNA, Brigid Carpenter of Baker Donelson.

13. At that time, the parties did not discuss possible settlement terms, but rather, the raised the possibility of exploring settlement. We agreed to defer filing the lawsuit to further explore that possibility, as I believed early resolution of this safety defect could potentially be in the best interests of putative Class Members. In order to ensure the rights of putative Class Members were protected, we insisted upon a nationwide tolling agreement. The parties entered into a nationwide class-wide tolling agreement in July 2019.

14. During the early discussions, we informed NNA's counsel that any discussion of Settlement would require informal discovery from NNA. The parties entered into a confidentiality agreement covering the exchange of information and documents in November 2019. NNA began providing informal discovery thereafter.

15. On November 13, 2019, we also served a further notice of claims and a demand for relief on behalf of additional clients, Daisy Gonzalez of California and Richard Byrd of Ohio, and all others similarly situated. At that point in time, we had been contacted by hundreds of putative class members. One of the reasons we served the subsequent demand was to ensure that our anticipated settlement discussions with Nissan included class representatives with different perspectives, from different states, and who owned different models of the affected Altimas. All three representatives – Suarez, Byrd, and Gonzalez – played an active role in approving the settlement negotiations, as well as providing information that informed our negotiations.

16. Between July 2019 and July 2020, the parties engaged in numerous discussions, and NNA produced documents in response to Plaintiffs' requests.¹ During that time my firm also collected data from and corresponded with over 1,200 putative class members, and we obtained several samples of delaminated headlamps from some of these consumers.

¹ The COVID-19 pandemic began during this period, which slowed progress slightly.

17. In early 2020, after NNA had provided initial informal discovery, the parties agreed to mediate, and exchanged the names of several potential mediators, ultimately agreeing to mediate with Honorable Diane M. Welsh (Ret.), a renowned JAMS mediator with extensive experience mediating class actions.

18. In anticipation of mediation, my firm continued to communicate with numerous putative Class Members, as well as the three class representatives. We also conducted additional legal research into the strengths and weaknesses of the case and potential settlement frameworks and standards.

19. In connection with the mediation, we also conducted a Class Member survey of 350 class members and collected receipts/invoices from class members who had paid for replacements. That information too, proved vital, as it provided Lead Class Counsel with data concerning average time to failure, typical repair costs, data about the form and content of typical invoices/receipts, and other information.

20. We also retained an internationally recognized headlight engineering expert to examine the sample headlamps we collected, review NNA's documents, and consult with us about the defect and industry practices.

21. The mediation process lasted approximately five months. The parties exchanged mediation briefs in July 2020 and engaged in three full-day mediation sessions with Judge Welsh on August 3, 2020, September 30, 2020, and November 4, 2020. Between mediation sessions, the parties exchanged numerous letters and participated in numerous telephonic discussions with each other and with Judge Welsh.

22. The parties did not negotiate attorneys' fees, costs, or Plaintiff incentive awards, until agreement was reached on all other material terms of the Settlement. The parties reached

agreement on all other material terms of the settlement in the afternoon of the final full-day mediation session on November 4, 2020. The parties then reached agreement on Plaintiff incentive awards, and began to discuss attorneys' fees and expenses but did not reach agreement on attorneys' fees that day.

23. Over the next several weeks, Judge Welsh engaged in numerous further telephone discussions with the parties individually. The parties eventually reached agreement on attorneys' fees with Judge Welsh's assistance and recommendation on December 3, 2020.

24. From February 2021 to April 2021, we conducted additional confirmatory discovery. We obtained additional documentation from Nissan and further consulted with our headlamp expert.

25. The parties also then turned to drafting the settlement agreement, notices, and claim forms, which was also a time-consuming process and sometimes required additional notice and claims details to be worked out between the parties. My firm handled the majority of the drafting work.

26. The Settlement Agreement was then executed between May 6, 2021 and May 9, 2021. Thereafter, we filed a Complaint in this Court on May 14, 2021, in order to obtain approval of the Settlement under Rule 23.

27. We then drafted and filed the Joint Motion for Preliminary Approval and related documents. The Court granted preliminary approval on July 26, 2021.

28. Since that time, my firm has been actively overseeing the notice and claims administration process, including reviewing, testing, and approving the settlement website and online claim form, and reviewing, editing, and approving final versions of the other notices and mailed claim form.

29. We also communicated about the Settlement with the now over 2,600 Class Members who contacted us. We also posted information about the settlement on our firm website and social media accounts.

30. We also drafted briefs and related documentation in support of final approval and the motion for attorneys' fees, costs, and incentive awards.

31. As discussed below, going forward we will continue to invest significant time in obtaining final approval, overseeing the notice and claims process, and communicating with and assisting class members.

Lodestar and Expenses

32. My firm's policy requires all professionals to contemporaneously record their time with detailed descriptions of the work performed in one-tenth hour (6 minute) increments. Within a few business days of the end of each month, all time is input into our Timeslips billing system and each professional receives a printout of their monthly detailed time entries to review and, as appropriate, edit for clarity and accuracy.

33. Prior to the filing of this declaration, I reviewed all detailed time in this case and reduced or eliminated certain time entries based on the exercise of billing discretion. Mr. Kashurba also reviewed all detailed time entries to confirm accuracy. We also excluded the time of any timekeeper who devoted less than ten hours to this matter.

34. Attached as **Exhibit A** is a table that identifies the attorneys and paralegals who worked on this litigation, the number of hours billed by each by category of work performed, their position and number of years of professional experience, their respective billable rates, and the lodestar for the work performed.

35. As reflected in Exhibit A, my firm devoted a total of 2,191.90 billable hours of work on this case from inception through August 31, 2021, and my firm's total lodestar at our usual and customary hourly rates is \$1,146,342.50.

36. As reflected on Exhibit A, my firm staffed this case efficiently, with a small team. Most of the work was performed by just two people, me and Mr. Kashurba. Approximately 79% of my firm's hours and 85% of our lodestar consists of work performed by Mr. Kashurba and me.

37. The rates for attorneys from my firm who worked on this case range between \$400 and \$725 per hour, and for paralegals and IT professionals between \$200 and \$300. The total blended hourly rate for the Chimicles firm is \$523.

38. My firm's rates as reflected in Exhibit A are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. We set our rates based on an analysis of rates charged by our peers and approved by courts throughout the country. Over the past decade my firm's hourly rates, including Mr. Kashurba's and my rates, have been regularly approved as reasonable by state and federal courts in geographic regions across the country. *See e.g., Udeen v. Subaru*, No. 1:18-cv-17334-RBK-JS, ECF No. 67 at ¶ 13 (D.N.J. June 30, 2020) (approving Chimicles rates including Mr. Kashurba's rate); *Bentley v. LG Elecs. U.S.A., Inc.*, No. 2:19-cv-13554-MCA-MAH, ECF No. 67 (D.N.J. 2020) (approving Chimicles rates including Mr. Kashurba's); *In re Cigna-American Specialty Health Administrative Fee Litigation*, No. 2:16-cv-03967-NIQA, ECF 101 (E.D. Pa. Aug. 29, 2019) (approving Chimicles rates); *Weeks v. Google*, No. 5:18-cv-00801-NC, ECF No. 184 at ¶ 22 (N.D. Cal. Dec. 13, 2019) (same); *Granados v. County of L.A.*, 2018 Cal. Super. LEXIS 7807, *52 (Cal. Super. 2018) (approving Chimicles rates including Mr. Mathews' rate); *In re 24 Hour Fitness Prepaid*

Mbrshp. Litig., 2018 U.S. Dist. LEXIS 235375, at *13 (N.D. Cal. June 8, 2018) (approving Chimicles rates including Mr. Mathews' rate); *Rodman v. Safeway*, No. 3:11-cv-03003-JST, ECF No. 496 at 11-12 (N.D. Cal. Aug. 23, 2018), affirmed on appeal, 2017 U.S. App. LEXIS 14397 (9th Cir. 2017) (approving Chimicles rates, including Mr. Mathews' rate); *Chambers v. Whirlpool Corp.*, 11-1773 FMO, ECF No. 351 at 23 & ECF No. 218-7 at 77 (C.D. Cal. Oct. 11, 2016), (approving Chimicles rates, including Mr. Mathews' rate, over defendants' objections); *In re LG Front-Loading Washing Machine Litig.*, Case No. 08-51, at ECF No. 421 at 1 and ECF No. 409-5 at 59 (D.N.J.) (approving Chimicles rates and finding them to be "reasonable and appropriate in a case of this complexity"); *Johnson et al. v. W2007 Grace Acquisition I Inc. et al.*, Case No. 2:13-cv-2777, ECF No. 135 at 37 (W.D. Tenn. Dec. 4, 2015) ("Both the hours spent and the hourly rates [by lead counsel Chimicles firm] are reasonable given the nature and circumstances of this case, and the applied lodestar multiplier is at the low end of the range regularly approved in securities class actions"); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 U.S. Dist. LEXIS 46291 *46-47 (D.N.J. Mar. 22, 2013) (Chimicles rates "are entirely consistent with hourly rates routinely approved by this Court in complex class action litigation.").

39. Exhibit A was prepared from our contemporaneous, daily time records regularly prepared and maintained by my firm. My firm's detailed time records are available to the Court for *in camera* inspection upon request.

40. All of the time billed to this case by my firm was reasonable and necessary in the prosecution of this case. It was also performed on a contingency basis. My firm has not been compensated for any of its work on this matter to date.

41. My firm also has and will continue to expend significant additional time after August 31, 2021 for activities such as drafting a reply brief, preparing for and attending the final

approval hearing on December 20, 2021, overseeing the notice and claims administration process, and assisting class members. Importantly, in every class action my firm and I settle, we take seriously our obligation to ensure that the settlement administration process proceeds as intended, which requires significant investment of time long after final approval. It is not uncommon for my firm to incur hundreds-of-thousands of dollars in additional lodestar after final approval. In a case like this one, with over 3 million class members, our post-approval work is likely to be substantial.

42. As set forth in **Exhibit B** attached to this Declaration, my firm has incurred a total of \$53,207.54 in unreimbursed expenses in connection with the prosecution of this litigation through September 17, 2021. The expenses include expert fees, mediation fees, filing fees, printing and mailing expenses, and legal research fees. These expenses were reasonable and necessary in the prosecution of this case. As with our billable time, my firm has not been reimbursed for these expenses.

43. The expenses incurred in this action are reflected on my firm's the books and records. These books and records are prepared from expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred. Underlying receipts are available for inspection upon request.

I declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: September 20, 2021

/s/ Timothy N. Mathews
Timothy N. Mathews

EXHIBIT A

SUAREZ, et al. v. NISSAN NORTH AMERICA, INC.

TIME REPORT

FIRM NAME: CHIMICLES SCHWARTZ KRINER & DONALDSON-SMITH LLP

REPORTING PERIOD: Inception through August 31, 2021

Name	Status	Years of Experience	Category 1 Hours	Category 2 Hours	Category 3 Hours	Category 4 Hours	Category 5 Hours	Category 6 Hours	Total Hours	Hourly Rate	Cumulative Lodestar
Timothy N. Mathews	P	18	67.70	17.80	97.30	126.90	64.80	373.60	748.10	\$725.00	\$542,372.50
Samantha E. Holbrook	A	10	11.80		55.70			35.90	103.40	\$525.00	\$54,285.00
Alex M. Kashurba	A	7	227.10	17.90	245.90	84.90	33.10	370.40	979.30	\$450.00	\$440,685.00
Zachary P. Beatty	A	4	7.50		46.40	1.90	7.80	86.00	149.60	\$400.00	\$59,840.00
David W. Birch	IT	6	1.00			6.90		8.60	16.50	\$300.00	\$4,950.00
Justin P. Boyer	PL	6	18.00			3.30		14.40	35.70	\$275.00	\$9,817.50
Sydney B. Spott	PL	3			18.00	6.00			24.00	\$275.00	\$6,600.00
Kiera A. Wadsworth	PL	1			23.00	6.30			29.30	\$225.00	\$6,592.50
Madeline C. Landry	FPL	2	34.30			43.60	15.90	12.20	106.00	\$200.00	\$21,200.00
TOTALS			367.40	35.70	486.30	279.80	121.60	901.10	2,191.90		\$1,146,342.50

CATEGORIES

- P - Partner
- A - Associate
- PL - Paralegal
- FPL - Former Paralegal
- IT - Info. Tech.

- 1) Initial investigation and research, demand letters, drafting complaint, correspondence with class member intakes.
- 2) Court procedural matters, including pro hac, court conferences, hearings, status reports.
- 3) Legal research, legal memoranda, motions, briefs.
- 4) Discovery requests, meet and confers, document review, factual research and analysis.
- 5) Work with experts.
- 6) Settlement, including mediation, settlement discussions with defense counsel, settlement-related fact and legal research, settlement and notice drafting, dealing with notice and claims administration, correspondence with class members regarding settlement.

EXHIBIT B

SUAREZ, et. al v. NISSAN NORTH AMERICA, INC.

EXPENSE CHART

**FIRM NAME: CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP**

REPORTING PERIOD: INCEPTION TO SEPTEMBER 17, 2021

DESCRIPTION	EXPENSES
Mediation Fees	\$14,817.49
Consultant/Expert	\$36,002.50
Courier Mail	\$892.87
Computer Research	\$732.51
Photocopies/Internal	\$385.50
Travel/Food/Lodging	\$153.16
Postage	\$143.51
Filing Fees	\$80.00
TOTAL	\$53,207.54