

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**In re Navistar MaxxForce Engines  
Marketing, Sales Practices and Products  
Liability Litigation**

**Case No. 1:14-cv-10318**

**This filing applies to:  
All Class Cases**

**Fairness Hearing Date: November 13, 2019  
Time: 10:00am  
Courtroom: 2325**

***Judge Joan B. Gottschall***

**DECLARATION OF DAVID M. BIRKA-WHITE  
IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT AND PLAINTIFFS' UNOPPOSED MOTION FOR  
ATTORNEY FEES AND COSTS AND SERVICE AWARDS**

I, DAVID M. BIRKA-WHITE, declare as follows:

1. I am an attorney at law duly licensed to practice in all courts of the State of California. I am a member in good standing of the Bar of the State of California and admitted to practice in numerous District Courts, including this Court. I have served in this action as counsel to Plaintiffs Antioch Building Materials and Sloan Transportation.

2. I respectfully submit this Declaration in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Plaintiffs' Unopposed Motion for Attorneys' Fees and Costs and Service Awards. I have personal knowledge of the facts set forth in this Declaration, and could testify competently to them if called upon to do so.

**David M. Birka-White's Qualifications, Experience and Recognition**

3. I was admitted to the California Bar in 1979. I have been practicing law for over 40 years. For nearly 35 years, my practice has been almost exclusively devoted to product failure and consumer fraud class actions. During that time, I have served as lead or co-lead court-appointed class counsel in several dozen class action and related complex cases. I have

repeatedly been recognized for my work as Plaintiffs' counsel in product liability class actions which include (1) being selected for the last 13 years as a "Super Lawyer" by San Francisco Magazine, which represents the top 5% of attorneys in Northern California; (2) America's Most Honored Professionals (2019), which recognizes the top 1% of American Professionals; and (3) a lifetime achievement award from America's Top 100 Attorneys (2017 & 2019) for the State of California. I also have the highest AV rating for over 20 years and am included in The Bar Register of Preeminent Lawyers published by Martindale Hubbell. I was a contributing author to "California Class Actions Practice and Procedure" published in 2003 and have served as a consultant on numerous other product liability cases.

4. Some of the cases in which I have served as court appointed class counsel include:

a. *Allagas v. BP Solar International, Inc. et al.*, U.S. District Court, Northern District of California, Case No. 3:14-cv-00560-SI

b. *Kuffner v. Suntech America, Inc., et al.*, Contra Costa County Superior Court, Case No. C13-01328

c. *United Desert Charities, et al. v. Sloan Valve Company*, U.S. District Court, Central District of California, Case No. 2:12-cv-06878-SJO-SH

d. *Kelly Mergens v. Sloan Valve Company, et al.*, U.S. District Court, Central District of California, Case No. 2:16-cv-05255-SJO-SH

e. *In Re: Uponor, Inc. F1807 Plumbing Fittings Products Liability Litigation*, U.S. District Court, District Court of Minnesota, Case No. Case 0:11-md-02247-ADM-JJK

f. *Cambridge Lane v J-M Manufacturing Company, Inc.*, U.S. District Court, Central District of California, Case No. 2:10-cv-06638-GW-PJW

g. *In Re: Kitec Plumbing Systems Products Liability Litigation\**, U.S. District Court, Northern District of Texas, Case No. 3:09-md-02098-F

h. *Cartwright v. Viking Industries, Inc.*, U.S. District Court, Eastern District of California, Case No. 2:07-CV-02159

i. *Garner v. State Farm Mutual Automobile Insurance Company*, U.S. District Court, Northern District of California, Case No. 4:08-cv-01365

- j. *Owens Corning, Chapter 11, Mira Vista Roofing Products*, United States Bankruptcy Court in the District of Delaware; Case Number 00-3837 (JKF)
- k. *Heilman, et al. v. Perfection Corporation, et al.*, U.S. District Court, Western District of Missouri, Case No. 99-0679-CW-W-6 (Settlement Class Counsel)
- l. *NatureGuard Cement Roofing Shingles Case*, Judicial Council Coordination Proceeding No. 4215, Stanislaus Superior Court, Case No. 275768
- m. *Bowen-Fromm, et al. v. Terra Roofing Products, et al.*, Alameda Superior Court, Case No. 2001-028588
- n. *Shake Roof Cases (Weiner, et al. v. Shake Company of California, et al.)*, Judicial Council Coordination Proceeding No. 4208, Contra Costa County Superior Court, Case No. C99-00318
- o. *Milano, et al. vs. Cal-Shake, Inc. (Old Cal-Shake)*, Judicial Council Coordination Proceeding No. 4208, Contra Costa County Superior Court, Case No. C99-00318
- p. *Roy D. Richison, et al. v. American Cemwood, et al.*, Phase I and Phase II, San Joaquin County Superior Court, Case No. 005532
- q. *Shah, et al. v. Re-Con Building Products, Inc., et al.*, Phase I and Phase II, Contra Costa County Superior Court, Case No. C99-02919
- r. *Koslosky v Domtar, Inc.; Georgia-Pacific Corp. & Georgia Pacific Gypsum Corp.*, San Joaquin County Superior Court, Case No. VC 011260
- s. *Hazelwood v. Albert D. Seeno Construction Co., Inc., et al. (Seeno)*, Contra Costa County Superior Court, Case No. C94 05673
- t. *Byron Dahl v. Polaris Pipe Co., et al.*, Contra Costa County Superior Court, Case No. C 94 02132
- u. *Jan Marshall, et al. v. Centaur Mfg., Inc., et al.*, Santa Clara County Superior Court, Case No. CV 7366949
- v. *Clark Edwards, et al. v. Phoenix Extrusion Co., et al.*, Santa Clara County Superior Court, Case No. CV 736950
- w. *Martin v. Gable Plastics, Inc., et al.*, Contra Costa County Superior Court, Case No. C 94 05619
- x. *Joseph Charette v. Apache Plastics, Inc., et al.*, Shasta County Superior Court, Case No. 126341

y. *Southfork, ABS Pipe Developer Litigation*, Contra Costa County Superior Court, Case No. C94 05673

z. *Wolfe v. Winncrest Homes*, Sacramento County Superior Court, Case No. 95AS05291

aa. *Blackwell, ABS Pipe Developer Litigation*, Contra Costa County Superior Court, Case No. C94 05673

bb. *ABS Pipe Cases II*, Judicial Council Coordination Proceeding, No. 3126 Contra Costa County Superior Court, Case No. C94 05673 (*Amfac*)

cc. *ABS Pipe Cases II*, Judicial Council Coordination Proceeding, No. 3126 Contra Costa County Superior Court, Case No. C94 05673 (*Plastic Processing, Inc.*)

dd. *ABS Pipe Cases II*, Judicial Council Coordination Proceeding, No. 3126 Contra Costa County Superior Court, Case No. C94 05673, (*International Association of Plumbing and Mechanical Officials ('IAPMO')*)

4. I have worked as co-counsel with Lief Cabraser Heimann & Bernstein and specifically lead counsel Jonathan Selbin in several product liability and consumer fraud class action cases for more than 20 years. We are familiar with each other's practices and efficiently delegate work without duplicating time.

**Mindy Wong's Qualifications, Experience and Recognition**

5. Mindy Wong was an associate attorney from my office during the prosecution of this case and provided invaluable assistance. She joined Birka-White Law Offices in 2009. Since that time, Ms. Wong has worked almost exclusively in consumer fraud and product liability class action litigation. She is a member of the bars of the United States District Courts for the Northern, Central and Eastern Districts. She received her J.D. from the University of San Francisco, School of Law in 2009, and her B.A. in Sociology from the University of California, Berkeley in 1999. She has also been selected as a Northern California super Lawyer "Rising Star" for 2015-2016 by San Francisco Magazine in the practice area of class actions.

6. Ms. Wong's attorney time and billing rates have been approved in the following product liability class action cases: *Michael Allegas, et al. v. BP Solar International, Inc. et al.*, United States District Court, Northern District of California, Case No. 3:14-cv-00560-SI(EDL);

*Kuffner v. Suntech*, Contra Costa County Superior Court, Case No. C13-01328 (March 7, 2016); *United Desert Charities, Inc., et al. v. Sloan Valve Company*, U.S. District Court, District of Minnesota, Case No. 0:11-cv-01684-ADM-JJK (Dkt. 51); *Kelly Mergens v. Sloan Valve Company, et al.*, U.S. District Court, Central District of California, Case No. 2:16-cv-05255-SJO-SH; *Cartwright v. Viking Industries, Inc.*, U.S. District Court, Eastern District of California, Case No. 2:07-cv-02159-FCD-EFB (Dkt. 190).

**General Principles Applicable to the Award of Attorney Fees in Class Actions**

7. My firm's compensation for services rendered in this action is wholly contingent. Any fees and reimbursement of expenses will be limited to such amounts as may be awarded by the Court.

8. I assisted with the performance of work associated with the prosecution of this case including, but not limited to, analysis of the product defect in the Navistar exhaust system, pleadings, assistance with discovery and analysis of issues related to class certification. I was heavily involved in the retention of experts and the analysis of the defective Navistar exhaust system.

9. All of the services performed by my firm were reasonable and necessary to the prosecution of this action.

10. There has been no duplication of services for which class Counsel now seeks compensation.

**BWLO's Role in Prosecuting this Case**

11. The following is a general task summary of the tasks which I, or members of my office, performed in this matter.

- a. Research and analysis of the Navistar exhaust system;
- b. Research, analysis, and writing of the complaint;
- c. Research and analysis of client documents;
- d. Research, retention and interaction with experts Robert P. O'Shea and Dr.

Kent L. Johnson regarding the design and manufacturer of the Navistar exhaust system;

- e. Assist in preparation of interrogatories and requests for production of documents to Defendants;
- f. Preparation of responses to Interrogatories and document requests propounded by Defendants;
- g. Review and analysis of reports by Plaintiffs' experts based on their analysis of public records, Navistar documents and research including design schematics and internal analysis;
- h. Coordination and attendance at inspections of numerous Navistar trucks;
- i. Regular interaction with Class member Antioch Building Materials & Sloan Transportation, including dozens of telephone calls and email communications and meetings;
- j. Analysis regarding black box inspection protocols of Navistar trucks;
- k. Development and analysis of black box inspection protocols;
- l. Review correspondence and documentation regarding black box issues;
- m. Prepare memorandum to Plaintiffs' counsel regarding black box data;
- n. Analysis of sale and trade-in value of vehicles;
- o. Analysis of class certification, experts issues and scheduling;
- p. Planning regarding scope of discovery and discovery schedule;
- q. Analysis of discovery status and discovery plan; Extensive discussions with lead class counsel regarding discovery, expert analysis and class certification;
- r. Analysis of responses to document requests including objections;
- s. Review and analysis of expert reports; numerous calls with lead counsel regarding inspections and expert analysis;
- t. Review defense report regarding damages analysis;
- u. Review analysis and summary from expert Dr. Kent Johnson; and
- v. Analysis of 30(b)(6) deposition notices, and scope of document production.

**BIRKA-WHITE ATTORNEY TIME**

12. All attorneys at Birka-White Law Offices are required to maintain contemporaneous time records reflecting the time spent in 6-minute intervals on this and other matters. I have personally contributed 274.8 hours of my time presented to this Court for approval. Mindy Wong contributed 112.2 hours in associate time. Our time is billed at historical rates. Our firm's lodestar is as follows:

<b>BIRKA-WHITE ATTORNEY TIME</b>				
<b>NAME</b>	<b>TITLE</b>	<b>HOURS</b>	<b>RATE(S)</b>	<b>TOTAL</b>
Birka-White, David	Partner	274.80	\$775 - \$855	\$218,916.00
Wong, Mindy	Associate	112.20	\$395 - \$510	\$51,071.80
<b>TOTAL</b>		<b>387.00</b>		<b>\$269,987.80</b>

13. The hourly rates reflect the market rate for professional of similar experience in California primarily in San Francisco and Los Angeles in the Northern and Central Districts of the United States District Court. My rates have repeatedly been approved by courts ranging from \$775 to \$855 per hour in numerous cases, including but not limited to:

- a. *Michael Allegas, et al. v. BP Solar International, Inc. et al.*, United States District Court, Northern District of California, Case No. 3:14-cv-00560-SI(EDL);
- b. *Kuffner v. Suntech*, Contra Costa County Superior Court, Case No. C13-01328 (March 7, 2016);
- c. *United Desert Charities, Inc., et al. v. Sloan Valve Company*, U.S. District Court, Northern District of California, Case No. 2:12-cv-06878-SJO-SH (Dkt. 148);
- d. *United Desert Charities, Inc., et al. v. Sloan Valve Company*, U.S. District Court, District of Minnesota, Case No. 0:11-cv-01684-ADM-JJK (Dkt. 51);
- e. *Garner v. State Farm Mutual Automobile Insurance Company*, U.S. District Court, Northern District of California, Case No. 4:08-cv-01365-CW (Dkt. 284);
- f. *Cartwright v. Viking Industries, Inc.*, U.S. District Court, Eastern District of California, Case No. 2:07-cv-02159-FCD-EFB (Dkt. 190).

g. *In re: Kitec Plumbing System Products Liability Ligation*, U.S. District Court, Northern District of Texas, Case No. 09-md-2098 (Dkt. 155);

h. *In re: Uponor, Inc. F1807 Plumbing Fittings Products Liability Litigation*, U.S. District Court, District of Minnesota, Case No. 0:11-cv-01684-ADM-JJK (Dkt. 51); and numerous other cases.

14. In this fee application, I have performed a line-by-line review of my time and Mindy Wong’s time. In my judgment, all time submitted was reasonable and necessary for the prosecution of the case. In addition, the time submitted for compensation does not reflect all of the time my firm incurred during this matter, some of which was deleted.

**BIRKA-WHITE COSTS**

15. My firm advanced a total of \$13,196.29 in unreimbursed expenses primarily related to the retention of experts Robert P. O’Shea and Dr. Kent L. Johnson. These expenses were reasonable and necessary to the prosecution of this action, and for which reimbursement is requested. All expenses were incurred solely in connection with this litigation and are reflected on the books and records of my firm which are maintained in the ordinary course of business. This cost summary has been prepared from invoices and check records, and constitutes an accurate record of the expenses incurred in this case.

<b>BIRKA-WHITE COSTS</b>	
<b>CATEGORY</b>	<b>AMOUNT</b>
COST FUND	\$ 2,500.00
AIR TRAVEL	\$ 560.98
WITNESS/EXPERT FEES	\$ 10,135.31
<b>TOTAL</b>	<b>\$ 13,196.29</b>

**Skill of Required Counsel**

16. This case presented a range of difficulties requiring the efforts of highly skilled and experienced attorneys. The combined experience and skills of counsel was necessary to achieve this Settlement which provide fair, adequate and substantial relief to Settlement Class Members.



**Risk of Litigation**

17. I undertook this litigation on a contingent fee basis with no guarantee of receiving anything in return and have advanced all costs without reimbursement. The litigation required counsel to assume an unusually high risk of an adverse outcome because of the complex legal issues presented and the formidable defense presented by Defendants and their highly experienced and capable counsel.

**Summary**

18. My office billed for a total of 387 hours amounting to \$269,987.80 (see paragraph 12). The total expenses for which reimbursement is requested is \$13,196.29 (see paragraph 15) for a combined total of \$283,184.09. It is requested that the Court approve and compensate my office for this time and expenditure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th day of September, 2019 at Danville, California.



DAVID M. BIRKA-WHITE