

No. 25-3687

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LINDSAY AND JEFF ABERIN, ET AL.,

Plaintiffs-Appellees,

vs.

AMERICAN HONDA MOTOR COMPANY, INC.,

Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of California
No. 16-cv-04384 (Hon. Jon S. Tigar)

**BRIEF OF AMICI CURIAE NATIONAL ASSOCIATION OF CONSUMER
ADVOCATES AND AMERICAN ASSOCIATION FOR JUSTICE IN
SUPPORT OF PLAINTIFFS-APPELLEES**

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INTEREST OF AMICI CURIAE¹

The National Association of Consumer Advocates (“NACA”) is a nonprofit association of more than 1,600 attorneys and consumer advocates committed to representing consumers’ interests. NACA’s members are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus is the protection and representation of consumers. They have represented hundreds of thousands of consumers in small-damages actions and consumer class actions. As a national organization fully committed to promoting justice for consumers, with an emphasis on those of modest means or those who are otherwise especially vulnerable, NACA’s members have also long advocated to ensure that consumers can obtain redress of injuries caused by unfair practices.

The American Association for Justice (“AAJ”) is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world’s largest plaintiffs’ trial bar. AAJ’s members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and

¹ All parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Amici Curiae state that no party’s counsel (i) authored the brief in whole or in part, or (ii) contributed money intended to fund preparing or submitting the brief, and (iii) no person contributed money intended to fund preparing or submitting the brief, other than counsel for amici.

other civil actions. Throughout its nearly 80-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

Both NACA and AAJ have an interest in protecting the ability of consumers to access qualified counsel to represent them in consumer class action litigation, so that they can obtain redress for harms that are impractical to address through individual litigation.

SUMMARY OF ARGUMENT

Defendant-Appellant Honda Motor Company Inc. (“Honda”) implicitly advocates for this Court to depart from settled law that authorizes district courts to engage in a fact-intensive analysis of case-specific factors in determining fee awards, and to instead create a rigid, one-size-fits-all rule that would circumscribe district courts’ discretion. In cases, as here, where the aggregate amount of funds ultimately claimed is relatively modest, Honda’s proposed approach would require district courts to rely almost exclusively on one factor—the aggregate claims paid to class members—to the exclusion of all other case-specific factors this Circuit has long deemed pertinent to the determination of a reasonable fee award in class cases. These factors include, *inter alia*, the effort required of counsel to achieve the relief, the importance of the rights at issue, the complexity of the issues involved, and the risks incurred in taking on the case.

In addition to improperly elevating one factor to the exclusion of all others, Honda implicitly advocates for a rule that would significantly impair the ability of individuals with small claims to hold corporations accountable for violations of consumer protection laws. Class action lawsuits are critical to the effective enforcement of consumer protection laws. Small value consumer claims are precisely the type of claims for which the class device was designed: as Judge Posner famously put it, “only a lunatic or a fanatic sues for \$30.” *Carnegie v. Household Int’l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004). To ensure robust enforcement of consumer protection laws, it is crucial not to impose inflexible fee standards or rules that disincentivize qualified counsel from taking on challenging, resource-intensive consumer cases that advance important consumer and public interests. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997); *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997).

It is no less important for courts to retain this discretion in claims-made settlements. Class actions involve a wide variety of substantive laws with varying policy objectives. As such, class action judgments and settlements take many forms. An effective cap on fee awards tied to total claims paid would not only fail to account for this diversity, but also would distort incentives, discourage qualified counsel from taking on important cases to the detriment of consumers, and dissuade parties from pursuing innovative resolutions of class cases.

ARGUMENT

I. District Courts Must Retain Flexibility and Discretion in Determining Appropriate Fee Awards in Class Actions.

Rule 23 grants district courts broad discretion to “award reasonable attorney’s fees.” Fed. R. Civ. P. 23(h). As the Rule itself inherently recognizes, there is no one-size-fits all approach to determining an appropriate fee. Class actions, themselves, are not one size; they address a variety of issues and claims. Likewise, the structure of class settlements and judgments, the nature of class benefits, and the quality of the result (including but not limited to the overall amount claimed) vary from case-to-case. So, too, do the risks and complexity of the issues and the effort required to prosecute class cases. The district court is uniquely positioned to determine a reasonable fee award, given its familiarity with the litigation and the inherently fact-intensive nature of the task. *See Fox v. Vice*, 563 U.S. 826, 838 (2011) (“[A]ppellate courts must give substantial deference to [fee award] determinations, in light of the district court’s superior understanding of the litigation.”) (internal quotations omitted).

A. Fee Determinations Require the Evaluation of Several Case-Specific Factors.

In this Circuit, there are two primary methods for calculating attorneys’ fees: the lodestar-multiplier method and the percentage-of-recovery method. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). This Court has long recognized that district courts should have discretion not only in

applying those methods, but also in choosing which method to use as the primary basis for calculating a fee. *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022) (“[C]ourts have discretion to employ either the lodestar method or the percentage-of-recovery method.”) (internal quotations omitted). Even in cases with similar settlement structures, courts may opt to use different methods based on the circumstances of the case. For example, the percentage-of-recovery method is used in the majority of common settlement fund cases. But in some instances, the lodestar method may be more appropriate. *E.g.*, *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 570-71 (9th Cir. 2019) (holding the district court was not required to perform a percentage-of-recovery cross check on lodestar in common fund settlement). As another example, in claims-made settlements with no common fund, either method may be appropriate to use as a starting point based on the circumstances of the particular case. ER-13 (citing *Walsh v. Kindred Healthcare*, 2013 WL 6623224, at *1 (N.D. Cal. Dec. 16, 2013)); *Guschausky v. Am. Fam. Life Assur. Co. of Columbus*, 851 F. Supp. 2d 1252, 1258 (D. Mont. 2012), *vacated on other grounds*, 2012 WL 4849688 (D. Mont. Oct. 11, 2012) (stating that, even in cases without a common fund, “the Court may still apply the percentage-of-recovery method if the court is able to reasonably estimate the settlement value[.]”).

District courts in this Circuit consider a number of case-specific factors when applying either method. Under the lodestar-multiplier method, once the lodestar is calculated, the district court may adjust it based on factors such as “the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment,” among others. *Bluetooth Headset*, 654 F.3d at 942. Similarly, under the percentage-of-recovery method, district courts in this Circuit begin with the “benchmark” of 25% of the fund, and then evaluate several factors—e.g., the results achieved, the level of risk, benefits obtained beyond the class settlement fund, and the resources counsel expended—in deciding whether to deviate from that percentage in either direction. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). What constitutes a reasonable fee, *and* the most appropriate way to measure that fee, will vary from case to case depending on the settlement or judgment and application of the various case-specific factors.

B. A Flexible, Case-Specific Approach to Fee Determinations Is Essential in Consumer Cases.

A flexible, case-specific approach to fee awards is critical in consumer class actions, where often (predictably or not) the effort and commitment of resources required to prosecute the case may be substantial relative to the monetary recovery ultimately obtained for the class, and where the quality of the result may be evaluated pursuant to multiple metrics, including but not necessarily limited to the

aggregate funds paid to the class. The district court must have discretion to use all available tools in determining a reasonable fee based on the case-specific considerations prescribed by this Court. A rigid standard, like what Honda implicitly proposes, would unnecessarily tie the district court's hands, taking away important tools and the ability to consider the case-specific factors pertinent to the analysis. It would also produce fee awards in many cases that are, from the district court's uniquely-informed perspective, unreasonably untethered from the overall quality of the result and the amount of work required to achieve such relief for the class.

Moreover, Honda's proposal is wholly unnecessary to ensure that fee awards are reasonable and not excessive. Under existing precedent in this Circuit, for both the lodestar and percentage-of-recovery approaches, the result achieved for the class is *already* the most important factor that courts consider in evaluating whether adjustments are appropriate and determining a reasonable fee. *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009) (holding that the reasonableness of the attorneys' fee "is determined primarily by reference to the level of success achieved by the plaintiff").

In this case, the District Court considered the quality of the result achieved, including the total money claimed by class members, and declined to apply a positive multiplier to the lodestar. ER-19. Recognizing the hard-fought nature of

the litigation, the substantial effort required of counsel, and other pertinent considerations, in addition to the results achieved for the class (including the quality of the result per claimant), the District Court also declined to deviate downward from counsel's lodestar. ER-23. That measured judgement, based on an evaluation of the facts and balancing of the pertinent factors, by a court familiar with the case and counsel's efforts and performance, exemplifies the wisdom of providing courts with discretion and flexibility in this area.

II. The Rigid Standard Honda Implicitly Endorses Would Hamper Enforcement of Consumer Protection Laws.

Private enforcement of consumer protection laws serves the dual purposes of vindicating individual harms and deterring future misconduct. *See* Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?*, 158 U. Pa. L. Rev. 2043, 2059 (2010) (affirming that deterrence is a central goal of consumer class actions); Samuel Issacharoff, *Regulating After the Fact*, 56 DePaul L. Rev. 375, 377 (2007) (describing the United States' post-hoc regulatory system through which parties are held accountable for the consequences of their wrongdoing after the fact). Regulatory agencies constrained by a lack of resources are often ill-equipped to respond to innovative or diffuse forms of corporate misconduct. *See Deposit Guar. Nat'l Bank, Jackson, Miss. v. Roper*, 445 U.S. 326, 339 (1980) ("The aggregation of individual claims in the context of a classwide suit is an evolutionary response to the existence of injuries unremedied by the regulatory action of government.").

Legislatures have responded by creating private causes of action and fee shifting provisions designed to incentivize qualified attorneys to assume the risks and incur the resource demands of prosecuting these cases.

Class actions play a particularly crucial enforcement role when it comes to violations where the value of individual claims would be too small to justify individual lawsuits as a practical matter. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985); *see also Patel v. Mercedes-Benz USA, LLC*, 43 Cal. App. 5th 1007, 1017 (2019) (Class actions “allow[] consumers to pursue remedies in cases . . . where the compensatory damages are relatively modest.”); William B. Rubenstein, *Why Enable Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, 74 UMKC L. Rev. 709, 710 (2006). When the cost of individual litigation far exceeds any potential recovery, most consumers will never bring a claim. Many may not even be aware that they were defrauded. Without coordinated litigation, corporations could systematically defraud consumers of small sums, reaping enormous profits while escaping liability entirely. *Id. See also Amchem Prods.*, 521 U.S. at 617 (“The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone’s (usually an attorney’s) labor.”)

(quoting *Mace*, 109 F.3d at 344). A rigid rule effectively capping fee awards based on a single metric (aggregate claims paid)—regardless of, *inter alia*, the importance of the interests at issue, the complexity of the case, the effort required to achieve the result, the risks incurred in prosecuting the case, and the other factors long-recognized in this Circuit as pertinent to determining a reasonable fee—would significantly exacerbate the risks that potential counsel would face at the outset, and thus disincentivize qualified counsel from taking on important consumer cases, hampering the enforcement of consumer protection laws and the ability to deter the types of misconduct those laws were enacted to stop.

The impact would be particularly acute for misconduct that harms large numbers of consumers but in small amounts individually. NACA Standards & Guidelines, 176 F.R.D. 375, 379-80 (1997) (advising that failure to prosecute low-value consumer claims “would encourage wrongful conduct and largely immunize entities engaged in schemes to steal millions in \$10 increments”). Honda’s implicit proposed rule would significantly reduce the deterrence impact of class actions, widely recognized as their most vital function. *See, e.g.*, Fitzpatrick, *supra*, at 2067; Myriam Gilles & Gary B. Friedman, *Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers*, 155 U. Pa. L. Rev. 103, 139 (2006). As Judge Posner has observed, the “most important point, from an economic perspective, is that the violator be confronted with the cost of his

violation . . . not that he pays them to his victims.” Richard A. Posner, *Economic Analysis of the Law* 349-50 (1972); see also *Hughes v. Kore of Indiana Enter., Inc.*, 731 F.3d 672, 677 (7th Cir. 2013) (holding that a class action can provide value for its deterrent effect even where it does not result in large monetary recovery).

Moreover, in cases like this where the attorneys’ fees are paid separately by the defendant and not from a fund, a rigid rule capping fee awards based on claims paid would reduce the deterrence effect of consumer class actions for the additional reason that it would reduce the overall amount of money the defendant is required to pay. 5 Newberg & Rubenstein on Class Actions § 15:70 (6th ed.).

Finally, curtailing the district court’s discretion and flexibility in the way Honda proposes could, in some cases, create an obstacle to settlement, dissuading the parties from exploring potential solutions that might trigger such a rule.

CONCLUSION

District courts must maintain flexibility and discretion to determine reasonable attorneys’ fee awards in consumer class cases based the circumstances of the particular case. This Circuit’s existing standards for fee determinations already prioritize the result achieved as the most important factor for courts to consider. A rigid rule curtailing district courts’ discretion and requiring exclusive or near-exclusive focus on a single factor and metric, irrespective of other details

of the case, would undermine enforcement of consumer protection laws by discouraging qualified counsel from taking on important and challenging cases, to the detriment of consumers.

For the foregoing reasons, the District Court's award of attorneys' fees should be affirmed.

Dated: April 16, 2026

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UNITED STATES COURT OF APPEALS
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**UNITED STATES COURT OF APPEALS
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