

EXHIBIT 27

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Counsel for Plaintiff(s)² in:

Quiroz, et al. v. Kia Motors America, Inc., No. SACV12-02091 (C.D. CA)
Woodruff, et al. v. Kia Motors America, Inc., No. 2:13-cv-1124 (N.D. CA)
Gudgalis, et al. v. Hyundai Motor America, Inc., No. 2:13-cv-1128 (N.D. IL)
Hoessler, et al. v. Kia Motors America, Inc., No. 2:13-cv-1129 (N.D. IL)
Hammond, et al. v. Hyundai Motor America, Inc., No. 2:13-cv-1132 (E.D. MO)
Leggett, et al. v. Kia Motors America, Inc., No. 2:13-cv-1134 (W.D. MO)
Armstrong, et al. v. Kia Motors America, Inc., No. 2:13-cv-1122 (M.D. AL)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IN RE: HYUNDAI AND KIA FUEL
ECONOMY LITIGATION

Case No. 2:13-ml-02424-GW-FFM

**JOINT DECLARATION OF DEREK
Y. BRANDT AND JAMES M.
TERRELL IN SUPPORT OF
REQUEST FOR ATTORNEYS' FEES
AND EXPENSES**

Date: December 23, 2014

¹ Effective July 1, 2014, Simmons Browder Gianaris Angelides & Barnerd LLC (counsel of record in each of the cases included herein) became Simmons Hanly Conroy.

² McCallum, Methvin & Terrell, P.C., is counsel only in the *Armstrong v. Kia Motors* case. Simmons Hanly Conroy is counsel in all listed cases.

1 Derek Y. Brandt, on personal information as to the work and records of Simmons
2 Hanly Conroy and otherwise on information and belief, declares as follows:

3 James M. Terrell, on personal information as to the work and records of
4 McCallum, Methvin & Terrell, P.C. and otherwise on information and belief, declares as
5 follows:

6 1. This declaration is submitted in support of the fees and expenses requested
7 for work performed by Simmons Hanly Conroy and McCallum, Methvin & Terrell, P.C.
8 (together, “SHC”), in connection with their representation of certain of the so-called
9 “non-settling plaintiffs” (“NSPs”) involved in this litigation and their work performed in
10 advancement of the class settlement. This declaration is submitted after a review of the
11 billing records of Simmons Hanly Conroy and McCallum, Methvin & Terrell, P.C.

12 2. Derek Y. Brandt is a shareholder at Simmons Hanly Conroy, counsel for
13 Plaintiffs Guillermo Quiroz and Lisa Sands; Richard Woodruff; James Gudgalis and
14 Sarah and James Kundrat; Mary P. and Daniel E. Hoessler; Sam and Carolyn Hammond;
15 Mark and Melissa Leggett; and Bobby B. Armstrong (hereafter, collectively, the “SHC
16 Plaintiffs”). Mr. Brandt has personal knowledge of the facts below and, if called upon to
17 do so, could and would testify competently thereto.

18 3. James M. Terrell is a shareholder at McCallum, Methvin & Terrell, P.C.,
19 counsel for Plaintiff Bobby B. Armstrong. Mr. Terrell has personal knowledge of the
20 facts below and, if called upon to do so, could and would testify competently thereto.

21 **I. OVERVIEW**

22 **A. Overview of Work Performed**

23 4. SHC performed work investigating and filing actions for the owners of nine
24 different vehicles (owned or co-owned by, in all, 13 named plaintiffs) in seven separate
25 actions, filed in four different states. The SHC actions assert putative state and
26 nationwide class claims on behalf of Kia purchasers in Illinois, Missouri, California and
27 Alabama, and on behalf of Hyundai purchasers in Illinois and Missouri. SHC
28 investigated the factual claims of these individuals and evaluated the laws of each of

1 these states in order to file these actions, shepherded the seven actions through the
2 Judicial Panel on Multi-District Litigation process, and attended the initial MDL hearing
3 before this Court. When the tentative settlement was revealed, SHC remained intimately
4 involved in the MDL proceedings, including by way of: attending additional MDL court
5 hearings (both telephonically and in-person); performing confirmatory discovery work at
6 the request of Liaison Counsel, including conducting depositions/interviews of HMA
7 witnesses; document review to support the confirmatory discovery process; taking part in
8 regular NSP group teleconferences and emails to develop strategy and process; taking
9 part in a series of small group meetings among Liaison Counsel, Counsel for Settling
10 Plaintiffs, and Counsel for Defendants to refine and improve the settlement and claims
11 process; evaluating, formulating, and compiling multiple client positions with respect to
12 the initial and subsequent settlement proposals and documents; and advising and
13 consulting with SHC clients in all seven actions along the way.

14 **B. SHC Lodestar**

15 5. The total SHC lodestar is \$297,727.50, which is based on 650.30 hours of
16 counsel time (hereafter "Total SHC Lodestar"). This does not include any lodestar for
17 time spent tabulating the SHC lodestar itself or for preparation of this submission, nor for
18 any time spent mediating attorneys' fees.

19 6. Notwithstanding the Total SHC Lodestar, SHC has reached an agreement
20 with Defendants as to payment of SHC attorneys' fees and expenses, and Defendants
21 have agreed not to oppose SHC's request for attorneys' fees in the amount of
22 \$189,691.00, which includes past and future fees, along with reimbursement of SHC's
23 reasonable expenses of \$13,021.33 (*see also infra* at Points III-IV). Request for an award
24 in these amounts is made herewith.

25 7. With respect to the Total SHC Lodestar, the following chart sets out in
26 summary form all of the individuals who worked on this matter, their role (Sr. Partner, Jr.
27 Partner, Sr. Associate, Jr. Associate), the total number of hours they worked on this
28 matter, and the hourly billing rates of each.

| Attorney | Role | Total Hours | Billing Rate | Lodestar |
|---------------------------|--------------------------------------------------|---------------|--------------|---------------------|
| Derek Y. Brandt | Sr. Partner (directing all work) | 228.75 | \$600.00 | \$137,250.00 |
| John R. Phillips | Sr. Associate | 77.10 | \$450.00 | \$34,695.00 |
| Emily J. Kirk | Mid-Level Associate (most day-to-day work) | 229.75 | \$350.00 | \$80,412.50 |
| Anna M. Kohut | Jr. Associate | 67.00 | \$250.00 | \$16,750.00 |
| James M. Terrell | Sr. Partner in <i>Armstrong v. Kia</i> action | 47.7 | \$600.00 | \$28,620.00 |
| TOTAL SHC LODESTAR | | 650.30 | | \$297,727.50 |

8. Mr. Brandt personally supervised the SHC efforts in this litigation. In so doing, as the senior-most attorney involved, he directed as much investigation, research, document review, and pre-MDL work as possible to junior and mid-level associates. The largest quantity of work done by SHC in the litigation was performed by a mid-level associate, who was involved in substantially all aspects. Most importantly, that mid-level associate did the bulk of the preparatory work necessary for SHC to take an active role in the confirmatory discovery process, within which Liaison Counsel assigned SHC to take, and Mr. Brandt personally took, two of the HMA witness interviews. This also led to SHC's role in the small-group settlement refinement process (further described below, *see* Para. 16), among Liaison Counsel and counsel for Defendants and for the Settling Plaintiffs. Based largely on the work of lower hourly rate attorneys under his direction, Mr. Brandt was able to exercise ultimate responsibility for the SHC actions and also step in to the confirmatory discovery and small group processes as requested. While it was

1 necessary for multiple attorneys to stay abreast of filings and happenings in the litigation,
2 the Total SHC Lodestar reflected herein already reflects significant elimination of
3 duplication from our lodestar (e.g., where multiple attorneys from our team took part in
4 NSP phone conferences and the like). Finally, although it may be appropriate to do so,
5 we have not included in this submission any time or lodestar for efforts spent by SHC to
6 tabulate the Total SHC Lodestar or to prepare this Declaration.

7 **II. WORK PERFORMED**

8 9. The below divides the Total SHC Lodestar listed into two categories: work
9 done prior to creation of the MDL and work done from the initial MDL hearing forward.

10 **A. Time Spent Prior to the Initial MDL Hearing on February 14, 2013**

11 10. This category includes all time spent before the initial status conference
12 before Judge Wu, which occurred on February 14, 2013.

13 11. This includes client communications, factual investigation, legal research,
14 and complaint drafting, finalization, and filing for the owners of nine separate class
15 vehicles in four different states. This also includes a constituent case physical court
16 appearance prior to the JPML hearing, coordinating appropriate stays of actions in the
17 constituent cases, coordinating “tag-along” notices (and related documents) to the JPML,
18 and attending the JPML hearing. While there was some economy of scale achieved in
19 filing more than one action, there also were expanded state-specific requirements
20 involved; further, communicating with and coordinating the filing of complaints for
21 thirteen plaintiffs (purchasers of nine unique vehicles) increased the attorney hours
22 required. Despite this, SHC was able to utilize junior- and mid-level associates for the
23 largest portion of the work performed in this task category.

24 12. Below is a list of the attorneys who worked on this portion of the litigation,
25 along with the number of hours each spent, their billing rates, the lodestar attributable to
26 them, and the total lodestar for this portion of the litigation.

| Attorney | Total Hours | Billing Rate | Lodestar |
|------------------|--------------------|---------------------|--------------------|
| Derek Y. Brandt | 53.50 | \$600.00 | \$32,100.00 |
| John R. Phillips | 7.70 | \$450.00 | \$3,465.00 |
| Emily J. Kirk | 55.25 | \$350.00 | \$19,337.50 |
| Anna M. Kohut | 67.00 | \$250.00 | \$16,750.00 |
| James M. Terrell | 28.20 | \$600.00 | \$16,920.00 |
| TOTALS | 211.65 | | \$88,572.50 |

B. Time Spent From the Initial MDL Hearing Forward

13. This category includes all hearings with Judge Wu (attended in person or telephonically) in MDL 2424; participation in the confirmatory discovery process as assigned by Liaison Counsel (including conducting Hyundai interviews in Orange County, California); participation in claims process refinement meetings with a small group comprised of Liaison Counsel, Counsel for Defendants, and Settling Plaintiffs; evaluation of the proposed settlement with SHC clients for approval; and all other coordination with NSPs and Liaison Counsel to establish strategy and process.

14. Mr. Brandt attended the initial MDL court hearing on February 14, 2013 in person and also appeared in person at the preliminary approval hearing on June 26, 2014. All other court hearing attendance was telephonic.

15. SHC participated extensively in the confirmatory discovery process, which is where the plurality of the Total SHC Lodestar is accumulated. This includes document review and analysis to prepare for, and a Liaison-Counsel-assigned role in taking, certain Hyundai witness depositions/interviews. Mr. Brandt personally conducted the interviews of Hyundai witnesses Scott Margason and William Reedy, in Orange County, California, in August 2013. This required significant preparation, including participation in numerous small group calls to coordinate document searches and use, outlines, and strategy, as well as identification of and review of key or “hot” documents. Much of this

1 preparation was effectively performed by a mid-level associate at a correspondingly low
2 billing rate. Based on its role in the document review and interview preparation, SHC
3 was well-positioned to assist with preparation by other attorneys conducting other
4 confirmatory interviews, and SHC did so assist.

5 16. As a function of its role in the foregoing processes, SHC also was well-
6 positioned to, and did, assist Liaison Counsel by participating in an in-person small group
7 meeting at Liaison Counsel's office in February 2014. The purpose of this meeting,
8 attended by only SHC, Liaison Counsel, Counsel for Hyundai and Kia, and Counsel for
9 the Settling Plaintiffs, was to discuss and develop potential refinements to the proposed
10 settlement and claims process, in order that the proposal might meet greater approval
11 among all plaintiffs and the Court. Thereafter, SHC also participated in a series of small
12 group phone and/or web conferences among this same limited group of counsel to move
13 the proposed settlement and claims process from the originally proposed form toward the
14 form ultimately presented to the Court at the June 26, 2014 hearing.

15 17. In addition, after creation of the MDL, SHC also participated in numerous
16 Liaison-Counsel-directed teleconferences and emails to develop and set strategy, to stay
17 abreast of ongoing communications with the Court and with the settling parties, and to
18 communicate and coordinate ongoing efforts in the confirmatory discovery process. This
19 also included time spent preparing, reviewing, and submitting revisions to plaintiffs'
20 document requests, review of document production summaries distributed by Liaison
21 Counsel throughout the course of the litigation, as well as documents contained in the
22 online document database that accompanied Liaison Counsel's summaries in October and
23 December 2013.

24 18. SHC also reviewed, analyzed, and discussed proposed settlement terms and
25 communicated with their own clients to evaluate same and to assess client support for the
26 proposed settlement. This includes the initial Term Sheet, distributed in February 2013;
27 Liaison Counsel's December 20, 2013 memo addressing how discovery related to the
28 strengths and weaknesses of plaintiffs' claims; the proposed settlement filed December

23, 2013 and the two Addenda, filed January 16, 2014 and May 2, 2014. This also includes discussions with the other NSPs regarding the settlement, the settlement negotiations conducted by Liaison Counsel, and revisions to the settlement. It also includes the review of settlement-related memos and summaries distributed to NSPs after the settlement was filed on December 23, 2013. This also includes time spent in discussions about the settlement with Liaison Counsel in light of SHC’s multi-plaintiff position and SHC’s role in confirmatory discovery and in the small group refinement meetings with Liaison Counsel, Defendants, and Settling Plaintiffs.

19. Below is a list of the attorneys who worked on this portion of the litigation, along with the number of hours each spent, their billing rates, the lodestar attributable to them, and the total lodestar for this portion of the litigation.

| Attorney | Total Hours | Billing Rate | Lodestar |
|------------------|--------------------|---------------------|---------------------|
| Derek Y. Brandt | 175.25 | \$600.00 | \$105,150.00 |
| John R. Phillips | 69.40 | \$450.00 | \$31,230.00 |
| Emily J. Kirk | 174.50 | \$350.00 | \$61,075.00 |
| James M. Terrell | 19.50 | \$600.00 | \$11,700.00 |
| TOTALS | 438.65 | | \$209,155.00 |

III. LITIGATION EXPENSES

| Expense Category | Amount |
|--------------------------|--------------------|
| Filing Fees and Process | \$2,709.22 |
| Legal Research – Westlaw | \$526.31 |
| Travel | \$9,251.16 |
| Postage, Copying, Etc. | \$534.64 |
| TOTAL | \$13,021.33 |

20. SHC expenses encompass primarily filing fees for the seven SHC cases, nominal legal research, postage, and copying charges, and travel expenses for: the JPML

1 hearing in Orlando, Florida; the initial MDL hearing before Judge Wu (February, 2013);
2 the confirmatory discovery interviews assigned by Liaison Counsel in Orange County
3 (August, 2013); and the small group settlement refinement meeting among SHC, Liaison
4 Counsel, Counsel for Defendants, and Counsel for Settling Plaintiffs in San Francisco
5 (February, 2014).

6 21. As otherwise reflected herein, SHC makes a claim herewith for
7 reimbursement of its \$13,021.33 in reasonable past and future expenses and Defendants
8 have agreed to not oppose this request. As a part of its agreement with Defendants, SHC
9 has not submitted certain additional expenses incurred, although those too were
10 reasonable expenses.

11 **IV. THE REQUESTED HOURLY RATES ARE REASONABLE**

12 22. The Total SHC Lodestar and expenses set out above were communicated to
13 Defendants in or about July or August 2014, in conjunction with the fee mediation the
14 parties have conducted. Although, as referenced below, SHC and Defendants have
15 reached agreement at a lower amount of attorneys' fees, the Total SHC Lodestar would
16 have been reasonable in any event, as it is based on hourly rates that are reasonable for
17 the following reasons, among others:

18 23. Mr. Brandt's hourly rate of \$600 per hour is the same hourly rate at which
19 he billed time (and for which he was paid) in the Toyota unintended acceleration MDL
20 litigated in this District, *In re Toyota Motor Corp. Unintended Acceleration Marketing,*
21 *Sales Practices, and Product Liab. Litig.* (MDL No. 2151, C.D. Calif., Hon. James V.
22 Selna). Although much of the time for which he billed at that rate in the *Toyota* MDL
23 dated as far back as 2010, Mr. Brandt seeks no increase to this billing rate for purposes of
24 this submission. \$600 per hour is also consistent with (or even slightly below) the billing
25 rates used by other partners of like experience and skill level at Mr. Brandt's firm in other
26 MDL proceedings, most notably pharmaceutical product liability actions.

27 24. At the time the Total SHC Lodestar was accumulated and calculated, Mr.
28 Brandt had been a practicing lawyer for nineteen years, focusing for the last fifteen years

1 on complex litigation matters, including commercial litigation actions, consumer
2 protection and environmental actions, antitrust, class actions, and aviation disasters,
3 among other things. He regularly practices in district courts in his home state (both the
4 Northern and Southern Districts of Illinois), as well as in other district courts around the
5 country (having regularly appeared in both the Central and Northern Districts of
6 California, as well as in the Southern District of New York). Notable roles include Mr.
7 Brandt's appointment as Co-Lead Interim Class Counsel for the plaintiffs in *In re AIG*
8 *Workers Compensation Insurance Policyholder Litig.* (MDL No. 2519, N.D. Ill., Hon.
9 Robert W. Gettleman). Mr. Brandt also serves as lead outside counsel for the Village of
10 Roxana, Illinois in certain environmental litigations relating to underground
11 contamination emanating from a local oil refinery.

12 25. As a nineteen-year attorney, Mr. Brandt is at the upper end of the *Laffey*
13 Matrix bracket for lawyers of 11-19 years' experience, as to whom the billing rate is
14 listed at \$640. As Judge Otis D. Wright II of this District recently noted, "Although the
15 *Laffey* Matrix was prepared in connection with the Baltimore and District of Columbia
16 market, it provides additional guidance and has been cited with approval by other courts
17 in this Circuit." *Lakim Indus. V. Linzer Products Corp.*, 2:12-cv-04976 ODW (JEMx),
18 2013 WL 1767799, at *8 (C.D. Cal. April 24, 2013) (citing *Young v. Polo Retail, LLC*,
19 No. CV 02 4546 VRW, 2007 WL 951821, at *7 (N.D. Cal. Mar. 28, 2007); *Fernandez v.*
20 *Victoria Secret Stores, LLC*, No. CV 06-04149 MMM (SHX), 2008 WL 8150856, at *14
21 (C.D. Cal. July 21, 2008)). Although *Lakim* notes that the relevant community against
22 which to analyze attorney rates is the community where the district sits, *see id.*, SHC
23 accepts that the Court has stated on the record that it will use attorneys' local rates for
24 individual states. Transcript of Proceedings, Oct. 14, 2013, at 13:12-22.³ In assessing
25

26 _____
27 ³ The hourly rates referenced in the Total SHC Lodestar contemplated that Central District of California
28 rates would prevail. The rates used were intentionally modest for that market and are, nonetheless, also
reasonable rates for the St. Louis and Birmingham markets, as applicable, for the reasons described
herein. The parties' negotiation and Defendants' agreement to not oppose the fee request made herewith

1 rates, the Court might look to locality pay differentials within the federal courts as
2 another court in this Circuit did in *In re HPL Technologies, Inc. Securities Litig.*, 366 F.
3 Supp. 2d 912, 921 (N.D. Cal. 2005). These pay differentials⁴ demonstrate that effective
4 January 13, 2014, the St. Louis area (Mr. Brandt's and Simmons Hanly Conroy's home
5 office) has a net (-10) % adjustment, as compared with the *Laffey* Matrix values.⁵ While
6 this would yield a rate of \$576 per hour, Mr. Brandt is at the extreme upper end of the
7 experience category for this particular rate. For the foregoing and other reasons, a \$600
8 per hour is and would be reasonable for Mr. Brandt's time; the parties' actual agreement
9 effectively reduces this rate.

10 26. The greatest amount of time submitted for SHC lawyers is that committed
11 by a mid-level associate, Emily Kirk, at a billing rate of \$350 per hour. Although Ms.
12 Kirk is a 2001 law school graduate, she spent five years in government service and is
13 treated for purposes of this submission as a 4-7 year attorney (as to which the *Laffey*
14 Matrix would indicate a rate of \$353 per hour in the St. Louis region). The submitted
15 billing rate of \$350 per hour is and would be reasonable for these and other reasons; the
16 parties' actual agreement effectively reduces this rate.

17 27. The next greatest amount of time submitted (aside from Mr. Brandt and Ms.
18 Kirk) is by a senior-level associate, John Phillips, calculated at a billing rate of \$450 per
19 hour. Mr. Phillips is 2003 law school graduate (*Laffey* \$510 billing rate, after adjustment
20 for the St. Louis locality). In his prior employment as Assistant Attorney General for the
21 State of Missouri, Mr. Phillips focused on consumer protection, and was Sr. Government
22 Affairs Litigator and Special Assistant to the Attorney General. The \$450 billing rate is
23 and would be reasonable for these and other reasons; the parties' actual agreement
24 effectively reduces this rate.

25
26 (at a discount to the Total SHC Lodestar) is additional support for the overall reasonableness of the fees
ultimately requested.

27 ⁴ <http://www.uscourts.gov/Careers/Compensation/JudiciarySalaryPlanPayRates.aspx>

28 ⁵ The *Laffey* Matrix sets out Baltimore-D.C. values, which are noted to include a +24.22% adjustment;
St. Louis, included in the "rest of the United States" category has a +14.16% adjustment, resulting in a
net (-10) % adjustment from the *Laffey* value.

1 28. SHC also seeks attorneys' fees for junior-level associate Anna Kohut, at a
2 billing rate of \$250 per hour. Ms. Kohut is a 2011 law school graduate (*Laffey* \$288
3 billing rate, after adjustment for St. Louis locality). \$250 per hour is and would be
4 reasonable for these and other reasons; the parties' actual agreement effectively reduces
5 this rate.

6 29. Finally, SHC seeks attorneys' fees for co-counsel James M. Terrell for his
7 work in connection with the *Armstrong v. Kia* case, at a rate of \$600 per hour. Mr.
8 Terrell has been a practicing lawyer for 16 years. Throughout his career, Mr. Terrell's
9 practice has been primarily focused on complex litigation, including commercial and
10 consumer class actions, antitrust litigation and consumer protection cases. Although
11 based in Birmingham, Alabama, Mr. Terrell regularly practices in state and federal courts
12 throughout the country and has been appointed class counsel in at least ten nationwide
13 class actions. Mr. Terrell's \$600 per hour rate is substantially consistent with the *Laffey*
14 Matrix (\$576 per hour adjusted for Birmingham) and reasonable for these and other
15 reasons; the parties' actual agreement effectively reduces this rate.

16 30. The billing rates reflected above are and would be reasonable for all these
17 and other reasons as well. In addition, based on the hours and Total SHC Lodestar
18 submitted, the SHC blended effective billing rate is \$458 per hour, which would be
19 reasonable under the circumstances. Even so, the rates are also reasonable in that, as set
20 forth below, SHC and Defendants have negotiated the fee request which SHC makes
21 herein and Defendants have agreed to not oppose a request for recovery of \$189,691.00,
22 which is a lesser amount and/or hourly rate. *Based on the total number of hours spent*
23 *(650.3), this negotiated agreement results in a blended effective rate of \$291.70 per hour,*
24 *which is reasonable under any circumstances.* This blended effective rate is further
25 diluted by work done compiling data and preparing this request, for which SHC has not
26 included time or lodestar.

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V. DEFENDANTS HAVE AGREED TO NOT OPPOSE THIS REQUEST

31. SHC and Defendants have mediated and negotiated SHC’s request for attorneys’ fees and reimbursement of litigation expenses. Following that arms’ length negotiation, Defendants have agreed to not oppose SHC’s request for \$189,691 in reasonable attorneys’ fees and \$13,021.33 in reasonable expenses. This includes all past and future SHC attorneys’ fees and expenses.

32. SHC hereby seeks recovery of those amounts: \$189,691.00 in attorneys’ fees and \$13,021.33 in expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed December 22, 2014, at Alton, Illinois.

/s/ Derek Y. Brandt
Derek Y. Brandt

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed December 22, 2014, at Birmingham, Alabama.

/s/ James M. Terrell
James M. Terrell

C.D. Cal. L. R. 5-4.3.4(a)(2)(i) Attestation

I attest that the e-signature of James M. Terrell was added with the authorization of Mr. Terrell.

/s/ Derek Y. Brandt
Derek Y. Brandt