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Plaintiffs' Co-Lead Class Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON SENNE, et al., Individually and on
Behalf of All Those Similarly Situated,

Plaintiffs,

vs.

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as MAJOR LEAGUE
BASEBALL, et al.,

Defendants.

CASE NO. 3:14-cv-00608-JCS (consolidated with
3:14-cv-03289-JCS)

CLASS ACTION

**DECLARATION OF GARRETT R. BROSHUIS IN
SUPPORT OF MOTION FOR AWARD OF
ATTORNEYS' FEES, LITIGATION COSTS, AND
INCENTIVE AWARDS**

Hearing Date and Time: Feb. 17, 2023, 9:30 a.m.
Courtroom: F, 15th Floor
Judge: Honorable Joseph C. Spero

1 I, Garrett R. Broshuis, hereby declare as follows:

2 1. I am one of the attorneys principally responsible for the handling of this matter.

3 I submit this Declaration in support of Plaintiffs' Motion for Award of Attorneys' Fees, Litigation
4 Costs, and Incentive Awards.

5 2. I am personally familiar with the facts set forth in this Declaration. If called as a
6 witness, I could and would competently testify to the matters stated herein.

7 3. I am now a partner at the law firm of Korein Tillery, LLC, though for much of this
8 case I worked as an associate at the firm. Our firm regularly works on some of the most complex
9 cases in the country (in both class and non-class cases) and has been appointed as class counsel in
10 over 50 class actions. A description of the firm's experience and notable results, and the bios of key
11 attorneys who worked on the case, is attached as Exhibit A.

12 **SUMMARY OF WORK PERFORMED**

13 4. The firms of Korein Tillery, LLC and Pearson, Simon & Warshaw LLP ("Class
14 Counsel") have been working on this case for approximately nine years. Although the case was filed
15 on February 7, 2014, Class Counsel began their investigation of the case months before that.
16 Recognizing the importance and novelty of the issues, our firm, with the assistance of co-counsel,
17 spent months researching the case. We identified potential obstacles and defenses, and began devising
18 a strategy for overcoming those obstacles. We conducted pre-filing interviews with players, scrutinized
19 the UPC and Major League Rules, and familiarized ourselves with the industry. That was aided by my
20 background in the industry as a former player, which gave our team a unique combination of industry
21 knowledge and legal expertise.

22 5. After this investigation, Class Counsel drafted a lengthy complaint. Because of the
23 novelty of the case, the time spent on the complaint was extensive. The complaint initially included
24 just three plaintiffs, and named MLB, three MLB Clubs and the then-Commissioner of Baseball as
25 defendants. In the first two months, additional plaintiffs joined the case, resulting in Class Counsel
26 filing two amended complaints. The number of plaintiffs grew to over 30 by April 2014, and the
27 complaint included all 30 MLB Clubs as defendants.

1 6. Class Counsel then began opposing the procedural motions brought by Defendants.
2 Defendants initially contested personal jurisdiction and venue. Class Counsel sought and received the
3 right to conduct jurisdictional and venue discovery from the Court, and Class Counsel then conducted
4 that discovery.

5 7. As jurisdictional and venue discovery took place, Class Counsel moved to be named
6 interim lead counsel. Several respected complex litigation firms supported that motion, including
7 Lief, Cabraser, Heimann, & Bernstein, LLP; Carney, Bates & Pulliam, PLLC; and Glancy, Binkow &
8 Goldberg, LLP. Shortly after Class Counsel filed that motion, an attorney for other minor leaguers
9 announced at a case management conference that he would oppose Class Counsel's motion and
10 would be filing a complaint. He did so shortly thereafter, and when he declined to consent to this
11 Court's jurisdiction, the case was re-assigned to the Hon. Richard Seeborg. Judge Seeborg
12 consolidated the cases and appointed Class Counsel as interim lead counsel. ECF Nos. 235, 236. The
13 case returned to this Court a short time later.

14 8. In May 2015, the Court denied Defendants' venue motion and granted in part and
15 denied in part the motion to dismiss for lack of personal jurisdiction. ECF No. 379. Around the same
16 time, Defendants filed another motion to dismiss, this time for purported lack of standing. The
17 motion took aim at the breadth of the claims, seeking to cabin the reach of the classes by arguing that
18 a player only had standing to bring a claim against a particular Club for which he worked in a
19 particular state, and not against other MLB Clubs. Class Counsel opposed that motion, and the Court
20 denied it, ECF No. 420, which greatly benefitted the then-putative classes.

21 9. Fact discovery ensued, and it was remarkably extensive. The parties took 137
22 depositions, served hundreds of sets of interrogatories and document requests—which totaled over
23 4,000 requests for production and over a thousand interrogatories—and presented over a dozen
24 discovery disputes to the Court. The named plaintiffs responded to over 60 requests for production
25 (each) seeking emails, social media postings, text messages, and a variety of other items. Plaintiffs
26 engaged vendors, and a team of attorneys and staff worked to gather, organize, and review plaintiff
27 documents for production. Another team worked to review Defendants' productions, and another
28 team worked to take and defend depositions. The parties produced approximately 230,000 documents

1 that contained over a million pages. Class Counsel negotiated an ESI protocol with opposing counsel,
2 and we devised a protocol for reviewing documents efficiently. Our firm housed the documents on
3 our in-house Relativity servers and relied upon our in-house Relativity expertise to reduce costs when
4 possible. I, along with other attorneys, oversaw much of the review process, and I (along with co-
5 counsel) oversaw the creation of deposition outlines and the assignments for depositions.

6 10. As discovery took place, Class Counsel also prepared class certification briefing. The
7 battle over class certification lasted five years. The Court preliminarily certified the FLSA Collective in
8 October 2015. In March 2016, the Court decertified the FLSA Collective and denied Plaintiffs'
9 motion for certification under Rule 23. Despite that ruling, Class Counsel directed an expert to finish
10 his work on a survey. Class Counsel then used the final survey and narrower proposed classes as the a
11 bases for a motion for reconsideration. That resulted in the Court partially granting class certification
12 in March 2017. ECF No. 782.

13 11. Both sides appealed, and the Ninth Circuit issued its order on August 16, 2019. Class
14 Counsel's decision to appeal was slightly unorthodox. Many firms would have been satisfied that the
15 Court had partially granted class certification. But Class Counsel knew that Defendants would likely
16 appeal, and thus made the decision to cross-appeal in order to try to broaden the scope of the
17 certified classes.

18 12. In the end, that decision greatly benefitted class members because the Ninth Circuit
19 sided with Plaintiffs on the appeal. That resulted in certified classes under Arizona, Florida, and
20 California law, and a certified FLSA collective.

21 13. Defendants filed petitions for rehearing *en banc* and for a writ of certiorari. In doing so,
22 Defendants engaged one of the most well-known Supreme Court specialists in the country, Paul
23 Clement. Class Counsel opposed both petitions, which were denied.

24 14. The case finally returned to this Court in October 2020. Class Counsel worked
25 diligently to complete discovery, and to devise a notice plan and oversee the class notice sent to the
26 class members. Class Counsel also moved to certify a Rule 23(b)(2) class, representing a current player
27 who intervened to ensure Plaintiffs had standing to do so. The Court certified a (b)(2) class in July
28 2021. ECF No. 946.

1 15. Shortly after that, Class Counsel completed expert discovery. The damages model was
2 particularly complex—far more complex than in a normal wage-and-hour case. Class Counsel
3 presented experts that set forth an admissible model of hours worked, which was no easy task given
4 that Defendants had not kept time records. Class counsel had innumerable phone calls with their
5 experts to ensure that the model adequately captured the work at issue, and which involved an
6 intricate understanding of the industry and of the standard for admissibility of expert evidence. In the
7 end, the model was a combination of Defendants’ records (such as game schedules, eBIS data, rosters,
8 and itineraries), publicly available records (such as travel data), and survey data.

9 16. Class Counsel then prepared summary judgment and *Daubert* briefing. Doing so
10 required mastery of the voluminous record, along with mastery of nearly a dozen legal issues that
11 often were a matter of first impression. I worked with our team and co-counsel to identify key
12 documents and key deposition testimony to use as exhibits, and worked to distill the facts and apply
13 them to the legal disputes at issue—and to ultimately draft a brief that would hopefully be both
14 persuasive and digestible. It took a massive effort to do so given the volume of discovery that had
15 taken place and the number of issues in dispute. In the end, each side filed 60-page opening summary
16 judgment briefs, along with *Daubert* motions. The motions presented many complex and novel issues.
17 After hearing two days of argument, the Court granted partial summary judgment for Plaintiffs on a
18 number of issues, holding that minor league baseball players are “employees” under wage laws, that
19 MLB jointly employs them, that players are not “creative artists” within the meaning of wage laws,
20 that Defendants had not kept the records required under Arizona and California law, and that the
21 Save America’s Pastime Act did not bar claims under state law. ECF No. 1063. At the same time, the
22 Court denied Defendants’ motions to exclude Plaintiffs’ experts.

23 17. The order was monumental for minor league baseball players, and it reverberated
24 across the industry. Several issues remained unresolved, however, and so Class Counsel continued to
25 prepare for trial.

26 18. As the June 1, 2022 trial date approached, Class Counsel intensely prepared the case
27 for a complex trial, including: (1) creating outlines for witnesses and opening statements and
28 conducting mock exercises; (2) performing designations from the nearly 140 depositions; and (3)

1 preparing pre-trial filings such as exhibit lists, trial plans, trial briefs, motions *in limine*, jury
2 instructions, verdict forms, a proposed juror questionnaire, and voir dire questions. We also began
3 preparing witnesses to testify, which involved a very large number of prep sessions due to the volume
4 of possible witnesses.

5 19. The parties did not engage in substantive settlement talks until after the summary
6 judgment order. Before agreeing to the terms of the Settlement Agreement, the parties engaged in
7 formal mediation with David Geronemus, a renowned dispute resolution specialist with JAMS. Mr.
8 Geronemus, a former Supreme Court clerk, has worked as a full-time mediator since 1994. The
9 parties participated in three formal sessions with Mr. Geronemus in April and May 2022. One session
10 lasted more than 15 hours. The parties also conducted several calls and exchanged countless emails
11 during the mediation process. In addition, the parties participated in a settlement conference with U.S.
12 District Judge Jacqueline Scott Corley. The process lasted around a month and culminated in the
13 landmark settlement now at issue before this Court.

14 20. Since then, Class Counsel has diligently worked with the settlement administrator,
15 JND Legal Administration, to prepare notice documents and to oversee the notice process, and has
16 worked to ensure that the allocation model will fairly compensate class members. Class Counsel has
17 also already responded to a significant number of class member inquiries; those inquiries are currently
18 consuming considerable time on a nearly daily basis.

19 21. Class Counsel anticipates that the firms will perform substantial further work
20 associated with settlement approval. Class Counsel will continue to respond to a high number of class
21 member inquiries, and will continue to work with the administrator to resolve disputes from class
22 members regarding work periods. Class counsel will also prepare the motion for final approval. If
23 granted, additional work may be needed in relation to the allocation model and ensuring that class
24 members receive their settlement shares. If not all class members cash checks, a second disbursement
25 will likely take place several months after the first disbursement. Assuming the Court grants final
26 approval around the time of the February 2023 hearing, Class Counsel expects to continue to expend
27 many more hours of work throughout 2023.

28

SUMMARY OF THE RESULTING LODESTAR

22. As of October 31, 2022, Class Counsel has already expended 54,988.2 hours prosecuting this case. Of those hours, 41,166.8 are from Korein Tillery. In Exhibit B, I have attached a chart summarizing the number of hours worked by each attorney and staff member of the firm, along with the billing rates. The chart reflects contemporaneous computerized time records that the firm maintains in the ordinary course of business.

23. The billing rates provided in Exhibit B are the usual rates charged in similar complex litigation. Stephen Tillery, as the managing partner of the firm, set these rates. They reflect current billing rates, which have been adjusted slightly over the course of the litigation in order to continue to reflect market demands. Based on our experience and a review of caselaw, the prevailing practice is to use current billing rates when submitting billing information for a fee motion because the firm has not yet been paid for work that occurred in the past. With slight modifications to adjust for current market demands, these rates have been approved in other complex matters that our firm has been involved in. For instance, our firm submitted similar rates in support of a fee motion in a complex class action in the Southern District of New York in 2018, which were approved. *See In re Foreign Exchange Benchmark Rates Antitrust Litig.*, Case No. 1:13-cv-07789-LGS (ECF 1140) (S.D.N.Y. Nov. 18, 2018); *see also id.* at ECF 939-4 (showing rates of \$1,200 for Stephen Tillery and \$900 for partner Robert King (who also worked on this case), and associate rate of \$700 for Diane Moore (who also worked on this case)). Nearly five years have passed, and yet Mr. Tillery has only increased the hourly rates by \$50 during that time for most attorneys, and \$95 for himself. The rates reflected in Exhibit B to this declaration range from \$350 per hour for staff attorneys, to \$525 per hour for my time as an associate (\$725 per hour for my time as a partner), to \$1,295 per hour for Mr. Tillery.

24. Based on Mr. Tillery's experience and my experience and discussions with attorneys at other firms who work in complex litigation in this District, we believe the rates are reasonable and in line with rates charged for similar work by professionals with similar levels of experience and comparable reputations. A review of cases in this District support that. *See, e.g., In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 14-MD-02541-CW (NC), 2019 WL 12194763, at *3 (N.D. Cal. Dec. 6, 2019), *adopted* (Feb. 24, 2020) (approving rates of up to \$1,515 in a

1 similarly complex sports case); *Kang v. Wells Fargo Bank, N.A.*, No. 17-CV-06220-BLF, 2021 WL
 2 5826230, at *17 (N.D. Cal. Dec. 8, 2021) (in a wage/hour case, approving of rates between \$325 and
 3 \$1,150 per hour); *In re Lidoderm Antitrust Litig.*, No. 14-MD-02521-WHO, 2018 WL 4620695, at *2
 4 (N.D. Cal. Sept. 20, 2018) (finding four years ago that rates ranging “from \$350 to \$1,050 for partners
 5 and senior counsel, \$300 to \$675 for associates, and \$100 to \$400 for paralegals and other litigation
 6 staff (including senior cases managers)” were reasonable); *In re Nat’l Collegiate Athletic Ass’n Athletic*
 7 *Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-MD-2541-CW, 2017 WL 6040065, at *9 (N.D. Cal. Dec. 6,
 8 2017), *aff’d*, 768 F. App’x 651 (9th Cir. 2019) (finding five years ago that rates of up to \$1,035 were
 9 reasonable, and citing a “reputable” 2015 survey of rates in San Francisco showing billing rates of
 10 between \$200 and \$1,080); *see also Wren*, 2011 WL 1230826, at *20 (in wage/hour case over 11 years
 11 ago, approving range of \$375 to \$725 per hour).

12 25. Articles that have reviewed legal filings show that several large law firms now charge
 13 over \$2,000 for their most experienced partners working on complex matters.¹ For instance, Neal
 14 Katyal charged \$2,465 per hour last year; he is a Supreme Court litigator who likely charges rates
 15 similar to those charged by Paul Clement, who Defendants hired on appeal.² Further, data from a
 16 legal analytics company showed that in 2021, the *average* rate billed nationally by law firms stood at
 17 \$728 per hour for partners, and at \$535 per hour for associates.³

18
 19
 20 ¹ *Big Law Rates Topping \$2,000 Leave Value ‘In Eye of Beholder,’* Bloomberg Law (June 9, 2022), *available at*
 21 [https://news.bloomberglaw.com/business-and-practice/big-law-rates-topping-2-000-leave-value-in-](https://news.bloomberglaw.com/business-and-practice/big-law-rates-topping-2-000-leave-value-in-eye-of-beholder)
 22 [eye-of-beholder](https://news.bloomberglaw.com/business-and-practice/big-law-rates-topping-2-000-leave-value-in-eye-of-beholder); *see also As Billing Rates Skyrocket, Historic Fee Leaders Find Company at \$2,000 Per Hour,*
 23 *The American Lawyer* (July 28, 2022), *available at*
 24 [https://www.law.com/americanlawyer/2022/07/28/as-bankruptcy-rates-skyrocket-historic-fee-](https://www.law.com/americanlawyer/2022/07/28/as-bankruptcy-rates-skyrocket-historic-fee-leaders-find-company-at-2000-per-hour/?slreturn=20221003115254)
 25 [leaders-find-company-at-2000-per-hour/?slreturn=20221003115254](https://www.law.com/americanlawyer/2022/07/28/as-bankruptcy-rates-skyrocket-historic-fee-leaders-find-company-at-2000-per-hour/?slreturn=20221003115254) (showing that the top-billing
 26 partners at the top Am Law 100 firms charged an average of \$1,838 per hour in 2021).

24 ² Clement reportedly charged \$1,350 per hour seven years ago, in 2015. *SCOTUS litigators charge as*
 25 *much as \$1,800 an hour, filing says*, ABA Journal (Aug. 10, 2015), *available at*
 26 https://www.abajournal.com/news/article/scotus_litigators_charge_as_much_as_1800_an_hour_filing_says#:~:text=Paul%20Clement%20of%20Bancroft%20charges,%241%2C800%20an%20hour%2C%20and%20E.

27 ³ *Associate Billing Rates Are Growing Faster Than Partner Rates*, *The American Lawyer* (Feb. 3, 2022),
 28 *available at* [https://www.law.com/americanlawyer/2022/02/03/associates-billing-rates-are-growing-](https://www.law.com/americanlawyer/2022/02/03/associates-billing-rates-are-growing-faster-than-partner-rates/)
[faster-than-partner-rates/](https://www.law.com/americanlawyer/2022/02/03/associates-billing-rates-are-growing-faster-than-partner-rates/).

1 26. Some senior partners at the firm performed considerable work on this case. That
2 includes Mr. Tillery, who has over 40 years of experience working in complex litigation and who has
3 tried hundreds of cases to verdict—including his role as lead trial counsel in a class action trial that
4 resuled in a \$10.1 billion verdict. (More details about Mr. Tillery’s experience and the experience of
5 the other main attorneys working on the case (including myself) can be found in the firm resume,
6 attached as Exhibit A). Yet our firm ensured that associates performed substantial work on the case as
7 well. For most of the years that I worked on the case, I was an associate rather than a partner. For
8 those hours, we have used my billing rate as an associate rather than as a partner. That has ensured
9 that the blended rate for our firm remains reasonable under the circumstances, at \$480 per hour
10 blended for all timekeepers, or \$620 per hour when blended for just attorneys.

11 27. Our firm also worked with our co-counsel to ensure adequate but non-redundant
12 staffing, and to ensure that the firms achieved efficiencies when possible. The two firms very much
13 worked as a team, meeting regularly to make assignments and to strategize. Given the length of the
14 case and all its complexities, the result in my experience is a very reasonable number of hours
15 expended when compared to other cases of similar length and complexity.

16 28. Other law firms also performed certain tasks for the benefit of the class at Class
17 Counsel’s direction. These firms have submitted their own declarations describing the work
18 performed and the hours expended.

19 29. Class Counsel has reviewed the hours expended by these firms and finds them to be
20 reasonable and that they benefitted the class.

21 30. Including those hours, and through October 31, 2022, the total number of hours
22 amounts to 57,072.7. That results in a current lodestar of \$36,322,371.75. If this motion is granted,
23 that would result in a lodestar multiplier of 1.53. The following chart summarizes the total hours and
24 lodestar figures of the firms collectively:

Firm	Hours	Lodestar
Korein Tillery, LLC	41,166.8	\$22,795,282.00
Pearson, Simon & Warshaw LLP	13,821.4	\$11,994,437.50
Glancy Prongay & Murray LLP	154.4	\$140,122.00
Boucher LLP	225.6	\$252,609.00
Lieff Cabraser Heimann & Bernstein, LLP	198.3	\$129,023.50
Carney Bates & Pulliam, PLLC	231.4	\$186,061.75
Rulis & Bochicchio, LLC	1274.8 (approximate) ⁴	\$824,836.00
Totals	57,072.7	\$36,322,371.75

31. Again, I am of the firm opinion that when one considers the length, complexity, and novelty of the case—along with the large number of parties—that the number of hours and the resulting lodestar are very reasonable. Every step in the lawsuit, no matter how small, was contested. The legal research and resulting work was extensive because the novelty and complexity of the case commanded it. With this many parties and the nature of the action, discovery was laborous and intensive. The parties battled over class certification for five years. An interlocutory appeal proceeded all the way to the steps of the U.S. Supreme Court. Cross motions for summary judgment and multiple rounds of *Daubert* briefing took place. And the parties were just three weeks from trial when they reached a settlement.

SUMMARY OF THE LITIGATION COSTS

32. To date, Class Counsel has incurred 4,609,574.06 in litigation costs. The other firms that performed some work on the case incurred additional costs of \$44,964.27. Thus, the total expended litigation costs amount to \$4,654,538.33, as summarized in this chart:

⁴ As explained in the accompanying Declaration of Vito Bochicchio, his firm had a billing system failure for a small portion of time, so the hours are not exact. Yet Mr. Bochicchio attests that the hours are as accurate as possible.

Firm	Costs
Korein Tillery, LLC	\$2,865,483.65
Pearson, Simon & Warshaw LLP	\$1,744,090.41
Glancy Prongay & Murray LLP	\$7,677.26
Boucher LLP	\$21,900.10
Lieff Cabraser Heimann & Bernstein, LLP	\$3,009.64
Carney Bates & Pulliam, PLLC	\$537.72
Rulis & Bochicchio, LLC	\$11,839.55
Total	\$4,654,538.33

33. Of these costs, Korein Tillery incurred \$2,865,483.65 (after reimbursement of some costs by Pearson, Simon & Warshaw LLP). I have included a chart detailing Korein Tillery's litigation costs at Exhibit C.

34. All costs reflect the usual and customary charges for the expenses incurred and are reflected in the firm's records. These records are prepared from check records, receipts, and other source materials. The costs have not been reimbursed from any other source and are of the type that would have been billed to the client if this had been a non-contingency matter.

35. Some of the larger expenses include:

- a. Research expenses, primarily from Westlaw. The firm also incurred Pacer costs when searching for and pulling copies of filings in other federal court matters that counsel deemed relevant.
- b. Experts/consultants. This case required a substantial amount of work performed by multiple experts and consultants—much more than in a more typical wage-and-hour case. Based on work that our firm has done in other complex cases, I am of the opinion that the amount billed by these experts was reasonable and necessary, directly benefitted the classes, and is of the type that would be billed to a client.

- c. Mediation costs. The parties engaged a highly respected and experienced mediator, David Geronemus, when mediating. Mr. Geronemus expended extensive time in his role, which assisted the parties in reaching the Settlement Agreement.
- d. Travel. Depositions occurred at locations throughout the country, including in Puerto Rico. Counsel also attended numerous in-person court proceedings, which required travel, and also traveled for in-person meet-and-confer sessions in accordance with the Court's rules on resolving discovery disputes. The costs include airfare, which was at coach class fare rates, along with hotel, meals, and ground transportation expenses.
- e. Transcripts. Given that over 100 video depositions took place, the firm incurred substantial costs on transcripts and the related videos.

CLASS COUNSEL TOOK ON SIGNIFICANT CONTINGENCY RISK

36. Class Counsel litigated this case on a pure contingency basis. When our firm undertook this case, we knew that it would involve significant risk and require substantial resources. Everything about the case was novel. No minor league baseball player—or even a professional athlete—had tested their employment status under wage-and-hour laws, and no minor leaguer had brought a class action against MLB and its thirty Clubs.

37. As a result, no one had ever litigated the potential issues in this context. There were complex and novel issues at every turn: in the procedural matters handled early in the case, during discovery, during class certification and on appeal, during expert discovery and in *Daubert* motions, and during summary judgment briefing and all the way up to the verge of trial. The risks even extended to legislative halls, as proven by Defendants' lobbying for the Save America's Pastime Act and unsuccessful lobbying for changes to Arizona's minimum wage law. Every phase of the case presented potential pitfalls that could have proven ruinous.

38. Despite all those risks, we performed our work on a contingency basis. We did so against a well-funded and beloved organization represented by one of the largest law firms in the country and with attorneys specializing in labor and employment matters pertaining to sports and entertainment. And of course, committing the firm to this case for most of a decade meant turning

1 down other potentially lucrative opportunities for the firm given that the firm had to expend immense
2 resources on this case.

3 **CLASS COUNSEL ACHIEVED A TERRIFIC RESULT FOR THE CLASSES**

4 39. Class Counsel overcame all of those obstacles to achieve a terrific result for the classes.
5 Class Counsel worked vigorously to ensure that class members would receive as much compensation
6 as possible and the best potential forward-looking relief. The Settlement Agreement calls for a
7 payment of \$185 million by Defendants. Based on research that Class Counsel has performed in
8 regards to other wage-and-hour cases, that fund will provide above-average results for class members,
9 and if approved, will fairly compensate them when taking into consideration the unique legal issues in
10 this case and uncertainties of trial and appeal. It is expected to amount to, on average, between \$5,000
11 and \$5,500 per player, which is substantial given that most players made less than \$10,000 per year
12 during the class period.

13 40. The Settlement Agreement also provides significant forward-looking relief. As part of
14 the Agreement, MLB will be required to remove the part of the player contract that has always
15 forbidden MLB Clubs from paying players outside of the championship season. Those contractual
16 provisions are a chief reason for why we are here today, and the removal of them will be monumental.
17 MLB has also agreed to direct MLB Clubs to comply with minimum wage laws during the training
18 seasons.

19 41. Our firm has litigated some of the most complex cases (class and non-class) in the
20 country in recent decades. (The firm bio for Korein Tillery is attached as Exhibit A.) Based on our
21 experience, we are of the strong opinion that Class Counsel has achieved excellent results—far above
22 average—in the face of extraordinary obstacles.

23 **SUMMARY OF THE SERVICES PROVIDED BY THE NAMED PLAINTIFFS**

24 42. I fully support the proposed incentive awards for the named plaintiffs. Considering
25 the service provided to the class, I believe it is appropriate to award \$15,000 to the class
26 representatives and \$7,500 awards to the other five named plaintiffs who did not serve as class
27 representatives. These individuals showed great commitment in seeing this case to its end. Most of
28 them have been involved since the first months of the case, meaning that they have lived with this

1 case for nearly nine years. These men are almost all in their 30s, so they have lived with this case for
2 around 25% of their lives.

3 43. It would have been far easier for these men to simply allow the status quo to continue
4 in the industry. Many players had come before them, but these men were the first to bring a lawsuit
5 seeking to require MLB and its Clubs to comply with wage-and-hour laws. There would be no *Senne*
6 case without them, and relatedly, no backpay for the thousands of class members and no contractual
7 changes for current players.

8 44. Because MLB consists of 30 Clubs, the case required a larger number of named
9 plaintiffs than normal. The case drew upon the collective experiences of these individuals when
10 pursuing discovery, formulating case strategy, and rebutting defenses.

11 45. Each of these individuals put in the work needed to ensure success. They searched for
12 documents, which included invasively digging into private electronic documents like text messages
13 and emails. They prepared for and sat for depositions; the depositions often went a full day and often
14 required travel. They provided declarations to assist motions and reviewed important filings. They
15 prepared to testify at trial.

16 46. They also incurred substantial reputational risks when attaching their names to this
17 case. This case has included a high level of media coverage, and the names of these plaintiffs were
18 public. Many of these players desired to remain in the baseball industry after they finished their
19 playing days. Current and potential employers, both within baseball and outside of it, could easily
20 ascertain that these men had brought this case.

21 47. Finally, these individuals sacrificed additional individual claims as part of the lawsuit.
22 Although the Court determined that claims for offseason work could not be litigated as a class, the
23 named plaintiffs still had individual claims for this work that often amounted to several thousand
24 dollars. As part of the settlement, the named plaintiffs will release these claims without receiving
25 additional money for them.

26 48. For these reasons, the case posed significantly higher reputational risks than normal.
27 Yet these men selflessly devoted themselves to this case to the benefit of thousands of other players.

28

1 I declare under penalty of perjury that the foregoing is true and correct.

2
3 Executed on November 23, 2022, in St. Louis, Missouri

4
5 

6 Garrett R. Broshuis

EXHIBIT A

KOREIN TILLERY

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Korein Tillery — based in Chicago and St. Louis — is one of the country’s leading and most successful plaintiffs’ complex-litigation firms, representing a broad array of clients in high-stakes lawsuits and delivering over \$18 billion in verdicts and settlements over the last 14 years. Most of our attorneys have represented both plaintiffs and defendants at some point in their careers, and, combined, we’ve handled cases covering virtually every conceivable substantive area of the law. We’ve litigated cases for clients ranging from individuals and certified classes to governmental entities and billion-dollar, multi-national corporations. Collectively, we’ve tried hundreds of cases to verdict, with several verdicts exceeding 10 figures. Our attorneys have been nominated for numerous regional and national trial lawyer awards, and we’ve won many landmark decisions in state and federal appellate courts, including the Supreme Court of the United States.

The National Law Journal has consistently deemed Korein Tillery to be one of the country’s top plaintiffs’ firms by naming it to its “Plaintiffs’ Hot List” seven times in the past 15 years. In 2014 and 2015, Korein Tillery was named by the NLJ as a member of its top 50 Elite Trial Lawyers. The American Bar Association’s Securities Litigation Journal deemed two of Korein Tillery’s cases, *Kircher v. Putnam Funds Trust*, 547 U.S. 633 (2006) and *Merrill Lynch Pierce Fenner & Smth, Inc. v. Dabit*, 547 U.S. 71 (2006), the two most important securities law decisions in 2006. Securities Litigation Journal, *Top 10 Securities Law Decisions of 2006* (Winter 2006). In *Kircher*, Korein Tillery served as lead counsel for the plaintiffs’ class from the initial trial court filing to the Supreme Court of the United States, where the Court reversed the Seventh Circuit in a 9-0 decision.

Korein Tillery has been appointed as class counsel in more than fifty class actions and has successfully negotiated some of the country’s largest class action settlements. *See, e.g., Parker v. Sears Roebuck & Co.*, Case No. 04-L-716 (Ill. Cir. Ct. Jan. 16, 2008) (settlement valued at \$544.5 million); *Cooper v. The IBM Pers. Pension Plan*, 2005 WL 1981501, 35 Employee Benefits Cas. 2488 (S.D. Ill. Aug. 8, 2005) (\$325 million settlement); *Sparks v. AT&T Corp.*, 96-LM-983 (Ill. Cir. Ct. Nov. 4, 2002) (\$350 million settlement); *Sullivan v. DB Investments, Inc.*, 04-2819 (D.N.J. May 22, 2008) (\$323 million settlement); *Folkerts v. Illinois Bell Tel. Co.*, 95-L-912 (Ill. Cir. Ct. July 7, 1998) (\$252 million settlement); *Berger v. Xerox Corp. Ret. Income Guar. Plan*, 2004 WL 287902, 32 Employee Benefits Cas. 1362 (S.D. Ill. Jan. 22, 2004) (\$240 million settlement); *Malloy v. Ameritech*, 98-488-GPM (S.D. Ill. July 21, 2000) (\$180 million settlement); *City of Greenville v. Syngenta Crop Prot., Inc.*, 3:10-CV-188-JPG-PMF, 2012 WL 1948153 (S.D. Ill. May 30, 2012) (\$105 million settlement); *In Re: MCI Non-Subscriber Tel. Rates Litig.*, MDL 1275 (S.D. Ill. Apr. 19, 2001) (\$99 million settlement); and *Dunn v. BOC*

Group Pension Plan, 01-CV-382-DRH (S.D. Ill. Mar. 12, 2004) (\$70 million settlement); *Axiom Investment Advisors, LLC v. Barclays Bank PLC*, No. 15-cv-9323-LGS (S.D.N.Y. July 19, 2017) (\$50 million settlement); *City of Winchester, Missouri and City of Creve Coeur, Missouri v. Union Electric Company d/b/a Ameren Missouri*, 11SL-CC04561 (St. Louis County Circuit Court) (\$20.5 million settlement in 2017); *City of Maryland Heights, Missouri and City of Winchester, Missouri v. TracFone Wireless, Inc.*, 12SL-CC00648-01 (St. Louis County Circuit Court) (\$10.27 million settlement in 2016); *City of O'Fallon, Missouri, City of Troy, Missouri; and City of Orrick, Missouri v. CenturyLink, Inc., et al.*, 12SL-CC01723-01 (St. Louis County Circuit Court) (\$17 million settlement in 2014); *City of University City, Missouri, et al. v. AT&T Wireless Services, Inc., et al.* (T-Mobile), 01-CC-004454 (St. Louis County Circuit Court) (\$55 million settlement in 2010); *State of Missouri, ex rel. v. SBC Communications n/k/a AT&T, Inc., et al.* (St. Louis City Circuit Court) (\$65 million settlement in 2009); *City of University City, Missouri, et al. v. AT&T Wireless Services, Inc., et al.* (Sprint-Nextel), 01-CC-004454 (St. Louis County Circuit Court) (\$52 million settlement in 2007); *City of University City, Missouri, et al. v. AT&T Wireless Services, Inc., et al.* (Verizon Wireless), 01-CC-004454 (St. Louis County Circuit Court) (\$25 million settlement in 2007).

Example of Past Class Action Settlement: *City of Greenville v. Syngenta Crop Prot., Inc.*, 3:10-CV-188-JPG-PMF (S.D. Ill.).

An example of one of Korein Tillery's past class action settlements is *City of Greenville v. Syngenta Crop Prot., Inc.*, 3:10-CV-188-JPG-PMF (S.D. Ill.). The case resulted in a \$105 million class-action settlement designed to compensate Community Water Systems throughout the United States for the cost of removing the pesticide atrazine from public drinking water. Atrazine is used to control broadleaf and grassy weeds in a variety of crops, but is applied primarily to corn fields. Atrazine has been one of the most heavily used pesticides in the U.S. Two of atrazine's key chemical characteristics—that it does not readily bind to soil and that it persists in the environment—dramatically increase atrazine's effectiveness as an herbicide. However, because atrazine does not bind to soil, it easily runs off of fields with rainfall and contaminates surface waters such as rivers, lakes, and reservoirs that act as drinking-water supplies for public water providers.

Plaintiffs alleged that atrazine had continuously entered their water supplies, and, as a result of this contamination, they had to filter atrazine from their water sources. After eight years of litigation, Korein Tillery secured a \$105 million settlement fund to be distributed among the class members—consisting of 1,930 Community Water Systems. *City of Greenville v. Syngenta Crop Prot., Inc.*, No. 3:10-CV-188-JPG-PMF, 2012 WL 1948153 (S.D. Ill. May 30, 2012); *see also* 904 F. Supp. 2d 902 (S.D. Ill. 2012) (granting final approval of settlement and attorneys' fees of 33%). The settlement amounted to approximately 76 percent of the \$139 million estimated to be the Class's maximum potential recovery. The settlement formula awarded each claimant a payment of \$5,000, and then allocated a percentage of the remaining fund based on the extent of atrazine present in the water and the size of the

claimant. Hundreds of water providers received more than \$50,000, and some received more than \$1.5 million.

To facilitate the settlement claims process, Korein Tillery lawyers collected 20 years of atrazine testing data into a database that was made available to each class member through a settlement website. From there, Claimants were able to view the test data already collected for their system and provide additional evidence of atrazine contamination to claim their share of the settlement fund.

Korein Tillery attorneys went the extra mile to ensure that class members received notice. Notice was sent multiple times by mail and by email, and Korein Tillery lawyers also placed personal phone calls to many class members. The lawyers were able to reach more than 99 percent of class members with estimated claims greater than \$10,000. Because of this work, the court noted that the settlement “experienced an unusually high claims rate.” *City of Greenville*, 904 F. Supp. 2d at 904. Although many class actions experience claims rates of less than 15 percent, in this case virtually all settlement funds were distributed to class members.

Public Justice honored the Korein Tillery lawyers representing the plaintiffs in this case as finalists for its Trial Lawyer of the Year award.

Other Recent Work in Class Actions and Complex Litigation:

In re: Foreign Exchange Benchmark Rates Antitrust Litigation: Korein Tillery, working with co-counsel, developed and filed a class action on behalf of individuals who entered into foreign exchange transactions in over-the-counter exchanges and/or on exchanges with dealers, alleging violations of the Sherman Antitrust Act and Commodity Exchange Act. After almost 6 years of work, \$2.3 billion in court-approved settlements were reached with 15 of the 16 defendants, constituting one of the largest antitrust class action recoveries in history. Mediator Kenneth Feinberg concluded this settlement “represent[ed] some of the finest lawyering toward a negotiated resolution that I have witnessed in my career,” and described Korein Tillery and its co-counsel as “superlative, sophisticated, and determined plaintiffs’ lawyers.”

In re GSE Bonds Antitrust Litig.: Korein Tillery, along with co-counsel, alleged antitrust violations arising from coordinated price-fixing in the secondary market for bonds issued by the government-sponsored entities Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Farm Credit Banks, and Federal Home Loan Banks (“GSE Bonds”). Plaintiffs defeated two motions to dismiss and reached a settlement with all defendants, including Deutsche Bank Securities Inc., First Tennessee Bank, N.A., FTN Financial Securities Corp., Goldman Sachs & Co. LLC, Barclays Capital Inc., BNP Paribas Securities Corp., Cantor Fitzgerald & Co., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, HSBC Securities (USA) Inc., J. P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Inc., Morgan Stanley & Co., LLC, Nomura Securities International, Inc., SG Americas Securities LLC, TD Securities (USA) LLC, and UBS

Securities LLC. The combined settlement provided \$386.5 million to class members and was approved by the court on June 18, 2020.

Sullivan v. DB Investments, Inc.: Korein Tillery represented a nationwide class of diamond purchasers in an antitrust case against the country's largest diamond distributor. That case was consolidated with others in the Eastern District of Pennsylvania and Korein Tillery was appointed co-lead counsel. In that role, the firm helped negotiate injunctive relief and a nationwide settlement that created a \$323 million fund to compensate diamond purchasers.

In re: Google Play Consumer Antitrust Litigation: Korein Tillery, working with co-counsel, filed the first consumer class action in the nation alleging that Google's operation of Google Play Store and Google Play Billing, among other actions, created a wrongful monopoly over the distribution of applications and payment for in-application purchases in the Android ecosystem. Over ten similar complaints followed and are now consolidated before Judge James Donato in the Northern District of California, where Korein Tillery serves as a member of the consumer class steering committee.

National Credit Union Administration Mortgage-Backed Securities Litigation.

The National Credit Union Administration ("NCUA") is the independent federal agency created by the U.S. Congress to regulate, charter, and supervise federal credit unions. On behalf of the NCUA, Korein Tillery and co-counsel Kellogg, Hansen, Todd, Figel & Frederick filed approximately 20 federal lawsuits throughout 2011-2013 alleging that Wall Street investment banks misled credit unions about the quality of certain residential mortgage-backed securities ("RMBS"), causing billions of dollars of losses that the NCUA insured. More specifically, NCUA alleged that these banks violated the Federal Securities Act by representing in federally-regulated offering documents that all loans backing the RMBS complied with originator underwriting guidelines or had sufficient compensating factors to allow exceptions to the guidelines when in fact the majority of the loans did not.

Throughout several years of contentious litigation, involving several successful appeals, Korein Tillery and Kellogg Hansen obtained more than \$5.1 billion in legal settlements on NCUA's behalf, including but not limited to:

- *NCUA v. JP Morgan Chase Bank*, 2:13-cv-02012-JWL (D. Kan.) (obtained \$1.4 billion settlement in Dec. 2013);
- *NCUA v. RBS Sec., Inc.*, 1:13-cv-06726-DLC (S.D.N.Y.) (accepted offer of judgment for \$129.6 million plus fees in Sept. 2015);
- *NCUA v. Barclays Capital, Inc.*, 1:13-cv-06727-DLC (S.D.N.Y.) & 2:12-cv-02631-JWL (D. Kan.) (obtained \$325 million combined settlement in Oct. 2015);
- *NCUA v. Wachovia Capital Markets LLC*, 1:13-cv-06719-DLC (S.D.N.Y.) & 2:11-cv-02649-JWL (D. Kan.) (obtained \$53 million combined settlement in Oct. 2015);
- *NCUA v. Morgan Stanley & Co., Inc.*, 1:13-cv-06705-DLC (S.D.N.Y.) & 2:13-cv-02418-JWL (D. Kan.) (obtained \$225 million combined settlement in Dec. 2015);

- *NCUA v. Goldman Sachs and Co.*, 1:13-cv-06721-DLC (S.D.N.Y.) & 2:11-cv-06521-GW-JEM (C.D. Cal.) (obtained \$575 million combined settlement in Apr. 2016);
- *NCUA v. RBS Sec., Inc. et al.*, 11-cv-2340-JWL-JPO (D. Kan.) & 2:11-cv-05887 GW-JEM (C.D. Cal.) (obtained \$1.1 billion combined settlement in Sept. 2016);
- *NCUA v. UBS Securities, LLC*, 2:12-cv-02591-JWL (D. Kan.) (obtained \$445 million settlement in Mar. 2017); and
- *NCUA v. Credit Suisse Sec. (USA) LLC*, 2:12-cv-02648-JWL (D. Kan.) (obtained \$400 million settlement in Mar. 2017).

NCUA was the first federal regulatory agency for depository institutions to recover losses from investments in these securities on behalf of failed financial institutions. NCUA uses the net proceeds to reduce Temporary Corporate Credit Union Stabilization Fund (Stabilization Fund) assessments charged to federally insured credit unions to pay for the losses caused by the failure of five corporate credit unions.

Korein Tillery and Kellogg Hansen continue to prosecute several lawsuits on behalf of the NCUA against certain RMBS trustees regarding their alleged failure to perform their duties.

***United States ex rel. Garbe v. Kmart Corp.*, 3:12-cv-00881-NJR-PMF (S.D. Ill.).**

Since 2004, Kmart pharmacies have charged low, flat-rate prices for certain generic drug prescriptions when those drugs are purchased by customers who paid entirely out of their own pockets with no insurance coverage. Since the beginning of the Medicare Part D drug program on January 1, 2006, however, Kmart has charged higher prices—often significantly higher prices—to customers with Medicare Part D coverage than it charges self-paying customers for the same prescription. For example, Kmart charged cash customers \$10 for a 60-day supply of 500 mg Naproxen (available in non-prescription strength as Aleve®), but charged the Government \$58.79 for the same prescription.

Korein Tillery and co-counsel Phillips & Cohen filed a False Claims Act case against Kmart after the Government declined to intervene. In the litigation, Kmart never disputed that it charges cash-paying customers lower prices than it charges to the Government. Instead, Kmart contended that it was never required to charge the Government the lower prices because those are not the prices Kmart charges to “the general public.” Rather, Kmart claimed its cash-customers are not the “general public” but rather members of an exclusive “club” through which they are offered the discount prices, even though as a practical matter the discount prices are the prices Kmart charges to all its cash customers. Kmart also has no record of denying any cash-paying customer “membership” in Kmart’s “club.” The U.S. District Court for the Southern District of Illinois rejected Kmart’s arguments and denied its motions for summary judgment. Kmart appealed, but the Seventh Circuit affirmed the district court in large part. *United States ex rel. Garbe v. Kmart Corp.*, 824 F.3d 632 (7th Cir. 2016). After remand, the case settled in late 2017 with Kmart agreeing to pay approximately \$59 million.

Lightfoot v. Arkema, Inc. Ret. Benefits Plan, CIV. 12-773 JBS/JS (D.N.J.).

After the court certified a class of present and former retirement benefits plan participants, plaintiffs filed a motion for partial summary judgment on the issue of whether the COLAs the Plan promised to participants who elected annuities were part of participants' "accrued benefit" under ERISA. The Plan countered with a motion for summary judgment arguing the statute of limitations had run on all class members' claims owing to statements in a 1994 Summary Plan Description (SPD) and other plan documents. Although the same judge had previously ruled that the statements in the SPD and Plan were "clear repudiations" in a companion case, Korein Tillery convinced the court to deny the Plan's motion for summary judgment and to grant plaintiffs' motion for partial summary judgment, finding that the COLAs promised annuitants were accrued benefits. 2013 WL 3283951 (D.N.J. June 27, 2013). The case settled in 2014 with the average class member receiving \$11,000 in cash that could be rolled into a retirement account.

Missouri Utility Tax Litigation

Since 2007, Korein Tillery has represented Missouri municipalities in class action litigation that sought to recover unpaid license taxes. In suits against wireless and wireline carriers, Korein Tillery attorneys recovered hundreds of millions of dollars of license tax revenues—both retrospectively and prospectively—for more than 350 cities throughout Missouri. Korein Tillery has recovered more than \$1 billion for Missouri municipalities. As a result of their work in these cases, the Missouri Lawyers Weekly recognized Korein Tillery partners John W. Hoffman and Douglas R. Sprong with awards in the "largest plaintiff wins" category in 2007, 2009, 2010, 2015, and 2017, and John W. Hoffman and Garrett Broshuis with the award of "largest judgment or bench award" in Missouri in 2021.

In 2012, Korein Tillery was successful in persuading the Supreme Court of Missouri to issue an extraordinary writ (mandamus) declaring unconstitutional a state statute that sought to sweep away this litigation by barring cities and towns from serving as class representatives. *State ex rel. Collector of Winchester v. Jamison*, 357 S.W.3d 589 (Mo. 2012).

Mansfield v. ALPA, 06-c-6869 (N.D. Ill.).

Beginning in 2001, United Airlines encountered financial difficulties that ultimately culminated in its filing for bankruptcy protection. During the course of United's reorganization in bankruptcy, United sought to terminate its pilots' defined benefit pension plan. In exchange for ALPA's agreement not to oppose the termination of the pension plan, United agreed to provide ALPA with \$550 million in convertible notes. ALPA, through its United Airlines Master Executive Council ("MEC"), was tasked with allocating the proceeds from the sale of the convertible notes among the pilots. The MEC selected an allocation method that divided the note proceeds based upon each pilot's lost accrued benefits and lost projected benefits.

Korein Tillery filed this case in 2006 contending that ALPA breached its duty of fair representation in discriminating between its members in allocating the proceeds from the sale of \$550 million in convertible notes. Korein Tillery prevailed on a number of complex

and novel issues in the trial court. For example, ALPA moved to exclude retirees from the class, arguing that a union owes no duties to retired pilots under the Railway Labor Act. The court denied ALPA's motion, agreeing with plaintiffs that because ALPA represented the retirees when it negotiated the convertible notes, it owed them a duty even though the retirees were no longer a part of the bargaining unit. *Mansfield v. ALPA*, 2007 WL 2903074 (N.D. Ill. Oct. 1, 2007). After Korein Tillery also successfully opposed motions for summary judgment, 2009 WL 2386281 (N.D. Ill. Jul. 29, 2009), and to decertify the class, 2009 WL 2601296 (N.D. Ill. Aug. 20, 2009), the parties reached a settlement two weeks before trial. Per the settlement, ALPA funded an aggregate settlement fund of \$44 million to be paid directly to class members. *Mansfield v. ALPA*, No. 06C6869 (N.D. Ill. Dec. 14, 2009). The settlement is believed to be one of the largest ever in a duty of fair representation case, in which unions are sued over their responsibility to fairly represent their members.

***Williams v. Rohm & Haas Pension Plan*, 4:04-cv-0078-SEB-WGH (S.D. Ind.).**

Korein Tillery filed this class action in 2002 alleging that the Rohm & Haas Pension Plan violated ERISA by failing to include the value of future cost-of-living adjustments (COLA) in calculating lump-sum distributions from the Plan. After eight years of litigation, Korein Tillery obtained one of the largest settlements in the history of ERISA—\$180 million. In 2006, the case was certified and Korein Tillery won summary judgment convincing the district court that the terms of the Plan violated ERISA because a COLA is an “accrued benefit” requiring that it be included in lump-sum distributions. The district court’s decision was affirmed on interlocutory appeal. *Williams v. Rohm & Haas Pension Plan*, 497 F.3d 710, 714 (7th Cir. 2007) (“If a defined benefit pension plan entitles an annuitant to a COLA, it must also provide the COLA’s actuarial equivalent to a participant who chooses instead to receive his pension in the form of a one-time lump sum distribution.”), *cert. denied*, 128 S. Ct. 1657 (2008). Settlement approval and the fee award were later affirmed. 658 F.3d 629 (7th Cir. 2011).

***Parker v. Sears, Roebuck & Co.*, Case No.: 04-L-716 (Ill. Cir. Ct. Sept. 18, 2007).**

Korein Tillery brought this action against Sears in 2004 to remedy Sears’s failure to install anti-tip safety devices, which prevent ranges from tipping over and severely burning or injuring unsuspecting consumers, on ranges that it sold, delivered, and set-up in customers’ homes. In the 1960s and 1970s, kitchen range manufacturers started reducing the weight of metal in an effort to competitively lower the price of kitchen ranges. Over the course of several years, advances in materials allowed manufacturers to produce ranges which were durable and light weight. However, because the oven doors on the front of the ranges serve as a lever and fulcrum, the light weight of the new ranges created an extremely dangerous tipping hazard. For example, if a person were to place a turkey roaster on an open and horizontal oven door, the added weight would cause these newly designed ranges to tip forward, spilling the hot contents onto anyone standing in the vicinity. Children who opened the range and used the door as a step could unwittingly tip boiling liquids onto themselves. Dozens of people had been killed and hundreds had been maimed as a result of this problem.

Recognizing the need for a solution to this dangerous hazard, manufacturers and regulators began requiring installation of an anti-tip bracket that could be attached to the wall or floor at the back end of the range, preventing any forward tipping and maintaining complete stability. The installation is simple and the lightweight bracket costs pennies. The rule making bodies of most codes (BOCA Code, National Electrical Code; numerous other industry codes) thereafter required the installation of anti-tip brackets in all range installations in the United States. Even Sears acknowledged that a properly installed anti-tip bracket completely eliminates the hazards of tipping stoves.

Sears, Roebuck & Company at the time was the largest retail seller of kitchen ranges in the United States—averaging more than 800,000 ranges sold every year. When selling a gas or electric range, Sears generally includes delivery, installation, and hookup in customers' homes; thus, Sears became the largest installer of kitchen ranges in the United States. To increase its profits, Sears adopted a policy of refusing to install anti-tip brackets during normal installation unless the customer agreed to incur a substantial cost. At the same time, Sears failed to disclose the hazards associated with forgoing anti-tip bracket installation.

In January 2008, the Court granted final approval of a settlement which provided complete relief to the class by requiring Sears to install anti-tip brackets for the affected members of the class as well as requiring the installation of such brackets in the future. The settlement is valued at more than \$544.5 million.

This settlement was touted by the public interest organization Public Citizen as an example of how consumer class actions benefit society. Public Citizen nominated Stephen Tillery as Trial Lawyers for Public Justice's Trial Lawyer of the Year based upon his role in this case.

***Hoormann v. SmithKline Beecham Corp.*, 04-L-715 (Ill. Cir. Ct. May 17, 2007).**

In July 2004, Korein Tillery filed suit on behalf of a nationwide class of purchasers alleging that SmithKline Beecham promoted Paxil® and Paxil CR™ for prescription to children and adolescents despite having actual knowledge that these drugs exposed children and adolescents to dangerous side effects while failing to treat their symptoms. Following three years of litigation, Korein Tillery obtained a settlement that established a \$63.8 million dollar fund to reimburse class members 100 percent of their out-of-pocket expenses. This case was featured in *The American Lawyer*, Aruna Viswanatha, *King & Spalding Lanyer Stirr State Judge's Ire*, [29] 1 Am.Law., Jan. 2007, at 50, and mentioned in the *National Law Journal*. *The Plaintiffs' Hot List*, 30 Nat'l L.J. S8 (Nov. 22, 2007).

CUNA Mutual Mortgage-Backed Securities Litigation.

CMFG Life Insurance Company, CUMIS Insurance Society, Inc., and MEMBERS Life Insurance Company (collectively referred to as "CUNA Mutual") are financial services and insurance firms that offer insurance, investment, and retirement products and services to credit unions and their members. Korein Tillery and Kellogg Hansen filed a series of individual lawsuits in 2011 and 2013 on behalf of CUNA Mutual against eight Wall Street

investment banks seeking to recover losses on \$300 million of RMBS purchases using the novel common-law theory of contract rescission.

As in NCUA, CUNA Mutual alleged that the banks misrepresented in offering documents that all loans backing the RMBS complied with originator underwriting guidelines or had sufficient compensating factors to allow exceptions to the guidelines. CUNA Mutual also alleged that the banks misrepresented that it conducted due diligence to verify the accuracy of its offering document representations. In mid-2015, an appellate court issued a favorable opinion in CUNA Mutual's bellwether case approving of CUNA Mutual's primary litigation arguments. *CMFG Life Ins. Co. v. RBS Sec., Inc.*, 799 F.3d 729 (7th Cir. 2015). On remand, the case settled in December 2015 for a confidential amount. CUNA Mutual eventually settled its remaining RMBS cases over the next two years for confidential amounts. *See, e.g., CMFG Life Ins. Co. v. Credit Suisse Sec. (USA) LLC*, 3:14-cv-00249-wmc (W.D. Wis.) (settled in Oct. 2017); *CMFG Life Ins. Co. v. Morgan Stanley & Co., LLC*, 3:13-cv-00577-jdp (W.D. Wis.) (settled in Sept. 2017); *CMFG Life Ins. Co. v. J.P. Morgan Sec, LLC*, 3:13-cv-00580-wmc (W.D. Wis.) (settled in Mar. 2016).

***Axiom Investment Advisors, LLC v. Barclays Bank PLC*, No. 15-cv-9323-LGS (S.D.N.Y.) (Schofield, J.).**

From 2008 to 2015, Barclays Bank PLC acted as both a buyer and seller of various foreign and domestic currencies through various trading platforms. Instead of executing foreign exchange orders placed by Barclays' customers on these platforms, Barclays instituted a secret "last look" policy that delayed execution of matched trades for several hundred milliseconds or even several seconds which allowed Barclays to determine through its algorithms whether the trade would be unfavorable to its position. If the matched trade would be unfavorable, Barclays reneged on the agreed price and rejected the trade or placed the order at a worse price. Barclays used last look to reject millions of trades that would otherwise have been executed.

Korein Tillery, along with its co-counsel Scott+Scott, Attorneys at Law, LLP and Hausfeld LLP, filed a class action against Barclays Bank PLC regarding its use of "last look," raising breach of contract and other claims. The court appointed Korein Tillery and Scott+Scott as class counsel. Counsel was successful in securing a \$50 million settlement from Barclays on behalf of the class, which the court ultimately approved.

Key Team Members:***Stephen M. Tillery***

Stephen Tillery is the senior and founding member of the firm. With more than 35 years of trial experience, Mr. Tillery has acted as lead counsel in hundreds of complex cases at both the trial and appellate levels that have resulted in some of the largest trial verdicts and settlements in the United States. Steve has been appointed lead counsel in more than 40 class action lawsuits. In March 2003, Steve served as plaintiff's lead trial counsel in a class action trial that resulted in a \$10.1 billion verdict. *Price v. Philip Morris Inc.*, 2003 WL 22597608 (Ill. Cir. Mar 21, 2003), rev'd, 848 N.E.2d 1 (Ill. Dec 15, 2005), reh'g denied, 846 N.E.2d 597 (Ill. May 5, 2006), cert denied, 127 S.Ct. 685 (Nov. 27, 2006).

Mr. Tillery completed his undergraduate studies at Illinois College (B.A. *magna cum laude*, Phi Beta Kappa) in 1972. Thereafter he attended Saint Louis University School of Law (J.D. *cum laude*, Order of the Woolsack, 1976). While obtaining his law degree, Mr. Tillery was a law clerk for the Honorable James L. Foreman, United States District Court for the Southern District of Illinois. Following graduation from law school, he was a law clerk to the Honorable George J. Moran, Fifth District Court of Appeals of Illinois.

Mr. Tillery is a member of the Illinois Trial Lawyers Association, where he has been one of the elected Board of Managers since 1987, and for which he has chaired and served on numerous committees. Mr. Tillery is also a member of the Illinois Bar Association, the Missouri Association of Trial Attorneys, the St. Louis Metropolitan Bar Association, the St. Clair County Bar Association, and the American Association for Justice. He serves as a board member of Public Justice. He was named *Litigation Daily's* Litigator of the Week on May 1, 2014, for successfully reinstating the trial court's \$10.1 billion verdict in *Price v. Philip Morris, Inc.*, 2014 IL App (5th) 130017, 2014 WL 1696280 (Ill. App. Ct. Apr. 29, 2014).

Mr. Tillery has written numerous legal articles and has served as lecturer, moderator, and panel member at dozens of legal seminars relating to litigation and trial practice. He was an adjunct professor at Saint Louis University School of Law for eleven years, and was Co-Director of the Advanced Trial Advocacy Program there from 1983 to 1988.

Garrett R. Broshuis

Garrett Broshuis, a partner at Korein Tillery, received his J.D. from Saint Louis University, where he graduated valedictorian and served as Editor-in-Chief of the school's Law Journal. Since joining Korein Tillery, Garrett has performed prominent roles in some of the most complex cases in the country. In addition to his lead role in *Senne*, he currently represents a class of pensioners in the Northern District of Georgia challenging the termination of their defined benefit plans, and in the past has worked on securities cases emanating from the failure of the mortgage-backed securities market during the financial crisis.

Garrett also represents classes of Missouri municipalities in actions against Fortune 500 and other large companies, and putative classes of Indiana municipalities in similar cases. In one

case, Garrett successfully represented Indiana cities before the Seventh Circuit Court of Appeals, both arguing and serving as lead brief writer on the appeal. *City of Fishers, Indiana v. DIRECTV*, 5 F.4th 750, 751 (7th Cir. 2021). In another, he was part of a trial team that recently achieved a nearly \$40 million verdict on behalf of Missouri cities. The team earned an award for largest judgment in Missouri in 2021.

He is also an adjunct professor at Saint Louis University School of Law and often speaks at conferences and law school symposia.

Before law school, Garrett played six years as a pitcher in the San Francisco Giants' organization, working at all levels of minor league baseball. For four of those years, he wrote regular columns on life in minor league baseball for *The Sporting News* and *Baseball America*. Garrett received his undergraduate degree from the University of Missouri, where he graduated *summa cum laude* and was inducted into Phi Beta Kappa. In 2004, he earned both All-American and Academic All-American honors in baseball and was a finalist for the Big 12 Conference Male Athlete of the Year. He also earned the University of Missouri's Total Person Program Excellence Award three times.

Marc A. Wallenstein

Marc Wallenstein is a partner at the firm. He is a former federal prosecutor who has more than a decade of experience in federal public service. Marc has tried numerous cases to verdict and appeared in court on a daily or weekly basis for much of his career.

Marc is a graduate of Harvard College and Yale Law School. After law school, he served as a law clerk in the Southern District of New York and on the United States Court of Appeals for the Ninth Circuit.

In addition to his work on this case, Marc is currently on the lead or co-lead class counsel teams in four class action lawsuits against Google.

Before joining Korein Tillery, Marc served for six years as an Assistant U.S. Attorney in the District of Hawaii, where he gained expertise in national security matters, financial crime, procurement fraud, health care fraud, public corruption, cyber crime, environmental crime, and crimes against children. Marc served as Computer Hacking and Intellectual Property (CHIP) Coordinator, responsible for complex issues related to computer crime and electronically stored information, as an Anti-Terrorism Advisory Coordinator (ATAC), responsible for national security investigations and prosecutions, and as a member of the Department of Justice's Cryptocurrency Working Group. Marc prosecuted the first terrorism case against an active duty member of the U.S. military, and obtained record fines in numerous environmental cases, including the largest marine pollution fine in District history. Marc has received several awards from the Department of Justice and the Federal Bureau of Investigation for his work.

Prior to his time at the Department of Justice, Marc served for three years as a Prosecutor at the Office of the Chief Prosecutor of Military Commissions, U.S. Department of Defense. In that capacity, Marc prosecuted violations of the law of war committed by enemy alien belligerents before a military commission in Guantanamo Bay, Cuba. Among other responsibilities, Marc served as a litigation team chief, managing attorneys, paralegals, FBI agents, analysts, and staff. Marc also served as an appellate and pretrial motions attorney on a range of cases, including the prosecution of Khalid Shaikh Mohammed and four others accused of perpetrating the attacks of September 11, 2001.

Marc previously worked for three years at Kellogg, Hansen, Todd, Figel, and Frederick PLLC, in Washington DC, where he conducted complex civil litigation. Among other matters, he represented the National Credit Union Administration against Wall Street banks for failed investments in residential mortgage-backed securities, with co-counsel from Korein Tillery.

Marc maintained an active Top Secret/SCI security clearance throughout his federal employment.

Before he became an attorney, Marc worked as a travel writer in Italy, Australia, and Hawaii. Marc works from his home in Honolulu, Hawaii, and is an avid surfer.

Diane Moore

Diane Moore has devoted her career to representing plaintiffs in complex litigation. Since joining Korein Tillery in 2000, she has worked on all aspects of a variety of complex cases, from inception through appeal, including cases under federal and state securities laws, the Real Estate Settlement Procedures Act (RESPA), the Employee Retirement Income Security Act (ERISA), and the Telephone Consumer Protection Act (TCPA).

Most recently, Diane spent the last five years working to obtain compensation for hundreds of individual clients who claimed they developed Parkinson's disease as a result of long-term, low-dose exposure to a pesticide in coordinated actions pending in state court in Illinois and California. The case involved complex issues regarding preemption under the Federal Insecticide, Fungicide and Rodenticide Act and complex issues regarding proof of causation of neurological injury as a result of occupational/environmental exposure to agricultural chemicals.

Diane previously worked on the team of attorneys who represented the National Credit Union Administration in residential mortgage-backed securities (RMBS) litigation against many of the largest Wall Street investment banks, resulting in over \$5 billion in settlements. Earlier in her career with Korein Tillery, Diane assisted on numerous successful ERISA cases challenging the calculation of retirees' lump sum pension benefits under "cash balance" pension plans that resulted in hundreds of millions of dollars of additional pension benefits for retirees of several Fortune 500 companies. She was also appointed class counsel in several TCPA class actions.

Diane received her Bachelor of Arts magna cum laude from St. Louis University in 1993 and her Juris Doctor cum laude from St. Louis University School of Law in 1998, where she was awarded Order of the Woolsack and where she served as Associate Editor of the St. Louis-Warsaw Transatlantic Law Journal. She spent the two years following law school as a judicial clerk for the Honorable Lawrence Mooney, Missouri Court of Appeals Eastern District.

Diane is an avid reader and enjoys travel and painting. For many years, Diane volunteered as an English as a second language tutor for Catholic Charities. Diane works from home in San Diego, California.

EXHIBIT B

Korein Tillery Lodestar

Name	Status	Rate	Hours	Amount
Steve Tillery	Partner	\$ 1,295	1,220.10	\$ 1,580,029.50
George Zelcs	Partner	\$ 1,200	547.70	\$ 657,240.00
Robert Litan	Partner	\$ 1,150	10.40	\$ 11,960.00
John Hoffman	Partner	\$ 950	15.00	\$ 14,250.00
Robert King	Partner	\$ 950	1,361.70	\$ 1,293,615.00
Marc Wallenstein	Partner	\$ 950	779.80	\$ 740,810.00
Aaron Zigler	Partner	\$ 900	3,497.50	\$ 3,147,750.00
John Libra	Partner	\$ 900	7.80	\$ 7,020.00
Steve Berezney	Partner	\$ 850	4.50	\$ 3,825.00
Giuseppe Giardina	Partner	\$ 800	444.30	\$ 355,440.00
Jamie Boyer	Partner	\$ 800	305.20	\$ 244,160.00
Garrett Broshuis	Partner	\$ 725	3,297.90	\$ 2,390,977.50
Garrett Broshuis	Associate	\$ 525	7,363.90	\$ 3,866,047.50
Diane Moore	Associate	\$ 700	968.30	\$ 677,810.00
Andrew Ellis	Associate	\$ 650	8.00	\$ 5,200.00
Chad Bell	Associate	\$ 575	4.20	\$ 2,415.00
Jeanine Bermel	Associate	\$ 550	1,154.70	\$ 635,085.00
Jo Dee Farve	Associate	\$ 525	568.80	\$ 298,620.00
Justin Stephens	Associate	\$ 525	451.90	\$ 237,247.50
Chris Hoffman	Associate	\$ 500	20.10	\$ 10,050.00
Matthew Davies	Associate	\$ 500	46.30	\$ 23,150.00
Michael Forrest	Associate	\$ 500	1,631.60	\$ 815,800.00
Peter Rocque	Associate	\$ 500	1,008.60	\$ 504,300.00
Devin Dippold	Associate	\$ 450	403.70	\$ 181,665.00
Heidi Johnson	Associate	\$ 450	1,899.60	\$ 854,820.00
Noah Smith-Drelich	Associate	\$ 450	196.40	\$ 88,380.00
Stephanie Clerkin	Dir. of Lit. Support	\$ 400	494.30	\$ 197,720.00
Charles Clark	Staff Attorney	\$ 350	704.10	\$ 246,435.00
Ian Moody	Staff Attorney	\$ 350	152.50	\$ 53,375.00
Jennie Simons	Staff Attorney	\$ 350	553.20	\$ 193,620.00
Josephine Dudek	Staff Attorney	\$ 350	581.10	\$ 203,385.00
Kyle Bass	Staff Attorney	\$ 350	1,665.40	\$ 582,890.00
Lynn Preece	Staff Attorney	\$ 350	629.00	\$ 220,150.00
Paige Tungate	Staff Attorney	\$ 350	98.10	\$ 34,335.00
Ryan White	Staff Attorney	\$ 350	594.80	\$ 208,180.00
Stephen Bruno	Staff Attorney	\$ 350	1,543.60	\$ 540,260.00
Tori Tobin	Staff Attorney	\$ 350	1,833.80	\$ 641,830.00
Marissa Sims	Law Clerk	\$ 250	23.50	\$ 5,875.00
Rob Iversen	Law Clerk	\$ 250	132.00	\$ 33,000.00
Zach Miller	Law Clerk	\$ 250	94.30	\$ 23,575.00
Jerry Brown	Sr. Investigator	\$ 225	605.00	\$ 136,125.00
Juanita Brumitt	Paralegal	\$ 200	56.10	\$ 11,220.00
Leann Eckhardt	Paralegal	\$ 200	809.00	\$ 161,800.00
Lisa Greiner	Paralegal	\$ 200	933.20	\$ 186,640.00
Lisa Lucas	Paralegal	\$ 200	596.20	\$ 119,240.00
Megan Epperson	Paralegal	\$ 200	230.10	\$ 46,020.00
Sheila Sortor	Paralegal	\$ 200	97.90	\$ 19,580.00
Tracee Tidwell	Paralegal	\$ 200	17.60	\$ 3,520.00
Alicia Alvero Koski	Analyst	\$ 200	27.50	\$ 5,500.00
Amelia Earnest	Analyst	\$ 200	595.80	\$ 119,160.00
James McGanney	Analyst	\$ 200	2.30	\$ 460.00

Korein Tillery Lodestar

Name	Status	Rate	Hours	Amount
Jason Lese	Analyst	\$ 175	7.00 \$	1,225.00
Jenifer Hartley	Analyst	\$ 175	7.30 \$	1,277.50
Jocelyn Perry	Analyst	\$ 175	80.00 \$	14,000.00
Elliot Brown	Jr. Investigator	\$ 175	784.10 \$	137,217.50
			41,166.80 \$	22,795,282.00

EXHIBIT C

Korein Tillery Costs

Expense Summary

Miscellaneous	\$ 7,667.44
Research	\$ 238,203.41
Postage/Shipping	\$ 24,904.31
E Discovery	\$ 98,695.01
Record Duplication	\$ 26,686.63
Travel, Lodging, Meals, etc.	\$ 248,420.07
Expert Services	\$ 2,870,363.09
Court Costs	\$ 6,195.30
Depositions/Transcripts	\$ 433,727.67
Conference Calls	\$ 2,548.84
Funds Received	\$ (1,091,928.12)
Total Expenses	\$ 2,865,483.65

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Plaintiffs' Co-Lead Class Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON SENNE, et al., Individually and on
Behalf of All Those Similarly Situated,

Plaintiffs,

vs.

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as MAJOR LEAGUE
BASEBALL, et al.,

Defendants.

CASE NO. 3:14-cv-00608-JCS
(consolidated with No. 3:14-cv-03289-JCS)

CLASS ACTION

**DECLARATION OF DANIEL L.
WARSHAW IN SUPPORT OF MOTION
FOR AWARD OF ATTORNEYS' FEES,
LITIGATION COSTS, AND INCENTIVE
AWARDS**

Judge: Hon. Honorable Joseph C. Spero
Date: February 17, 2023
Time: 9:30 A.M.
Crtrm.: F

1 Daniel L. Warshaw declares:

2 1. I am an attorney duly admitted to practice before this Court. I am a partner in the
3 firm of Pearson, Simon & Warshaw, LLP (“PSW”), attorneys of record for Plaintiffs and the Class.

4 2. I am one of the attorneys principally responsible for the handling of this matter. I was
5 responsible for insuring that the case was appropriately staffed and I supervised the work performed
6 by PSW. Further, I was responsible for collecting, maintaining and reporting on the time entries of all
7 PSW timekeepers.

8 3. I am personally familiar with the facts set forth in this declaration. If called as a
9 witness I could and would competently testify to the matters stated herein. I submit this declaration
10 in support of Plaintiffs’ Motion for Attorneys’ Fees, Litigation Costs, and Incentive Awards.

11 4. My firm began working on this matter in the January 2014 with co-class counsel
12 Korein Tillery, LLC, (“KT”) (collectively “Class Counsel”). I and other members of PSW have
13 worked on this case since its inception, almost nine years ago. After over 1,100 entries on the Court’s
14 docket with thousands of documents filed and challenges seeking appellate review by the Ninth
15 Circuit and Supreme Court, the settlement before the Court provides real and substantial relief to the
16 Class. The settlement is a direct result of the work performed by Class Counsel.

17 5. The attorneys at PSW have decades of experience handling complex class actions,
18 including cases that involve the types of claims asserted in this case. PSW has represented a wide
19 range of clients in complex litigation and class actions and have obtained approximately *three billion*
20 dollars in settlements and verdicts on behalf of their clients. PSW currently serves, or has served, as
21 lead counsel in some of the most advanced, cutting-edge, class actions in the country.¹

22 6. PSW’s experience and capabilities in managing complex class action lawsuits have
23 been displayed in their representation of the class members throughout the course of this case.
24 Successfully prosecuting a case of this magnitude not only requires an expenditure of the firm’s
25

26
27 ¹ A complete profile of PSW’s attorneys and a summary of the numerous complex litigation matters in
28 which they have obtained successful results is set for in PSW’s firm resume, a true and correct copy is
attached hereto as **Exhibit 1**.

1 attorney time and capital, but also necessitates a high level of skill. Class Counsel knew that the
 2 Defendants had virtually unlimited resources and that they would engage highly qualified counsel to
 3 vigorously defend the case as it challenged Defendants' perennial policies relating to the classification
 4 of and payment of wages to minor leaguers.

5 7. PSW has prosecuted this litigation solely on a contingent-fee basis and has been at risk
 6 that it would not receive any compensation for its work—or reimbursement for its costs—in
 7 prosecuting the claims against Defendants. The time and resources my firm invested in this matter
 8 could have been placed in other hourly or contingency matters.

9 8. As the Co-Lead attorneys assigned by the Court to represent the class members, PSW
 10 and KT were involved in all major facets of this litigation. In this declaration, when I refer to the
 11 work of Class Counsel, it denotes work that required involvement of attorneys for both firms.
 12 However, both firms insured that this case was handled efficiently without unnecessary duplication of
 13 efforts on any assignment or task. When Class Counsel initiated work on this case in January of 2014,
 14 it was incumbent upon us to build a structure to manage each phase of the litigation. Attorneys were
 15 assigned specific tasks and roles that corresponded to their experience, capabilities and role on the
 16 team. This structure naturally resulted in litigation efficiencies. Class Counsel's firms are both
 17 modestly staffed in comparison to defense oriented firms. Class Counsel worked as a team and
 18 insured that our collective resources were optimized for efficiency.

19 **I. SUMMARY OF WORK PERFORMED**

20 9. As the Court is well aware, this case was quite complex and hard fought and in turn
 21 required a significant amount of legal work addressing these complex legal issues. The purpose of this
 22 declaration is to highlight the work performed by Class Counsel. During the course of this litigation,
 23 Class Counsel has been involved in the below tasks and activities on behalf of the Settlement Class.

24 **A. Pleadings and Motions to Dismiss**

25 10. Class Counsel conducted extensive research in preparation of the complaint. The
 26 research included the wage and hour laws from multiple states, the Fair Labor Standards Act
 27 ("FLSA"), conflict of laws and jurisdictional issues. The original complaint was filed on February 7,
 28 2014. ECF No. 1. The initial complaint was brought on behalf of three class representatives against

1 five defendants. It alleged 20 causes of action. Defendants moved to dismiss the complaint for lack
 2 of personal jurisdiction and to transfer the action to Florida. In order to oppose this motion,
 3 Plaintiffs' requested, and the Court granted leave to conduct, jurisdictional and venue discovery. ECF
 4 No. 144. While discovery was underway, the Court consolidated a later filed action with the instant
 5 case. On October 24, 2014, Plaintiffs filed a consolidated amended complaint. ECF No. 243.

6 11. On February 13, 2015, the Court held a hearing on Defendants' motion to dismiss and
 7 at that hearing granted Plaintiffs leave to file a proposed second consolidated amended complaint.
 8 On March 16, 2015, Plaintiffs filed their proposed second consolidated amended complaint
 9 ("SCAC"). ECF No. 363. The SCAC named 43 Plaintiffs and 38 Defendants, contained 31 causes of
 10 action and was 113 pages. *Id.*

11 12. Subsequently, the parties filed additional briefing addressing Defendants' challenges to
 12 personal jurisdiction. On May 20, 2015 the Court denied Defendants' request to transfer the action to
 13 Florida and granted in part and denied in part the motions to dismiss for lack of personal jurisdiction.
 14 The Court dismissed eight of the 30 franchises from the action. ECF No. 379. The Court granted
 15 Plaintiffs leave to file the SCAC, which was formally filed on the same day. ECF No. 382.

16 13. The Franchise Defendants filed several motions to motion to dismiss the SCAC
 17 claiming that Plaintiffs did not have standing to assert claims under the laws of states where no
 18 plaintiff was alleged to have performed work for that particular Defendant and that the claims also
 19 failed under Rule² 12(b)(6). ECF No. 410. On July 13, 2015, the Court denied the Franchise
 20 Defendants' motion in its entirety. ECF No. 420.

21 14. In total, Class Counsel filed five complaints. ECF Nos. 1, 19, 57, 243 and 363.
 22 Additional motions have been filed during the course of the litigation in order to add or dismiss
 23 named plaintiffs to the action when it was necessary to do so.

24 **B. DISCOVERY**

25 15. The parties engaged in extensive fact discovery. The sheer number of plaintiffs and
 26

27 ² "Rule" as used herein refers to the Federal Rules of Civil Procedure.
 28

1 defendants obviously contributed to the amount of discovery requests and depositions. The parties
2 took 137 depositions from Florida to California. When Class Counsel deposed defense witnesses, it
3 required careful preparation and planning. Our team engaged in targeted searches and review of
4 documents produced by the Defendants. Further, Class Counsel affirmatively investigated the issues,
5 the witness, and/or the Franchise Defendant to prepare for the deposition. Class Counsel then
6 compiled this information and passed it on to the attorney assigned to take a given deposition.
7 Usually the deposition taker and a second chair attorney would further refine the information and
8 documents gathered resulting in a deposition packet. This approach maximized efficiency and insured
9 that the allocation of attorney time were appropriate.

10 16. The parties exchanged over 4,000 production requests. Class Counsel assisted the
11 Plaintiffs to respond to over 60 production requests each. Similar to Class Counsel's deposition
12 teams, we established separate teams to work on propounding and responding to written discovery.
13 At bottom, the parties produced in excess of 230,000 documents totaling over a million pages.

14 17. Further, the parties prepared and responded to over 1,000 interrogatories and over
15 500 requests for admission.

16 18. As a result of the massive amount of discovery conducted, the parties had several
17 discovery disputes. Class Counsel engaged in numerous meet and confer conferences with counsel
18 for the Defendants. However, on more than a dozen occasions, the parties sought Court intervention
19 relating to discovery issues, which required the preparation of discovery dispute submissions and
20 hearings with the Court regarding the same.

21 **C. CLASS CERTIFICATION**

22 19. From the outset of the case, Class Counsel began planning for class certification.
23 However, the contours of the prospective classes changed as the case and facts developed.

24 20. On June 26, 2015, Class Counsel moved to initially certify the FLSA Collective. ECF
25 No. 414. Although this initial motion preceded full discovery, it required extensive briefing and
26 supporting documentation, as well as preparation for oral argument with the Court. On October 20,
27 2015 the Court certified the Collective. ECF No. 445. Class Counsel prepared a notice to potential
28 members of the collective, and handled motion practice regarding the form and content of the notice.

Thousands of minor leaguers opted into the FLSA collective.

21. On March 4, 2016 Class Counsel filed the class certification motion along with declarations from expert statistician Dr. Brian Kriegler, survey expert Dr. J. Michael Dennis, Class Counsel and the Plaintiffs. ECF Nos. 496 – 577. Class Counsel filed approximately 370 exhibits in support of the class certification motion. The class certification filing was a herculean effort and sought broad relief for the minor leaguers for all work performed during the calendar year.

22. Also on March 4, 2016, Defendants filed a motion to decertify the FLSA Collective, which Plaintiffs opposed. ECF Nos. 495 and 613. On April 4, 2016, Defendants, as part of their fulsome challenge to class certification, brought a motion to exclude the declarations and testimony of Plaintiffs’ experts, Dr. Kriegler and Dr. Dennis. ECF No. 632. Plaintiffs again opposed. ECF No. 646.

23. After extensive briefing by the parties and oral argument, on July 21, 2016, the Court denied Plaintiffs’ motion for class certification and granted Defendants’ motions to decertify the class and exclude Plaintiffs’ experts. ECF No. 687. Rather than give up and let the case languish, Class Counsel got back to work. After careful analysis of the Court’s order and the feedback provided by the Court at the hearing, fourteen days later Class Counsel filed a motion for leave to file a motion for reconsideration of the Court’s order denying class certification. ECF No. 694. Despite Defendants’ opposition (ECF No. 706), the Court granted leave for Plaintiffs to file a renewed, albeit narrower, motion for class certification that also addressed the concerns “related to the survey conducted by their expert and the expert opinions that were based on the survey,” and for the Defendants to file *Daubert* motions in connection with Plaintiffs’ expert reports. ECF No. 710.

24. Class Counsel prepared and filed Plaintiffs’ motion for reconsideration regarding class and collective certification. ECF No. 720. Plaintiffs’ motion requested that the Court certify Arizona and Florida classes under Rule 23(b)(3) for work performed in those states during spring training, extended spring training and the instructional leagues. We also requested the certification of a California Rule 23(b)(3) class that included players who participated in the California League during the championship season. The proposed FLSA Collective was also redefined and tailored to these aforementioned work periods. Class Counsel argued that the results of Dr. Dennis’s main survey,

1 coupled with documentary evidence such as training schedules, established that the average hours
2 worked during spring training, instructional leagues and the championship season could be quantified
3 on a classwide basis.

4 25. Plaintiffs also moved for certification of a Rule 23(b)(2) class seeking injunctive relief
5 classes comprised of current players that participate in spring training, extended spring training and
6 instructional leagues in Florida and Arizona. In order to address the Court's concerns about standing
7 for the injunctive class, we brought a motion to intervene four current players into the case.

8 26. Class Counsel's perseverance paid off. On March 17, 2017, the Court held that Dr.
9 Dennis' survey was admissible under *Daubert* and denied Defendants' motion to exclude. The Court
10 certified the California Rule 23(b)(3) class and concluded that in combination with the additional
11 evidence proffered by Plaintiffs, they had established Rule 23(b)(3)'s predominance requirement.
12 ECF No. 782. However, the Court declined to certify the Arizona and Florida subclasses because
13 Plaintiffs could not meet the adequacy requirement of Rule 23(a) and the predominance requirement
14 of Rule 23(b)(3) due to choice of law concerns. Further, the Court denied certification of the
15 injunctive relief class under Rule 23(b)(2) because it held that it would have to apply the law of
16 numerous states to Plaintiffs' claims which would, in turn, undermine the cohesiveness of the class.

17 *Id.*

18 27. Both parties sought appellate review of the class certification order.

19 **D. APPEAL OF CLASS CERTIFICATION**

20 28. The Ninth Circuit granted both Defendants' petition to appeal the Court's
21 certification of the California class and Plaintiffs' petition to appeal the denial of certification of the
22 remaining classes. Class Counsel prepared strategic and extensive briefing in support of Plaintiffs'
23 position. We assembled a small team to handle the affirmative and responsive appellate briefing,
24 argument preparation and the oral argument itself.

25 29. As a result of Class Counsel's work, the Ninth Circuit in a published opinion affirmed
26 certification of the California class and further opined that the Arizona and Florida Rule 23(b)(3)
27 classes should have been certified because choice-of-law issues did not defeat class certification;
28 Arizona and Florida law applied to the work performed during training seasons in Arizona and

1 Florida. ECF No. 821. Additionally, the Ninth Circuit held, “the district court erred in imposing a
2 ‘cohesiveness’ requirement for the proposed Rule 23(b)(2) class.” *Id.* at 38.

3 30. Thereafter, Defendants, with the help of attorney Paul Clement, a well-known
4 Supreme Court practitioner, sought *en banc* review of the opinion. When that was denied, they a
5 prepared a *writ of certiorari* that was denied by the Supreme Court. Class Counsel prepared briefs in
6 opposition to review at both levels.

7 31. The work performed by Class Counsel throughout the course of the appeal resulted in
8 Plaintiffs obtaining all of the relief they requested and aligned with the rationale of Plaintiffs’ renewed
9 motion for class certification.

10 **E. POST-APPELLATE FACT DISCOVERY AND NOTICE TO THE CLASS**

11 32. Four years and four months after Plaintiffs filed their original class certification
12 motion, the case finally returned to the Court. Class Counsel devised a class notice plan that was
13 contested by the Defendants but approved by the Court. ECF No. 869.

14 33. Although fact discovery had been substantially completed, a number of tasks required
15 attention, including 30(b)(6) depositions of the dismissed MLB Clubs, and supplementation to the
16 parties’ discovery responses and document productions. It was also necessary to review Defendants’
17 documents in preparation for dispositive motions and trial. Again Class Counsel oversaw and
18 delegated tasks between firms and among counsel to ensure efficiencies.

19 **F. CERTIFICATION OF THE INJUNCTIVE RELIEF CLASS**

20 34. The Ninth Circuit order regarding class certification remanded to the trial Court for
21 determination of whether to certify the injunctive relief class. On February 23, 2021, Class Counsel
22 filed a complaint in intervention with a new class representative Cody Sedlock. ECF No. 882. The
23 primary purpose of the complaint in intervention was to add a class representative that was a then-
24 current minor league player so that Plaintiffs could move to certify an injunctive relief class under
25 Rule 23(b)(2). Consistent with the Ninth Circuit’s ruling regarding injunctive relief, we then prepared
26 and, on April 23, 2001, filed a motion to certify the injunctive relief class. ECF No. 923. Defendants
27 filed an opposition. The briefing involved complicated and newly presented issues regarding the
28 named Plaintiffs’ ability to represent class members in states he did not work in and Defendants for

1 which he was not contracted with. On July 23, 2021 the Court certified the injunctive relief class and
 2 appointed PSW and KT as Class Counsel. ECF No. 946. Defendants sought permission to appeal
 3 the Court's decision to certify the injunctive relief class pursuant to Rule 23(f), which Class Counsel
 4 opposed, and was ultimately denied.

5 **G. MERITS EXPERT DISCOVERY AND DAMAGES MODEL**

6 35. As set forth above, the class certification briefing process included extensive expert
 7 work and the submission of multiple expert reports by Plaintiffs' experts Dr. Dennis and Dr. Kriegler.
 8 Defendants retained multiple experts in support of their opposition as well. After the Court denied
 9 Plaintiffs' initial class certification motion, it did not initially stay the case and Plaintiffs were required
 10 to prepare merits expert reports in support of their case on behalf of the named Plaintiffs. Class
 11 Counsel worked with the expert team in preparing this discovery.

12 36. After the appeal, Class Counsel worked extensively with Dr. Kriegler to complete the
 13 damages model and prepare his finalize merits report. This work included regular as well as ad hoc
 14 meetings with Dr. Kriegler and his staff to refine and eventually finalize the damages model and the
 15 expert report. This was no small task, as we were required to estimate Plaintiffs' hours worked
 16 because Defendants did not keep records of hours worked by the class members. This task required
 17 attorneys experienced in class action and wage and hour law. There was little doubt that Defendants
 18 would move to exclude Dr. Kriegler's report and testimony as well as move for summary judgment
 19 and decertification of the classes. The damages model and Dr. Kriegler's report had to be prepared in
 20 anticipation of Defendants' upcoming challenges.

21 37. Class Counsel also retained a rebuttal expert, Dr. Erica L. Groshen, a labor economist
 22 who provided rebuttal testimony regarding: (1) whether minor leaguers should be classified unpaid
 23 trainees outside of the championship season, and (2) whether they could be subject to the creative
 24 professionals exemption under certain applicable laws.

25 38. Class Counsel prepared for and defended the depositions of Dr. Kriegler and Dr.
 26 Dennis. Class Counsel also prepared for the deposition of Dr. Groshen, which Defendants' cancelled
 27 days before it was set to take place. Class Counsel also prepared for and took the depositions of
 28 Defendants' labor economist Dr. Denise Martin, survey expert Dr. Eugene Ericksen, and economist

Dr. Jonathon Guryan. Again, Class Counsel assigned attorneys with appropriate skill and expertise to serve on these teams and a single attorney was assigned a lead role for taking or defending a deposition.

H. DECERTIFICATION, SUMMARY JUDGMENT AND *DAUBERT*

39. On January 4, 2022 Defendants sought leave to move to decertify the classes and the FLSA Collective. ECF No. 1038. Class Counsel prepared and filed Plaintiffs' opposition. The Court denied the motion. ECF No. 1044.

40. Defendants' Summary Judgment and *Daubert* motions were their last challenge to the case before trial. However, Class Counsel viewed summary judgment as a strategic opportunity to favorably adjudicate issues based on the record established to date. Class Counsel either brought or opposed the below voluminous motions as indicated below:

- Defendants' Motion to Exclude Plaintiffs' Expert Declarations and Testimony of J. Michael Dennis, Ph.D. (ECF No. 969)
- Defendants' Motion to Exclude Plaintiffs' Expert Declarations, Reports, and Testimony of Brian Kriegler, Ph.D. (ECF No. 971)
- Plaintiffs' Motion for Partial Judgment on the Pleadings with Respect to "Save America's Pastime Act" Defense (ECF No. 979)
- Defendants' Motion for Partial Summary Judgment (ECF No. 980)
- Plaintiffs' Motion For Partial Summary Judgment (ECF No. 986)
- Defendants' Motion to Exclude the Expert Rebuttal Report and Testimony of Erica L. Groshen, Ph.D. (ECF No. 987)
- Plaintiffs' Daubert Motion to Exclude Certain Expert Testimony Disclosed by Defendants (ECF No. 988)
- Plaintiffs' Motion to Strike Defendants' Daubert Motions and Improper Rebuttal Report (ECF No. 1025)

41. Class Counsel assigned specific attorneys to lead the briefing on each motion or portion thereof, who would present briefs to a limited team of attorneys for review and approval. Additional attorneys for Class Counsel were assigned supporting roles, which focused primarily on the review and presentation of evidence relating to these motions. The Court held hearings on the above referenced motions on February 11 and 16, 2022 and entertained argument for almost six hours. On March 15, 2022, the Court entered an order, 181 pages in length, denying Defendants' motions, save

1 the claims against dismissed Defendant Bud Selig and the claims under the FLSA that were barred
 2 after the Save America's Pastime Act ("SAPA") was enacted. ECF No. 1071.

3 42. The Court granted Plaintiffs' motion for judgment on the pleadings finding that SAPA
 4 did not apply to state law claims under Florida law.

5 43. The Court also granted, in part, Plaintiffs' partial summary judgment motion. The
 6 Court issued significant rulings in Plaintiffs' favor including: *first*, Plaintiffs are employees under the
 7 FLSA and the relevant state statutes throughout the calendar year; *second*, Defendant MLB is a joint
 8 employer; *third*, Plaintiffs performed work during Arizona and Florida training; *fourth*, travel time to
 9 away games during the training season is compensable under the FLSA, Florida, and Arizona law; *fifth*,
 10 all travel time by the California League players to away games is compensable under California law;
 11 *sixth*, Defendants' creative professional exemption defense fails; *seventh*, disputed issues of facts exist
 12 as to Defendants' amusement exemption defense; *eighth*, Defendants are liable concerning Plaintiffs'
 13 California wage statement claim and are entitled to \$1,882,650 in penalties; *ninth*, Defendants are liable
 14 concerning Plaintiffs' Arizona recordkeeping claim; and *tenth*, Defendants' method of allocating
 15 signing bonuses and tuition payments to offset minimum wage liability is incorrect as a matter of law.

16 44. The Court granted in part Plaintiffs' motion to exclude certain opinions presented by
 17 Defendants' expert Dr. Martin, that were outside the scope of her expertise. The Court also denied
 18 Defendants' motions to exclude Plaintiffs' three experts, Drs. Dennis, Kriegler and Groshen. ECF
 19 Nos. 969, 971 and 987, respectively.

20 45. The summary judgment order was an epic win for minor league players whose claims
 21 were filed over eight years prior. The affirmation that minor leaguers were employees and that they
 22 had legally protected rights as such was a major step toward a change in policy. Plaintiffs now had a
 23 clear path to trial, which increased the settlement value of the case.

24 **I. TRIAL PREPARATION**

25 46. Trial was set to commence on June 1, 2022, approximately three months from the
 26 summary judgment order. Preparation for this anticipated seven week trial, required Class Counsel to
 27 perform a tremendous amount of work to prepare for the deadlines in advance of the pre-trial
 28 conference and trial. This work included, preparing witnesses, deposition designations, witness lists,

1 exhibit lists, jury instructions, verdict forms, trial briefs, motions in limine, jury questionnaire, voir dire
2 question and preparing a trial plan.

3 47. Class Counsel oversaw the trial preparation work performed by the team of attorneys.
4 A small group of lawyers from both firms comprising the trial team met regularly in preparation for
5 trial and oversaw the work performed by additional attorneys. Plaintiffs engaged another attorney
6 with significant trial experience in California courts, Raymond Boucher, to assist with the preparation
7 of the case for trial. He joined the trial team. A larger team of attorneys supported the trial team and
8 were assigned specific tasks, including preparation of trial exhibits and the designation of deposition
9 transcripts. The trial team oversaw the preparation of all of the aforementioned pretrial filings, which
10 specific attorneys being assigned the lead for preparing specific pleadings.

11 48. In addition to the submissions to the Court, Class Counsel had to prepare for and plan
12 for the trial, including opening statements and the examination and presentation of witnesses. Given
13 the number of claims involved, and Defendants' competing trial proposal, this process required
14 planning for several contingent scenarios. Class Counsel retained consultants to assist with a mock
15 jury exercise. This exercise provided valuable feedback and testing of trial themes. The analysis and
16 conclusions of the mock jury was incorporated into Class Counsel's overall trial strategy.

17 **J. SETTLEMENT**

18 49. Settlement discussions did not begin in earnest until after the summary judgment
19 order was issued. As with trial, Class Counsel assigned a small team of attorneys from the firms who
20 were responsible for handling the settlement discussions.

21 50. The parties attended three full day mediation sessions with an experienced mediator at
22 JAMS, David Geronemus. The first mediation occurred on April 13, 2022. In fact, one session lasted
23 more than 15 hours. In addition to the mediation sessions, counsel for the parties engaged in several
24 calls with Mr. Geronemus to assist the parties resolve settlement issues. Additionally, on May 4, 2022,
25 the parties attended a settlement conference before United States District Court Judge Jacqueline
26 Scott Corley. The parties filed a notice of settlement on May 10, 2022. ECF No. 1122.

27 51. Class Counsel filed Plaintiffs' motion for preliminary approval on July 15, 2022 (ECF
28 No. 1128) and on August 26, 2022 the Court granted the motion (ECF No. 1141).

52. Since that time Class Counsel has worked with the Claims Administrator to effectuate the notice program and process claims.

53. PSW is currently and has committed to continue working on the administration of the settlement and intends to expend additional attorney time.

II. RESULT ACHIEVED

54. I have been practicing since 1996. My practice is almost exclusively limited to class action litigation. PSW and I have litigated hundreds of class actions. Class Counsel committed to this litigation knowing that it would be extremely risky, challenging, time consuming and expensive. In my opinion, the result achieved in this case is not only fair, adequate and reasonable, but it is also historic. The resulting \$185 million settlement provides real relief to the class members and also provides forward looking positive business and policy changes that will benefit the class directly.

III. PSW'S TIME AND COSTS

A. Time Expended

55. During the pendency of this case, PSW kept contemporaneous time and expense records which I reviewed on a monthly basis. All of the time and expenses performed by my firm were done so for the benefit of the Class. In preparing this declaration, I also reviewed every line item expense billed by my firm to ensure that it was reasonable and incurred for the benefit of the Class.

56. Attached hereto as **Exhibit 2** is a chart setting forth, from inception through October 31, 2022: (i) the individuals from this firm who have worked on this case; (ii) the billable rates charged by each individual using current rates, for work performed on this case; (iii) the total number of hours that each individual has worked on this case, and (iv) the total hours and total lodestar for the firm. Moreover, the time submissions do not include any time devoted to preparing this declaration.

57. The attorneys of PSW billed this case at their usual and customary current billing rates, which have been approved by courts presiding over similar complex class action lawsuits, and which are commensurate with the prevailing market rates attorneys of comparable experience and skill handling complex litigation, including:

- a. *In re Pork Antitrust Litig.*, Case No. 18-cv-01776 (JRT-HB) (D. Minn.). In 2022,

Judge John R. Tunheim granted class counsel's for interim payment of attorneys' fees finding that the following PSW rates were reasonable: \$1,190 for Clifford H. Pearson and Daniel L. Warshaw, \$950 for Bobby Pouya, \$800 for Michael H. Pearson, and \$400 for Naveed Abaie.

b. *In Re Broiler Chicken Antitrust Litig.*, Case No. 16 C 8637 (N.D. Ill.). In 2021, Judge Thomas M. Durkin issued an attorneys' fees award finding that the following PSW rates were reasonable: \$1,190 for Clifford H. Pearson and Daniel L. Warshaw, \$950 for Bobby Pouya, \$625 for Michael H. Pearson, and \$400 for Naveed Abaie.

c. *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, Case No. 1:14-cv-04391-VSB (S.D.N.Y.). In 2021, Judge Vernon S. Broderick issued an attorneys' fees award finding that the following PSW rates were reasonable: \$1,190 for Clifford H. Pearson and Daniel L. Warshaw, and \$560 for Matthew A. Pearson.

d. *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litig.*, Case No. 4:14-md-2541-CW (N.D. Cal.). In 2019, Magistrate Judge Cousins issued an attorneys' fees award finding that the following PSW rates were reasonable: \$985 (2016) and \$1,035 (2017) for Clifford H. Pearson and Bruce L. Simon; \$1,050 (2018) and \$1,150 (2019) for Clifford H. Pearson, Bruce L. Simon and Daniel L. Warshaw; \$520 (2017), \$720 (2015) and \$825 (2016) for Aaron M. Sheanin; \$650 (2018) and \$900 (2019) for Benjamin E. Shiftan; \$350 (2017), \$400 (2018) and \$450 (2019) for Alexander L. Simon and Matthew A. Pearson; \$225 (2017) for Amanda C. Lunzer; and \$225 (2019) for Ellowene J. Grant. This award was adopted in whole by Judge Claudia Wilken.

e. *In re Credit Default Swaps Antitrust Litig.*, Case No. 1:13-md-02476-DLC (S.D.N.Y.). In 2016, the court issued an attorneys' fee award which included

PSW at weighted average rates of \$958.07 for Clifford H. Pearson, \$935 Bruce L. Simon, and \$827 for Daniel L. Warshaw.

f. *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, Case No. 3:07-cv-05944-JST (N.D. Cal.). In 2016, the court issued an attorneys' fee award which included PSW at rates of \$985 (2016) for Clifford H. Pearson, Bruce L. Simon and Daniel L. Warshaw.

g. *James Eashoo v. Iovate Health Sciences U.S.A., Inc.*, Case No. 2:15-cv-01726-BRO-PJW (C.D. Cal.). In 2016, the court issued an attorneys' fee award which included PSW at rates of \$985 (2016) for Clifford H. Pearson and Daniel L. Warshaw, and \$385 (2016) for Matthew A. Pearson.

h. *Patricia Weckwerth et al. v. Nissan North America, Inc.*, Case No. 3:18-cv-00588 (M.D. Tenn.). In 2020, the court issued an attorneys' fee award which included PSW at the rate of \$1,150 (2020) for Daniel L. Warshaw, \$750 for Melissa S. Weiner (2020), and \$670 (2020) for a senior level associate.

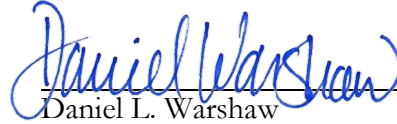
58. As of October 31, 2022, PSW expended a total of **13,821.4** hours on this case and incurred a lodestar of **\$11,994,437.50**. The lodestar calculation is based on my firm's current billing rates.

B. Costs Incurred by PSW

59. PSW has expended a total of \$1,540,350.15 unreimbursed costs and expenses in connection with the prosecution of this litigation. PSW has an outstanding invoice payable to trial consulting company, Empirical Creative in the amount of \$203,740.26, which has not been processed for payment as of the date of the declaration but is an expense that is owed and should be included as an unreimbursed cost. Therefore PSW's total deferred and current costs and expenses are **\$1,744,090.41**. These costs and expenses are broken down in the chart attached hereto as **Exhibit 3**. They were incurred on behalf of the Class by my firm on a contingent basis and have not been reimbursed. The expenses incurred in this action are reflected on the books and records of my firm.

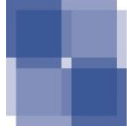
1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed on this 23rd day of November, 2022, at Sherman Oaks, California.

4
5 
6 Daniel L. Warshaw

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EXHIBIT 1



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S

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Pearson, Simon & Warshaw, LLP (“PSW”) is an AV-rated civil litigation firm with offices in Los Angeles, San Francisco and Minneapolis. The firm specializes in complex litigation, including state coordination cases and federal multi-district litigation. Its attorneys have extensive experience in antitrust, securities, consumer protection, and unlawful employment practices. The firm handles national and multi-national class actions that present cutting-edge issues in both substantive and procedural areas. PSW attorneys understand how to litigate difficult and large cases in an efficient and cost-effective manner, and they have used these skills to obtain outstanding results for their clients, both through trial and negotiated settlement. They are recognized in their field for excellence and integrity, and are committed to seeking justice for their clients.

CASE PROFILES

PSW attorneys currently hold, or have held, a leadership role in the following representative cases:

- *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, Northern District of California, MDL No. 2451. PSW attorneys currently serve as co-lead counsel in this multidistrict litigation that alleges the NCAA and its member conferences violate the antitrust laws by restricting the value of grant-in-aid athletic scholarships and other benefits that college students who are football and basketball players can receive. PSW settled the damages case, recently obtaining final approval of a \$208 million dollar settlement. PSW attorneys with co-counsel have completed a bench trial for the injunctive portion of the case. A verdict for Plaintiffs was awarded, and the United States Supreme Court recently issued an Opinion affirming the verdict 9-0. *See NCAA v. Alston*, 141 S.Ct. 2141 (2021).
- *In re Credit Default Swaps Antitrust Litigation*, Southern District of New York, MDL No. 2476. PSW attorneys served as co-lead counsel and represented the Los Angeles County Employees Retirement Association (“LACERA”) in a class action on behalf of all purchasers and sellers of Credit Default Swaps (“CDS”) against twelve of the world’s largest banks. The lawsuit alleged that the banks, along with other defendants who controlled the market infrastructure for CDS trading, conspired for years to restrain the efficient trading of CDS, thereby inflating the cost to trade CDS. The alleged antitrust

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conspiracy resulted in billions of dollars in economic harm to institutional investors such as pension funds, mutual funds, and insurance companies who used CDS to hedge credit risks on their fixed income portfolios. After nearly three years of litigation and many months of intensive settlement negotiations, PSW helped reach a settlement with the defendants totaling \$1.86 *billion* plus injunctive relief. On April 15, 2016, the Honorable Denise L. Cote granted final approval to the settlement, which is one of the largest civil antitrust settlements in history.

- *In re TFT-LCD (Flat Panel) Antitrust Litigation*, Northern District of California, MDL No. 1827. PSW served as co-lead counsel for the direct purchaser plaintiffs in this multidistrict litigation arising from the price-fixing of thin film transistor liquid crystal display (“TFT-LCD”) panels. Worldwide, the TFT-LCD industry is a multi-billion dollar industry, and many believe that this was one of the largest price-fixing cases in the United States. PSW helped collect over \$405 million in settlements before the case proceeded to trial against the last remaining defendant, Toshiba Corporation and its related entities. PSW partner Bruce L. Simon served as co-lead trial counsel, successfully marshaled numerous witnesses, and presented the opening argument. On July 3, 2012, PSW obtained a jury verdict of \$87 million (before trebling) against Toshiba. PSW later settled with Toshiba and AU Optronics to bring the total to \$473 million in settlements. In 2013, California Lawyer Magazine awarded Mr. Simon a California Lawyer of the Year Award for his work in the *TFT-LCD* case.
- *In re Potash Antitrust Litigation (No. II)*, Northern District of Illinois, MDL No. 1996. PSW partner Bruce L. Simon served as co-lead counsel for the direct purchaser plaintiffs in this multidistrict litigation arising from the price-fixing of potash sold in the United States. After the plaintiffs defeated a motion to dismiss, the defendants appealed, and the Seventh Circuit Court of Appeals agreed to hear the case *en banc*. Mr. Simon presented oral argument to the *en banc* panel and achieved a unanimous 8-0 decision in his favor. The case resulted in \$90 million in settlements for the direct purchaser plaintiffs, and the Court’s opinion is one of the most significant regarding the scope of international antitrust conspiracies. *See Minn-Chem, Inc. v. Agrum Inc.*, 683 F.3d 845 (7th Cir. 2012).
- *Vakilzadeh v. The Trustees of The California State University*, Los Angeles County Superior Court, Case No. 20STCV23134. PSW partner Daniel L. Warshaw serves as co-lead counsel for a putative class of California State University students who were not provided refunds of tuition and fees from the closing all campuses and ending in-person learning and activities.
- *North American Soccer League, LLC v. United States Soccer Federation, Inc., and Major League Soccer, L.L.C.*, Eastern District of New York, Case No. 1:17-cv-05495-MKB-ST. PSW, along with co-counsel, represents the North American Soccer League in a matter against the United States Soccer Federation and Major League Soccer alleging antitrust violations. The complaint alleges that U.S. Soccer and MLS have driven NASL out of business and have prevented NASL from competing against MLS (the sole Division I

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league) and the United Soccer League (the sole Division II league), which is affiliated with MLS.

- *In re Broiler Chicken Antitrust Litigation*, Northern District of Illinois, Case No. 1:16-cv-08637. PSW attorneys currently serve as interim co-lead counsel on behalf of direct purchaser plaintiffs. The complaint alleges that the nation's largest broiler chicken producers violated antitrust laws by limiting production and manipulating the price indices. Thus far, PSW and co-counsel have secured final approval of over \$169 million in settlements for the direct purchaser plaintiffs with numerous defendants remaining in the litigation.
- *In re Pork Antitrust Litigation*, District of Minnesota, Case No. 0:18-cv-01776. PSW attorneys currently serve as interim co-lead counsel on behalf of direct purchaser plaintiffs. The complaint alleges that the nation's largest pork producers violated antitrust laws by limiting production and manipulating the price indices. Thus far, PSW and co-counsel have secured over \$100 million in settlements for the direct purchaser plaintiffs with numerous defendants remaining in the litigation.
- *Grace v. Apple, Inc.*, Northern District of California, 5:17-CV-00551. PSW partners Daniel L. Warshaw and Jill M. Manning currently serve as class counsel in this California certified class action on behalf of consumers who allege Apple intentionally broke its "FaceTime" video conferencing feature for Apple iPhone 4 or iPhone 4S users operating on iOS 6 or earlier.
- *In re Santa Fe Natural Tobacco Company Marketing, Sales Practices, and Products Liability Litigation*, District of New Mexico, Case No. 1:16-md-02695-JB-LF. PSW partner Melissa S. Weiner chairs the Executive Committee and PSW partner Daniel L. Warshaw serves on the executive committee. This class action alleges that defendants' "natural" and "additive free" claims on their tobacco products were false and misleading to consumers.
- *In re Keurig Green Mountain Single-Serving Coffee Antitrust Litigation*, Southern District of New York, MDL No. 2542. In June 2014, Judge Vernon S. Broderick appointed PSW to serve as interim co-lead counsel on behalf of indirect purchaser plaintiffs in this multidistrict class action litigation. The case arises from the alleged unlawful monopolization of the United States market for single-serve coffee packs by Keurig Green Mountain, Inc. Keurig's alleged anticompetitive conduct includes acquiring competitors, entering into exclusionary agreements with suppliers and distributors to prevent competitors from entering the market, engaging in sham patent infringement litigation, and redesigning the single-serve coffee pack products in the next version of its brewing system to lock out competitors' products. PSW and co-counsel recently obtained final approval of a \$31 million settlement.

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- *Senne, et al. v. Office of the Commissioner of Baseball, et al.*, Northern District of California, Case No. 14-cv-0608. PSW attorneys currently serve as co-lead counsel in this certified class action and FLSA collective action on behalf of minor league baseball players who allege that Major League Baseball and its member franchises violate the FLSA and state wage and hour laws by failing to pay minor league baseball players minimum wage and overtime.
- *In re KIND LLC “Healthy and All Natural” Litigation*, Southern District of New York, MDL No. 2645. PSW partner Daniel L. Warshaw currently serves as interim co-lead counsel in this multistate certified class action on behalf of consumers who allege that they purchased KIND snack bars that were falsely advertised as “all natural,” “non-GMO,” and/or “healthy.”
- *Trepte v. Bionaire, Inc.*, Los Angeles County Superior Court, Case No. BC540110. PSW attorneys served as Class Counsel in this certified class action alleging that the defendant sold defective space heaters. The complaint alleged that defendant breached the warranty and falsely advertised the safety of the heaters due to design defects that cause the heaters to fail – and, as a result of the failure, the heaters could spark, smoke and catch fire. Final approval of the class settlement was recently granted.
- *In re Carrier IQ Consumer Privacy Litigation*, Northern District of California, MDL No. 2330. PSW attorneys served as interim co-lead counsel in this putative nationwide class action on behalf of consumers who alleged privacy violations arising from software installed on their mobile devices that was logging text messages and other sensitive information.
- *Sciortino, et al. v. PepsiCo, Inc.*, Northern District of California, Case No. 14-cv-0478. PSW attorneys served as interim co-lead counsel in this putative California class action on behalf of consumers who alleged that PepsiCo failed to warn them that certain of its sodas contain excess levels of a chemical called 4-Methylimidazole in violation of Proposition 65 and California consumer protection statutes.
- *James v. UMG Recordings, Inc.*, Northern District of California, Case No. 11-cv-01613. PSW partner Daniel L. Warshaw served as interim co-lead counsel in this putative nationwide class action on behalf of recording artists and music producers who alleged that they had been systematically underpaid royalties by the record company UMG.
- *In re Warner Music Group Corp. Digital Downloads Litigation*, Northern District of California, Case No. 12-cv-00559. PSW attorneys served as interim co-lead counsel, with partner Bruce L. Simon serving as chairman of a five-firm executive committee, in this putative nationwide class action on behalf of recording artists and music producers who alleged that they had been systematically underpaid royalties by the record company Warner Music Group.

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- *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, Northern District of California, MDL No. 1486. PSW partner Bruce L. Simon served as co-chair of discovery and as a member of the trial preparation team in this multidistrict litigation arising from the price-fixing of DRAM, a form of computer memory. Mr. Simon was responsible for supervising and coordinating the review of almost a terabyte of electronic documents, setting and taking depositions, establishing and implementing protocols for cooperation between the direct and indirect plaintiffs as well as the Department of Justice, presenting oral arguments on discovery matters, working with defendants on evidentiary issues in preparation for trial, and preparation of a comprehensive pretrial statement. Shortly before the scheduled trial, class counsel reached settlements with the last remaining defendants, bringing the total value of the class settlements to over \$325 million.
- *In re Methionine Antitrust Litigation*, Northern District of California, MDL No. 1311. PSW partner Bruce L. Simon served as co-lead counsel in this nationwide antitrust class action involving a conspiracy to fix prices of, and allocate the markets for, methionine. Mr. Simon was personally responsible for many of the discovery aspects of the case including electronic document productions, coordination of document review teams, and depositions. Mr. Simon argued pretrial motions, prepared experts, and assisted in the preparation of most pleadings presented to the Court. This action resulted in over \$100 million in settlement recovery for the Class.
- *In re Sodium Gluconate Antitrust Litigation*, Northern District of California, MDL No. 1226. PSW partner Bruce L. Simon served as class counsel in this consolidated antitrust class action arising from the price-fixing of sodium gluconate. Mr. Simon was selected by Judge Claudia Wilken to serve as lead counsel amongst many other candidates for that position, and successfully led the case to class certification and settlement.
- *In re Citric Acid Antitrust Litigation*, Northern District of California, MDL No. 1092. PSW partner Bruce L. Simon served as class counsel in antitrust class actions against Archer-Daniels Midland Co. and others for their conspiracy to fix the prices of citric acid, a food additive product. Mr. Simon was one of the principal attorneys involved in discovery in this matter. This proceeding resulted in over \$80 million settlements for the direct purchasers.
- *Olson v. Volkswagen of America, Inc.*, Central District of California, Case No. CV07-05334. PSW attorneys brought this class action lawsuit against Volkswagen alleging that the service manual incorrectly stated the inspection and replacement intervals for timing belts on Audi and Volkswagen branded vehicles equipped with a 1.8 liter turbo-charged engine. This case resulted in a nationwide class settlement.
- *Swain et al. v. Eel River Sawmills, Inc. et al.*, California Superior Court, DR-01-0216. Bruce L. Simon served as lead trial counsel for a class of former employees of a timber company whose retirement plan was lost through management's investment of plan assets in an Employee Stock Ownership Plan. Mr. Simon negotiated a substantial settlement on

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the eve of trial resulting in a recovery of approximately 40% to 50% of plaintiffs' damages after attorneys' fees and costs.

- *In re Homestore Litigation*, Central District of California, Master File No. 01-11115. PSW attorneys served as liaison counsel and class counsel for plaintiff CalSTRS in this securities class action. The case resulted in over \$100 million in settlements to the Class.
- *In re MP3.Com, Inc., Securities Litigation*, Southern District of California, Master File No. 00-CV-1873. PSW attorneys served as defense counsel in this class action involving alleged securities violations under Rule 10b-5.
- *In re Automotive Refinishing Paint Cases*, Alameda County Superior Court, Judicial Council Coordination Proceeding No. 4199. PSW attorneys served as class counsel with other law firms in this coordinated antitrust class action alleging a conspiracy by defendants to fix the price of automotive refinishing products.
- *In re Beer Antitrust Litigation*, Northern District of California, Case No. 97-20644 SW. PSW partner Bruce L. Simon served as primary counsel in this antitrust class action brought on behalf of independent micro-breweries against Anheuser-Busch, Inc., for its attempt to monopolize the beer industry in the United States by denying access to distribution channels.
- *In re Commercial Tissue Products Public Entity Indirect Purchaser Antitrust Litigation*, San Francisco Superior Court, Judicial Council Coordination Proceeding No. 4027. PSW partner Bruce L. Simon served as co-lead counsel for the public entity purchaser class in this antitrust action arising from the price-fixing of commercial sanitary paper products.
- *Hart v. Central Sprinkler Corporation*, Los Angeles County Superior Court, Case No. BC176727. PSW attorneys served as class counsel in this consumer class action arising from the sale of nine million defective fire sprinkler heads. This case resulted in a nationwide class settlement valued at approximately \$37.5 million.
- *Rueda v. Schlumberger Resources Management Services, Inc.*, Los Angeles County Superior Court, Case No. BC235471. PSW attorneys served as class counsel with other law firms representing customers of the Los Angeles Department of Water & Power ("LADWP") who had lead-leaching water meters installed on their properties. The Court granted final approval of the settlement whereby defendant would pay \$1.5 million to a *cy pres* fund to benefit the Class and to make grants to LADWP to assist in implementing a replacement program to the effected water meters.
- *In re Louisiana-Pacific Corp. Inner-Seal OSB Trade Practices Litigation*, Northern District of California, MDL No. 1114. PSW partner Bruce L. Simon worked on this nationwide product defect class action brought under the Lanham Act. The proposed class was certified, and a class settlement was finally approved by Chief Judge Vaughn Walker.

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- *In re iPod nano Cases*, Los Angeles County Superior Court, Judicial Council Coordination Proceeding No. 4469. PSW attorneys were appointed co-lead counsel for this class action brought on behalf of California consumers who own defective iPod nanos. The case resulted in a favorable settlement.
- *Unity Entertainment Corp. v. MP3.Com*, Central District of California, Case No. 00-11868. PSW attorneys served as defense counsel in this class action alleging copyright infringement.
- *Vallier v. Jet Propulsion Laboratory*, Central District of California, Case No. CV97-1171. PSW attorneys served as lead counsel in this toxic tort action involving 50 cancer victims and their families.
- *Nguyen v. First USA N.A.*, Los Angeles County Superior Court, Case No. BC222846. PSW attorneys served as class counsel on behalf of approximately four million First USA credit card holders whose information was sold to third party vendors without their consent. This case ultimately settled for an extremely valuable permanent injunction plus disgorgement of profits to worthy charities.
- *Morales v. Associates First Financial Capital Corporation*, San Francisco Superior Court, Judicial Council Coordination Proceeding No. 4197. PSW attorneys served as class counsel in this case arising from the wrongful sale of credit insurance in connection with personal and real estate-secured loans. This case resulted in an extraordinary \$240 million recovery for the Class.
- *In re AEFA Overtime Cases*, Los Angeles County Superior Court, Judicial Council Coordination Proceeding No. 4321. PSW attorneys served as class counsel in this overtime class action on behalf of American Express Financial Advisors, which resulted in an outstanding class-wide settlement.
- *Khan v. Denny's Holdings, Inc.*, Los Angeles County Superior Court, Case No. BC177254. PSW attorneys settled a class action lawsuit against Denny's for non-payment of overtime wages to its managers and general managers.
- *Kosnik v. Carrows Restaurants, Inc.*, Los Angeles County Superior Court, Case No. BC219809. PSW attorneys settled a class action lawsuit against Carrows Restaurants for non-payment of overtime wages to its assistant managers and managers.
- *Castillo v. Pizza Hut, Inc.*, Los Angeles County Superior Court, Case No. BC318765. PSW attorneys served as lead class counsel in this California class action brought by delivery drivers who claimed they were not adequately compensated for use of their personally owned vehicles. This case resulted in a statewide class settlement.

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- *Baker v. Charles Schwab & Co., Inc.*, Los Angeles County Superior Court, Case No. BC286131. PSW attorneys served as class counsel for investors who were charged a fee for transferring out assets between June 1, 2002 and May 31, 2003. This case resulted in a nationwide class settlement.
- *Eallonardo v. Metro-Goldwyn-Mayer, Inc.*, Los Angeles County Superior Court, Case No. BC286950. PSW attorneys served as class counsel on behalf a nationwide class of consumers who purchased DVDs manufactured by defendants. Plaintiffs alleged that defendants engaged in false and misleading advertising relating to the sale of its DVDs. This case resulted in a nationwide class settlement.
- *Gaeta v. Centinela Feed, Inc.*, Los Angeles County Superior Court, Case No. BC342524. PSW attorneys served as defense counsel in this class action involving alleged failures to pay wages, overtime, employee expenses, waiting time penalties, and failure to provide meal and rest periods and to furnish timely and accurate wage statements.
- *Leiber v. Consumer Empowerment Bv A/K/A Fasttrack*, Central District of California, Case No. CV 01-09923. PSW attorneys served as defense counsel in this class action involving copyrighted music that was made available through a computer file sharing service without the publishers' permission.
- *Higgs v. SUSA California, Inc.*, Los Angeles County Superior Court Case No. BC372745. PSW attorneys served as co-lead class counsel representing California consumers who entered into rental agreements for the use of self-storage facilities owned by defendants. In this certified class action, plaintiffs allege that defendants wrongfully denied access to the self-storage facility and/or charged excessive pre-foreclosure fees.
- *Fournier v. Lockheed Litigation*, Los Angeles County Superior Court. PSW attorneys served as counsel for 1,350 residents living at or near the Skunks-Works Facility in Burbank. The case resolved with a substantial confidential settlement for plaintiffs.
- *Nasseri v. CytoSport, Inc.*, Los Angeles County Superior Court, Case No. 439181. PSW attorneys served as class counsel on behalf of a nationwide class of consumers who purchased CytoSport's popular protein powders, ready to drink protein beverages, and other "supplement" products. Plaintiffs alleged that these supplements contain excessive amounts of lead, cadmium and arsenic in amounts that exceed Proposition 65 and negate CytoSport's health claims regarding the products. The case resulted in a nationwide class action settlement which provided monetary relief to the class members and required the reformulation of CytoSport supplement products.
- *In re Samsung Top-Load Washing Machine Marketing, Sales Practice and Products Liability Litigation*, Western District of Oklahoma, Case No. 5:17-ml-02792-D. Plaintiffs allege that the top-load washing machines contain defects that cause them to leak and

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explode. PSW Partner Melissa S. Weiner was appointed to the Plaintiffs' Steering Committee in this multi-district class action.

ATTORNEY PROFILES**FOUNDING PARTNERS****CLIFFORD H. PEARSON**

Clifford H. Pearson is a civil litigator, business lawyer and mediator focusing on complex litigation, class actions, and business law. In 2013, 2016, 2021 and 2022 Mr. Pearson was named by the *Daily Journal* as one of the Top 100 Lawyers in California. Additionally, Mr. Pearson was named as one of the Daily Journal's 2019 Top Plaintiff Lawyers and in 2022 he was named one of the Top Antitrust Lawyers. He was instrumental in negotiating a landmark settlement totaling \$1.86 billion in *In re Credit Default Swaps Antitrust Litigation*, a case alleging a conspiracy among the world's largest banks to maintain opacity of the credit default swaps market. Mr. Pearson also negotiated \$473 million in combined settlements in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, an antitrust case in the Northern District of California that alleged a decade-long conspiracy to fix the prices of TFT-LCD panels and over \$90 million in *In re Potash Antitrust Litigation*, an antitrust case in the Northern District of Illinois that alleged price fixing by Russian, Belarusian and North American producers of potash, a main ingredient used in fertilizer. Mr. Pearson currently serves as co-lead counsel in both the *In re Broiler Chicken Antitrust Litigation* and *In re Pork Antitrust Litigation* antitrust class action cases alleging price fixing in the broiler and pork industries.

Before creating the firm in 2006, Mr. Pearson was a partner at one of the largest firms in the San Fernando Valley, where he worked for 22 years. There, he represented aggrieved individuals, investors and employees in a wide variety of contexts, including toxic torts, consumer protection and wage and hour cases. Over his career that spans nearly 40 years, Mr. Pearson has successfully negotiated substantial settlements on behalf of consumers, small businesses and companies. In recognition of his outstanding work on behalf of clients, Mr. Pearson has been regularly selected by his peers as a Super Lawyer (representing the top 5% of practicing lawyers in Southern California). He has also attained Martindale-Hubbell's highest rating (AV) for legal ability and ethical standards.

Mr. Pearson is an active member of the American Bar Association, Los Angeles County Bar Association, Consumer Attorneys of California, Consumer Attorneys Association of Los Angeles, and Association of Business Trial Lawyers.

Current Cases:

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill.)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *North American Soccer League, LLC v. United States Soccer Federation, Inc., and Major League Soccer, L.L.C.* (E.D.N.Y.)

PEARSON, SIMON & WARSHAW, LLP

- *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.)

Education:

- Whittier Law School, Los Angeles, California – J.D. – 1981
- University of Miami, Miami, Florida – M.B.A. – 1978
- Carleton University, Ontario, Canada – B.A. – 1976

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- American Bar Association
- Association of Business Trial Lawyers
- Consumer Attorneys Association of Los Angeles
- Consumer Attorneys of California
- Los Angeles County Bar Association

BRUCE L. SIMON

Bruce L. Simon is a partner emeritus at Pearson, Simon & Warshaw, LLP and has lead the firm to national prominence. Mr. Simon specializes in complex cases involving antitrust, consumer fraud and securities. He has served as lead counsel in many business cases with national and global impact.

In 2019, Mr. Simon was named as one of the Daily Journal's Top Plaintiff Lawyers. In 2018, Mr. Simon was awarded "Antitrust Lawyer of the Year" by the California Lawyers Association. In 2013 and 2016, Mr. Simon was chosen by the Daily Journal as one of the Top 100 attorneys in California. In 2013, he received the California Lawyer of the Year award from California Lawyer Magazine and was selected as one of seven finalists for Consumer Attorney of the Year by Consumer Attorneys of California for his work in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 1827 (N.D. Cal.). That year, Mr. Simon was included in the Top 100 of California's "Super Lawyers" and has been named a "Super Lawyer" every year since 2003. He has attained Martindale-Hubbell's highest rating (AV) for legal ability and ethical standards.

Mr. Simon was co-lead class counsel in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, a case that lasted over five years and resulted in \$473 million recovered for the direct purchaser plaintiffs. Mr. Simon served as co-lead trial counsel and was instrumental in obtaining an \$87 million jury verdict (before trebling). He presented the opening argument and marshalled numerous witnesses during the six-week trial.

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Also, Mr. Simon was co-lead class counsel in *In re Credit Default Swaps Antitrust Litigation*, a case alleging a conspiracy among the world's largest banks to maintain opacity of the credit default swaps market as a means of maintaining supracompetitive prices of bid/ask spreads. After three years of litigation and many months of intensive settlement negotiations, the parties in CDS reached a landmark settlement amounting to \$1.86 billion. It is one of the largest civil antitrust settlements in history.

Mr. Simon was also co-lead class counsel in *In re Potash Antitrust Litigation (II)*, MDL No. 1996 (N.D. Ill.), where he successfully argued an appeal of the district court's order denying the defendants' motions to dismiss to the United States Court of Appeals for the Seventh Circuit. Mr. Simon presented oral argument during an en banc hearing before the Court and achieved a unanimous 8-0 decision in his favor. The case resulted in \$90 million in settlements for the direct purchaser plaintiffs, and the Court's opinion is one of the most significant regarding the scope of international antitrust conspiracies.

More recently, Mr. Simon completed the trial seeking injunctive relief in the *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*. The plaintiffs allege that the NCAA and its member conferences violate the antitrust laws by restricting the value of grant-in-aid athletic scholarships and other benefits that college football and basketball players can receive.

Current Cases:

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill.)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *North American Soccer League, LLC v. United States Soccer Federation, Inc., and Major League Soccer, L.L.C.* (E.D.N.Y.)

Reported Cases:

- *Minn-Chem, Inc. et al. v. Agrium Inc., et al.*, 683 F.3d 845 (7th Cir. 2012)
- *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, 594 U.S. ____ (2021).

Education:

- University of California, Hastings College of the Law, San Francisco, California – J.D. – 1980
- University of California, Berkeley, California – A.B. – 1977

Bar Admissions:

- California
- Supreme Court of the United States
- Ninth Circuit Court of Appeals
- Seventh Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California

PEARSON, SIMON & WARSHAW, LLP

- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Recent Publications:

- Class Certification Procedure, Ch. V, ABA Antitrust Class Actions Handbook (3d ed.), (forthcoming)
- Reverse Engineering Your Antitrust Case: Plan for Trial Even Before You File Your Case, Antitrust, Vol. 28, No. 2, Spring 2014
- *The Ownership/Control Exception to Illinois Brick in Hi-Tech Component Cases: A Rule That Recognizes the Realities of Corporate Price Fixing*, ABA International Cartel Workshop February 2014
- *Matthew Bender Practice Guide: California Unfair Competition and Business Torts*, LexisNexis, with Justice Conrad L. Rushing and Judge Elia Weinbach (Updated 2013)
- *The Questionable Use of Rule 11 Motions to Limit Discovery and Eliminate Allegations in Civil Antitrust Complaints in the United States*, ABA International Cartel Workshop February 2012

Professional Associations and Memberships:

- California State Bar Antitrust and Unfair Competition Section, Advisor and Past Chair
- ABA Global Private Litigation Committee, Co-Chair
- ABA International Cartel Workshop, Steering Committee
- American Association for Justice, Business Torts Section, Past Chair
- Business Torts Section of the American Trial Lawyers Association, Past Chair
- Hastings College of the Law, Board of Directors (2003-2015), Past Chair (2009-2011)

DANIEL L. WARSHAW

Daniel L. Warshaw is a civil litigator and trial lawyer who focuses on antitrust, complex litigation, class actions, and consumer protection. Mr. Warshaw has held leadership roles in numerous state, federal and multidistrict class actions, and obtained significant recoveries for class members in many cases. These cases have included, among other things, antitrust violations, high-technology products, automotive parts, entertainment royalties, intellectual property and false and misleading advertising. Mr. Warshaw has also represented employees in a variety of class actions, including wage and hour, misclassification and other Labor Code violations.

Mr. Warshaw played an integral role in several of the firm's groundbreaking cases. In the *In re TFT-LCD (Flat Panel) Antitrust Litigation*, he assisted in leading this multidistrict to trial and securing \$473 million in recoveries to the direct purchaser plaintiff class. After the firm was appointed as interim co-lead counsel in *In re Credit Default Swaps Antitrust Litigation*, Mr. Warshaw along with his partners and co-counsel successfully secured a \$1.86 billion settlement on behalf of the class.

Currently he serves in a lead or co-lead position in the following cases: *Vakilzadeh v. The Trustees of The California State University*, Los Angeles County Superior Court, Case No. 20STCV23134,

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a putative class action alleging the students were not refunded for tuition and fees when the California State University System closed its campuses and provided remote learning in lieu of in person education; *Grace v. Apple, Inc.*, 5:17-CV-00551-YGR (N.D. Cal.), a certified class action on behalf of consumers who allege that Apple intentionally broke its “FaceTime” video conferencing feature for iPhones with older operating systems that recently settled for \$18 million on behalf of a California class; *In re KIND LLC “Healthy and All Natural” Litigation*, MDL No. 2645, (S.D.N.Y.), a multistate certified class action on behalf of consumers who allege that they purchased KIND snack bars that were falsely advertised as “all natural,” and/or “non-GMO”; *Senne v. The Office of the Commissioner of Baseball*, 3:14-cv-00608-JCS (N.D. Cal.), a certified multistate class action alleging that Major League Baseball and its teams violate state and federal wage and hour laws relating to minor league players.

Mr. Warshaw’s cases have received significant attention in the press, and Mr. Warshaw has been profiled by the *Daily Journal* for his work in the digital download music cases. In 2022 Mr. Warshaw was named by the *Daily Journal* as one of the Top 100 Lawyers in California. In 2019 and 2020, Mr. Warshaw was named as one of the Daily Journal’s Top Plaintiff Lawyers. And in 2020 and 2022 he was also named one of the Daily Journal’s Top Antitrust Lawyers. Additionally, Mr. Warshaw has been selected by his peers as a Super Lawyer (representing the top 5% of practicing lawyers in Southern California) every year since 2005. He has also attained Martindale-Hubbell's highest rating (AV) for legal ability and ethical standards.

Mr. Warshaw has assisted in the preparation of two Rutter Group practice guides: *Federal Civil Trials & Evidence* and *Civil Claims and Defenses*. Mr. Warshaw is the founder and Chair of the Class Action Roundtable. The purpose of the Roundtable is to facilitate a high-level exchange of ideas and in-depth dialogue on class action litigation.

Current Cases:

- *Vakilzadeh v. The Trustees of The California State University*, (Cal. Super. Ct.)
- *Grace v. Apple, Inc.* (N.D. Cal.)
- *In re KIND LLC “Healthy and All Natural” Litigation* (S.D.N.Y.)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *In re. Santa Fe Natural Tobacco Company Marketing, Sales Practices, and Products Liability Litigation* (D. N.M.)
- *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.)

Education:

- Whittier Law School, Los Angeles, California – J.D. – 1996
- University of Southern California – B.S. – 1992

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California

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- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California
- U.S. District Court, District of Colorado
- U.S. District Court, Western District of Texas

Professional Associations and Memberships:

- American Bar Association
- Association of Business Trial Lawyers, Board Member
- Consumer Attorneys of California
- Los Angeles County Bar Association, Complex Court Committee, Member
- Plaintiffs' Class Action Roundtable, Chair

PARTNERS

MELISSA S. WEINER

Melissa S. Weiner is a partner and civil litigator whose work is squarely focused on combating consumer deception. Her experience is expansive, including class actions related to consumer protection, product defect, intellectual property, automotive, false advertising and the Fair Credit Reporting Act. Ms. Weiner has taken a leadership role in numerous large class actions and MDLs in cases across the country.

A contributor to her professional community, Ms. Weiner serves as Chair of the Development Committee for Public Justice and serves on the Minnesota Bar Association Food & Drug Law Council. Additionally, she teaches Food Law as an adjunct professor at Mitchell Hamline School of Law and sits on the Food Law Center Advisory Board for Mitchell Hamline School of Law. In recognition of her outstanding efforts in the legal community, each year since 2012, Ms. Weiner has been named a Super Lawyers *Rising Star* by Minnesota Law & Politics.

Ms. Weiner has been appointed to leadership positions in the following MDLs and consolidated cases:

- *In Re: Luxottica of America, Inc. Data Security Breach Litigation* (S.D. Ohio) (Appointed Interim Executive Committee Member);
- *Culbertson v. Deloitte Consulting LLP* (S.D.N.Y.) (Appointed to Plaintiffs' Executive Committee), a nationwide data breach class action
- *In Re: Fairlife Milk Products Marketing and Sales Practices Litigation* (N.D. Ill.) (Appointed Interim Co-Lead Counsel);
- *In Re Santa Fe Natural Tobacco Company Marketing & Sales Practices and Products Liability Litigation* (D.N.M.) (chair of the Plaintiffs' Steering Committee and member of the Plaintiffs' Oversight Committee);
- *In Re Samsung Top-Load Washing Machine Marketing, Sales Practices & Product Liability Litigation* (W.D. Okla.), (appointed to Plaintiffs' Executive Committee), a

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nationwide class action regarding a design defect in 2.8 million top loading washing machines, which resulted in a nationwide settlement;

- *In Re Windsor Wood Clad Window Product Liability Litigation* (E.D. Wis.), a nationwide class action regarding allegedly defective windows, which resulted in a nationwide settlement.
- *In Re: Blackbaud, Inc. Customer Data Security Breach Litigation* (D.S.C.), nationwide data breach class action, (appointed to Plaintiffs' Steering Committee).
- *Dusko v. Delta Airlines, Inc.* (N.D. Ga.), a nationwide breach of contract class action (appointed as Co-Lead Class Counsel).
- *In re Apple Inc. App Store Simulated Casino Style Games Litigation* (N.D. Cal.), a multi-state statutory class action (appointed to Plaintiffs' Steering Committee).

Current Cases:

- *Anurag Gupta v. Aeries Software, Inc.* (C.D. CA) (data breach)
- *Ashour v. Arizona Beverages USA LLC et al.* (S.D. NY) (false advertising/mislabeling)
- *Benson et al v. Newell Brands Inc., et al.* (N.D. IL) (false advertising/mislabeling)
- *Connor Burns v. Mammoth Media, Inc.* (C.D. CA) (data breach)
- *Daniels v. Delta Air Lines, Inc.* (N.D. Ga.). (COVID-19 pandemic relief)
- *In re Fairlife Milk Products Marketing and Sales Practices Litigation* (N.D. IL) (false advertising)
- *In Re Pork Antitrust Litigation* (D. Minn.)
- *In Re Samsung Top-Load Washing Machine Marketing, Sales Practices, and Products Liability Litigation* (W.D. Okla.)
- *In Re Santa Fe Natural Tobacco Company Marketing, Sales Practices, and Products Liability Litigation* (D. N.M.) (false advertising/mislabeling)
- *Dusko v. Delta Airlines, Inc.*, (N.D. Ga.) (breach of contract)
- *Bombin v. Southwest Airlines Co.*, (E.D. Pa.) (breach of contract)
- *Freeman v. MAM USA Corp.* (N.D. Ill.) (false advertising/mislabeling)
- *In re: Apple Inc. App Store Simulated Casino-Style Games Litig.; In re: Facebook, Inc. App Center Simulated Casino-Style Games Litig.; and In re: Google Play Store Simulated Casino-Style Games Litig.* (N.D. Cal).

Education:

- William Mitchell College of Law - J.D. – 2007
- University of Michigan – Ann Arbor - B.A. – 2004

Bar Admissions:

- New York
- Minnesota
- Ninth Circuit Court of Appeals
- U.S. District Court, District of Minnesota
- U.S. District Court, Colorado
- U.S. District Court, Northern District of Illinois

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- U.S. District Court, Southern District of New York
- U.S. District Court, Eastern District of New York

Professional Associations and Memberships:

- Minnesota State Bar Association
- Federal Bar Association
- Public Justice

BOBBY POUYA

Bobby Pouya is a partner in the firm's Los Angeles office, focusing on complex litigation, class actions, and consumer protection. Mr. Pouya has been an attorney with Pearson, Simon & Warshaw, LLP since 2007, and has extensive experience in representing clients in a variety of contexts. He has served as a primary member of the litigation team in multiple cases that resulted in class certification or a class-wide settlement, including cases that involved high-technology products, price fixing, consumer safety and false and misleading advertising. The cases that Mr. Pouya has worked on have resulted in hundreds of millions of dollars in judgments and settlements on behalf of effected plaintiffs and class members.

Mr. Pouya has served as one of the attorneys representing direct purchaser plaintiffs in several complex antitrust cases, including *In re Polyurethane Foam Antitrust Litigation* (N.D. Ohio) and *In re Fresh and Processed Potatoes Antitrust Litigation* (D. Idaho). Mr. Pouya is currently actively involved in the prosecution of *In re Broiler Chicken Antitrust Litigation* (N.D. Ill), *In re Pork Antitrust Litigation* (D. Minn.), *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.), as well as several prominent consumer class action lawsuits.

Mr. Pouya's success has earned him recognition by his peers as a Super Lawyers Rising Star (representing the top 2.5% of lawyers in Southern California age 40 or younger or in practice for 10 years or less) every year since 2008. Mr. Pouya earned his Juris Doctorate from Pepperdine University School of Law in 2006, where he received a certificate in dispute resolution from the prestigious Straus Institute for Dispute Resolution and participated on the interschool trial and mediation advocacy teams, the Dispute Resolution Law Journal and the Moot Court Board.

Current Cases:

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *In re Cattle Antitrust Litigation* (D. Minn.)
- *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.)

Education:

- Pepperdine University School of Law, Malibu, California – J.D. – 2006
- University of California, Santa Barbara, California – B.A., with honors – 2003

PEARSON, SIMON & WARSHAW, LLP

Publications:

- *Should Offers Moot Claims?*, Daily Journal, Oct. 10, 2014
- *Central District Local Rules Hinder Class Certification*, Daily Journal, April 9, 2013

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- American Bar Association
- Consumer Attorneys Association of Los Angeles
- Consumer Attorneys of California
- Los Angeles County Bar Association

Professional Associations and Memberships:

- California State Bar Antitrust and Unfair Competition Section, Advisor and Past Chair
- ABA Global Private Litigation Committee, Co-Chair
- ABA International Cartel Workshop, Steering Committee
- American Association for Justice, Business Torts Section, Past Chair
- Business Torts Section of the American Trial Lawyers Association, Past Chair
- Hastings College of the Law, Board of Directors (2003-2015), Past Chair (2009-2011)

MICHAEL H. PEARSON

Michael H. Pearson is a Partner and civil litigator in the firm's Los Angeles office, focusing on complex litigation, class actions, and consumer protection. Mr. Pearson has extensive experience in representing clients in a variety of contexts. He has served as a member of the litigation team in multiple cases that resulted in class certification or a class-wide settlement, including cases that involved antitrust, business litigation, complex financial products, high-technology products, consumer safety, and false and misleading advertising. Specifically, he was instrumental in managing the review of tens of millions of documents and drafting pleadings in *In Re Credit Default Swaps Antitrust Litigation*, which was settled for \$1.86 billion, plus injunctive relief.

Mr. Pearson received his Bachelor of Science degree from Tulane University in 2008, majoring in Finance with an Energy Specialization. He received his Juris Doctorate from Loyola Law School Los Angeles in 2011. Mr. Pearson is an active member in a number of legal organizations, including the American, Los Angeles County and San Fernando Valley Bar Associations, Consumer Attorneys of California, the Consumer Attorneys Association of Los Angeles and the Association of Business Trial Lawyers.

PEARSON, SIMON & WARSHAW, LLP

Mr. Pearson's success has earned him recognition by his peers as a Super Lawyers Rising Star (representing the top 2.5% of lawyers in Southern California age 40 or younger or in practice for 10 years or less) in 2017, 2018, 2019, 2020, 2021, and 2022.

Current Cases:

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill.)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.)

Education:

- Loyola Law School Los Angeles, Los Angeles, California – J.D. – 2011
- Tulane University, New Orleans, Louisiana – B.S., *magna cum laude* – 2008

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- American Bar Association
- Association of Business Trial Lawyers
- Consumer Attorneys Association of Los Angeles
- Consumer Attorneys of California
- Los Angeles County Bar Association
- San Fernando Valley Bar Association

BENJAMIN E. SHIFTAN

Benjamin E. Shiftan is a Partner in the firm's San Francisco office. Since joining the firm in 2014, Mr. Shiftan has focused on complex class action litigation, including antitrust, insurance, wage and hour, product defect, and consumer protection cases. In 2019, Mr. Shiftan received an award from the American Antitrust Institute for "Outstanding Antitrust Litigation Achievement in Private Law Practice" in connection with his and PSW's work on the groundbreaking *In re: NCAA Athletic Grant-in-Aid Cap Antitrust Litigation* (N.D. Cal. Case No. 14-md-2541-CW). The damages portion of the case settled for \$208 million dollars, while the injunctive relief phase of the case ended with a 9-0 victory in front of the Supreme Court of the United States.

Prior to joining the firm, Mr. Shiftan litigated complex bad faith insurance cases for a national law firm. Before that, Mr. Shiftan served as a law clerk to the Honorable Peter G. Sheridan, United States District Court for the District of New Jersey, and worked for a mid-sized firm in San Diego.

PEARSON, SIMON & WARSHAW, LLP

Mr. Shiftan graduated from the University of San Diego School of Law in 2009. While in law school, he served as Lead Articles Editor of the San Diego International Law Journal and competed as a National Team Member on the Moot Court Board. Mr. Shiftan won the school's Paul A. McLennon, Sr. Honors Moot Court Competition. At graduation, he was one of ten students inducted into the Order of the Barristers. Mr. Shiftan graduated from the University of Virginia in 2006.

Current Cases:

- *In re Pork Antitrust Litigation* (D. Minn.)
- *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.)
- *North American Soccer League, LLC v. United States Soccer Federation, Inc., and Major League Soccer, L.L.C.* (E.D.N.Y.)

Education:

- University of San Diego School of Law, San Diego, CA – J.D. – 2009
- University of Virginia, Charlottesville, VA – B.A. – 2006

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- San Francisco County Bar Association
- American Bar Association

JILL M. MANNING

Jill M. Manning is a Partner in the firm's San Francisco Office. Ms. Manning has over twenty years of experience representing businesses and consumers in complex and class action litigation, with a focus on antitrust, unfair competition and consumer protection cases. She has successfully represented plaintiffs in some of the leading cases brought under federal and state antitrust and consumer protection. She has sued price-fixing cartels, high tech companies, electronics manufacturers, agribusinesses, healthcare companies and the NCAA, and achieved recoveries exceeding \$1.5 billion.

In the antitrust area, Ms. Manning is Co-Counsel for direct purchaser plaintiffs in an antitrust case against the leading suppliers of broiler chickens sold in the United States. *In re: Broiler Chicken Antitrust Litig.* (N.D. Ill). She represented direct purchasers in an antitrust class action involving a conspiracy to raise the price of potatoes and secured an \$18.5 million settlement and injunctive relief valued at over \$1 billion. *In re: Fresh and Process Potatoes Antitrust Litig.* (D. Idaho). She

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played an integral role in prosecuting one of the nation's largest indirect purchaser antitrust class actions and was recognized by Special Master Martin Quinn as "one of the leaders in structuring and managing the overall document retrieval effort." *In re TFT-LCD (Flat Panel) Antitrust Litig.* (N.D. Cal) (\$1.082 billion all-cash settlement).

In the consumer protection field, Ms. Manning was appointed by Judge Koh as Co-Lead Counsel for the certified class in *Grace v. Apple Inc.* (N.D. Cal.), a case alleging that Apple caused the popular FaceTime feature to stop working on certain iPhone devices. Ms. Manning was appointed by Judge Lee on Plaintiffs' Steering Committee in cases against the NCAA on behalf of Division I football players who suffered concussion-related personal injuries. *In re: NCAA Student/Athlete Concussion Injury Litig.* (N.D. Ill.). She was appointed by Judge Davila to Plaintiffs' Steering Committee in cases challenging the conduct of Apple, Google, and Facebook in supporting and profiting from illegal social casinos on their platforms. *In re: Apple Inc. App Store Simulated Casino-Style Games Litig.; In re Facebook Inc. App Center Simulated Casino-Style Games Litig.; In re Google Play Store Simulated Casino-Style Games Litig.* (N.D. Cal).

Ms. Manning represented Eduardo Saverin in *Facebook v. Saverin* (Santa Clara Sup. Ct.), one of the cases featured in the Academy Award-winning movie, *The Social Network*, and achieved a confidential settlement.

In addition to her legal practice, Ms. Manning has demonstrated leadership in her professional life and community. She served as Chair of the Executive Committee of the Antitrust and Unfair Competition Law Section of the California Bar Association during the 2017-2018 term and presently serves as an Advisor. During her tenure, she implemented numerous live and on-line educational opportunities for section members and created "Celebrating Women in Competition Law in California," an annual panel presentation and networking event now in its fifth year. She is a court-appointed neutral for the Northern District of California's Early Neutral Evaluation Program and a trained private mediator. She is an elected official, serving on the Board of Trustees of Shoreline Unified School District since 2010, and as President of the Board since 2016.

Current Cases:

- *Grace v. Apple Inc.* (N.D. Cal.)
- *In re: Apple Inc. App Store Simulated Casino-Style Games Litig.; In re: Facebook, Inc. App Center Simulated Casino-Style Games Litig.; and In re: Google Play Store Simulated Casino-Style Games Litig.* (N.D. Cal).
- *In re: Broiler Chicken Antitrust Litig.* (N.D. Ill)
- *In re: NCAA Student/Athlete Concussion Injury Litig.* (N.D. Ill)
- *In re: Pork Antitrust Litig.* (D. Minn)
- *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (N.D. Cal.)

Education:

- Cambridge University, Pembroke College (summer 1990)
- B.A., University of California at Davis (1991)
- J.D., University of San Francisco School of Law (1995)

PEARSON, SIMON & WARSHAW, LLP

Bar Admissions:

- United States Supreme Court
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Northern District of California
- United States District Court for the Central District of California
- United States District Court for the Southern District of California
- State of California

Professional Associations and Memberships:

- American Bar Association, Antitrust Section\
- Bar Association of San Francisco, Antitrust Section
- California Lawyers Association, Antitrust and Unfair Competition Law Section
- Marin County Bar Association

Recent Events / Speaking Engagements:

- Panelist, Teatime with Angeion: Work-Life Balance in the COVID Era, March 4, 2021
- Creator and Co-Chair, Fourth Annual “Celebrating Women in Competition Law in California,” moderated by the Honorable Yvonne Gonzalez Rogers, March 5, 2020
- Moderator, “Big Stakes Antitrust Trial: *In re Korean Ramen Antitrust Litigation*,” 29th Annual Golden State Antitrust Law Institute, Panel Presentation, November 14, 2019
- Moderator, “Managing Antitrust and Complex Business Trials,” featuring the Honorable William Alsup, Laurel Beeler, and Edward Chen, 28th Annual Golden State Antitrust, UCL and Privacy Law Institute, Panel Presentation, November 8, 2018

PEARSON, SIMON & WARSHAW, LLP

OF COUNSEL

NEIL SWARTZBERG

Neil Swartzberg, Of Counsel to Pearson, Simon & Warshaw, LLP, has significant litigation and counseling experience, with a track record of providing advice and representation to individuals and companies. He has expertise in complex and commercial litigation, focusing on consumer protection, antitrust and securities laws, primarily in the class action context. Practicing in both federal and state courts, he has litigated price-fixing class actions, securities fraud suits and other consumer protection cases, as well as patent infringement, trade secret misappropriation and related intellectual property matters.

Mr. Swartzberg was a leading attorney in the direct purchaser plaintiff class action *In re Static Random Access Memory (SRAM) Antitrust Litigation* (N.D. Cal.). He was also actively involved in several other antitrust class actions, such as *In re International Air Transportation Surcharge Antitrust Litigation* (N.D. Cal.), *Air Cargo Shipping Services Antitrust Litigation* (E.D.N.Y.), *In re Cathode Ray Tube (CRT) Antitrust Litigation* (N.D. Cal.), and *In re Optical Disk Drive (ODD) Antitrust Litigation* (N.D. Cal.). In addition, he has represented patent owners and companies in infringement cases for patents covering video game controllers, Internet search functionality, secure mobile banking transactions and telecommunications switches.

His current cases include: direct purchaser antitrust class actions against the leading domestic producers of poultry (broiler chickens) and pork; several class actions on behalf students against colleges and universities seeking partial refunds of tuition and fees because of the schools closing their campuses and transitioning to online-only classes in the wake of COVID-19; an antitrust suit challenging the conduct of Major League Soccer and the United States Soccer Federation to exclude competition in men's professional soccer; and, two consumer class actions against airlines who failed to provide proper refunds when they canceled passengers' flights following COVID-19.

Current Cases:

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill.)
- *In re Pork Antitrust Litigation* (D. Minn.)
- *Vakilzadeh v. The Trustees of California State University* (Cal. Sup. Ct., Los Angeles)
- *North American Soccer League, LLC v. United States Soccer Federation, Inc.* (E.D.N.Y.)
- *Bombin v. Southwest Airlines Co.* (E.D. Pa.)
- *Dusko v. Delta Air Lines, Inc.* (N.D. Ga.)

Education:

- University of California, Davis, School of Law— J.D. – 2001
- State University of New York, Buffalo – M.A. – 1994
- Duke University – A.B. – 1991

PEARSON, SIMON & WARSHAW, LLP

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- Federal Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Eastern District of Missouri
- U.S. District Court, Western District of Pennsylvania

Publications and Presentations:

- *The Hard Cell, Mobile banking and the Federal Circuit's "divided infringement" decisions*, Feb. 2013, Intellectual Property magazine, with Robert D. Becker.

Professional Associations and Memberships:

- American Bar Association

Languages:

- German (proficient)

PEARSON, SIMON & WARSHAW, LLP

ASSOCIATES

NAVEED ABAIE

Naveed Abaie is an associate in the firm's Los Angeles office focusing on consumer protection, antitrust, and business litigation.

He graduated from the University of San Diego, School of Law in 2017. While at the University of San Diego, Mr. Abaie earned his J.D. with a concentration in Business and Corporate Law. Mr. Abaie received his Bachelor's degree from the University of California, Berkeley Haas School of Business in 2012.

Current Cases:

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill)
- *In re Pork Antitrust Litigation* (D. Minn.)

Education:

- University of San Diego, California – J.D. – 2017
- University of California, Berkeley, California – B.A.– 2012

Bar Admissions:

- California

Professional Associations and Memberships:

- Iranian American Bar Association

MATTHEW A. PEARSON

Matthew A. Pearson is an associate in the firm's Los Angeles office focusing on antitrust, consumer protection, copyright, and business litigation. Mr. Pearson has represented clients in a variety of different matters and works closely with clients, co-counsel, and opposing counsel on all aspects of litigation.

In 2019, Mr. Pearson received the award for Outstanding Antitrust Litigation Achievement in Private Law Practice by the American Antitrust Institute for his work in the *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation* (N.D. Cal.) trial, which took place in September of 2018 and resulted in a verdict in Plaintiffs' favor. Additionally, in 2019, Mr. Pearson was selected by his peers as a Super Lawyer (representing the top 5% of practicing lawyers in Southern California).

PEARSON, SIMON & WARSHAW, LLP

Mr. Pearson received his Bachelor of Science degree from the University of Arizona in 2010, majoring in Business Management. He received his Juris Doctorate from Whittier Law School in 2013. Mr. Pearson is an active member in a number of legal organizations, including the American Bar Association, American Association for Justice, Association of Business Trial Lawyers, Consumer Attorneys Association of Los Angeles, Consumer Attorneys of California, and the Los Angeles County Bar Association.

Current Cases:

- *In re Pork Antitrust Litigation* (D. Minn.)
- *Greg Kihn, et al. v. Bill Graham Archives, LLC, et al.* (N.D. Cal.)
- *In re KIND LLC “Healthy and All Natural” Litigation* (S.D.N.Y.)
- *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation* (N.D. Cal.)
- *North American Soccer League, LLC v. United States Soccer Federation, Inc., and Major League Soccer, L.L.C.* (E.D.N.Y.)
- *In Re Cattle Antitrust Litigation* (D. Minn.)

Education:

- Whittier Law School, California – J.D. – 2013
- University of Arizona: Eller College of Management – B.S.– 2010

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- American Bar Association
- American Association for Justice
- Association of Business Trial Lawyers
- Consumer Attorneys Association of Los Angeles
- Consumer Attorneys of California
- Los Angeles County Bar Association

PEARSON, SIMON & WARSHAW, LLP

BRIAN S. PAFUNDI

Brian S. Pafundi is an associate in the firm's Minneapolis office focusing on antitrust and consumer class actions.

Mr. Pafundi graduated from University of Florida Levin College of Law in 2010. After law school he worked as an Assistant Public Defender for the State of Minnesota where he handled a full and diverse caseload including felony trials.

Mr. Pafundi received his B.A. in Political Science in 2005 and a Master of Arts degree in Mass Communications in 2009, both from the University of Florida.

Current Case:

- *In re Pork Antitrust Litigation* (D. Minn.)

Education:

- University of Florida Levin College of Law – J.D. – 2010
- University of Florida College of Journalism and Communications – M.A. – 2009
- University of Florida College of Liberal Arts and Science – B.A. – 2005

Bar Admission:

- Minnesota

KYLE R. COSTELLO

Kyle R. Costello is an associate in the firm's Minneapolis office focusing on class actions, consumer protection, and complex litigation.

Mr. Costello, born and raised in New Jersey and graduated from Rutgers Law in 2010. He then began a career in contracts management for large corporations. In 2018, Kyle moved to Minnesota to transition into litigation. There he clerked for The Honorable Assistant Chief Judge Sarah Hennesy of the Seventh Judicial District of Minnesota. Subsequently he advocated for indigent clients as a Public Defender in Olmsted County, Minnesota. Kyle brings a wealth of corporate knowledge and trial experience to Pearson, Simon & Warshaw, LLP.

Current Case:

- *In re Pork Antitrust Litigation* (D. Minn.)

Education:

- Rutgers School of Law, New Jersey – 2010
- Manhattan College – 2007

Bar Admission:

- Minnesota

PEARSON, SIMON & WARSHAW, LLP

ADRIAN J. BUONANOCE

Adrian J. Buonanoce is an associate in the firm's Los Angeles office, focusing on antitrust litigation.

Mr. Buonanoce received a Bachelor's degree in Political Economy from the University of California, Berkeley in 2012. He earned his Juris Doctorate from the University of San Diego School of Law with a concentration in International Law in 2018.

Current Case:

- *In re Pork Antitrust Litigation* (D. Minn.)

Education:

- University of San Diego, California – J.D. – 2018
- University of California, Berkeley, California – B.A.– 2012

Bar Admissions:

- California

ERIC J. MONT

Eric J. Mont is an associate in the firm's Los Angeles office focusing on antitrust, consumer protection, and business litigation. Mr. Mont has represented clients in a variety of different matters and works closely with clients, co-counsel, and opposing counsel on all aspects of litigation.

Mr. Mont received his Bachelor of Science degree from Loyola Marymount University in 2012, majoring in Natural Science. He received his Juris Doctorate from UCLA in 2017.

Current Cases:

- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill)
- *In re Pork Antitrust Litigation* (D. Minn.)

Education:

- University of California, Los Angeles, Los Angeles, CA– J.D. – 2017
- Loyola Marymount University, Los Angeles, CA– B.S.– 2012

Bar Admissions:

- California

Professional Associations and Memberships:

- American Bar Association

PEARSON, SIMON & WARSHAW, LLP

JACOB T. SCHUTZ

Jacob T. Schutz is an associate in the firm's Minneapolis office, focusing on consumer protection litigation.

Previously, Mr. Schutz litigated class-action cases against retirement fiduciaries, corporations, and employers at a national class action firm, recovering tens of millions of dollars for 401(k) plan participants.

Mr. Schutz received a Bachelor's degree in International Relations from the University of Pennsylvania in 2010. He earned his Juris Doctorate from the University of Minnesota in 2013.

Current cases:

- *In re: Blackbaud Inc., Customer Data Security Breach Litigation* (D.S.C.)
- *Ashour v. Arizona Beverages USA LLC* (S.D.N.Y.)
- *Benson v. NUK USA, LLC* (N.D. Ill.)
- *Davis v. Walmart, Inc.* (N.D. Cal.)
- *Freeman v. MAM USA Corporation* (N.D. Ill.)

Education:

- University of Minnesota Law School, Minneapolis, MN – J.D. – 2013
- University of Pennsylvania, Philadelphia, PA – B.A. – 2010

Bar Admissions:

- Minnesota

Professional Associations and Memberships:

- Minnesota State Bar Association
- Hennepin County Bar Association
- Hennepin County Bar Foundation Fellow
- National Employment Lawyers Association

EXHIBIT 2

SENNE v. OFFICE OF THE COMMISSIONER
TIME REPORT

FIRM NAME: PEARSON, SIMON & WARSHAW, LLP
REPORTING PERIOD: INCEPTION THRU 10/31/2022

Status:

(P) Partner

(OC) Of Counsel

(A) Associate

(PL) Paralegal

NAME	STATUS	HOURLY RATE	CUMULATIVE HOURS	CUMULATIVE LODESTAR
Naveed Abaie	A	\$ 500.00	11.6	\$ 5,800.00
Thomas K. Boardman	A	\$ 750.00	34.3	\$ 25,725.00
Meredith C. Doyle	A	\$ 350.00	217.5	\$ 76,125.00
Veronica W. Glaze	A	\$ 700.00	9.9	\$ 6,930.00
Jill M. Manning	P	\$ 1,000.00	192.5	\$ 192,500.00
Harrison C. Margolin	A	\$ 350.00	167.3	\$ 58,555.00
Eric J. Mont	A	\$ 350.00	10.0	\$ 3,500.00
Ryan E. Mowry	A	\$ 350.00	223.4	\$ 78,190.00
William J. Newsom	A	\$ 700.00	0.4	\$ 280.00
Thomas J. Nolan	OC	\$ 1,190.00	419.2	\$ 498,848.00
Clifford H. Pearson	P	\$ 1,250.00	442.0	\$ 552,500.00
Matthew A. Pearson	A	\$ 700.00	4.5	\$ 3,150.00
Michael H. Pearson*	A	\$ 625.00	1,136.2	\$ 710,125.00
Michael H. Pearson*	P	\$ 800.00	7.6	\$ 6,080.00
Bobby Pouya*	A	\$ 800.00	3,356.6	\$ 2,685,280.00
Bobby Pouya*	P	\$ 990.00	1,342.8	\$ 1,329,372.00
Leslie A. Razo	A	\$ 350.00	10.2	\$ 3,570.00
Robert G. Retana	A	\$ 825.00	1.2	\$ 990.00
Alexander R. Safyan	A	\$ 700.00	164.4	\$ 115,080.00
Sophie R. Sedaghat	A	\$ 350.00	97.6	\$ 34,160.00
Aaron M. Sheanin	OC	\$ 900.00	6.2	\$ 5,580.00
Benjamin E. Shiftan*	A	\$ 900.00	738.8	\$ 664,920.00
Benjamin E. Shiftan*	P	\$ 940.00	587.5	\$ 552,250.00
Bruce L. Simon	P	\$ 1,250.00	933.5	\$ 1,166,875.00
Alexander L. Simon	A	\$ 725.00	942.5	\$ 683,312.50
Richard C. Stockton	A	\$ 675.00	118.2	\$ 79,785.00
Jessop M. Stroman	A	\$ 350.00	160.2	\$ 56,070.00
Daniel L. Warshaw	P	\$ 1,250.00	1,763.2	\$ 2,204,000.00
Alex P. Winding	A	\$ 350.00	259.3	\$ 90,755.00

ATTORNEY TOTAL

13,358.6 \$ 11,890,307.50

*These attorneys were elevated to partner during the pendency of the litigation and therefore have two different hourly rates.

NAME	STATUS	HOURLY RATE	CUMULATIVE HOURS	CUMULATIVE LODESTAR
Ellowene Grant	PL	\$ 225.00	278.5	\$ 62,662.50
Amanda Lunzer	PL	\$ 225.00	177.1	\$ 39,847.50
Gregory Sonstein	LC	\$ 225.00	7.2	\$ 1,620.00
NON-ATTORNEY TOTAL			462.8	\$ 104,130.00
TOTAL			13,821.4	\$ 11,994,437.50

EXHIBIT 3

SENNE v. OFFICE OF THE COMMISSIONER
COST REPORT

FIRM NAME: PEARSON, SIMON & WARSHAW, LLP

CATEGORY	AMOUNT
Record Duplication	\$4,128.19
Conference Calls	\$1,065.17
Research	\$14,494.60
Postage/Shipping	\$5,564.62
Travel/Meals	\$65,298.29
Court Fees	\$529.00
Subpoena fees	\$187.48
Witness fees	\$1,030.49
Deposition/Transcripts	\$17,690.61
Expert and Consulting Services*	\$542,173.84
Assesments Paid to Korein Tillery	\$1,091,928.12
TOTAL	\$1,744,090.41

*Includes an unpaid \$203,740.26 invoice from Empirical Creative.

STEPHEN M. TILLERY (*pro hac vice*)
stillery@koreintillery.com

GARRETT R. BROSHUIS (Bar No. 329924)
gbroshuis@koreintillery.com

MARC A. WALLENSTEIN (*pro hac vice*)
mwallenstein@koreintillery.com

DIANE MOORE (Bar No. 214903)
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505 North 7th Street, Suite 3600
St. Louis, MO 63101
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CLIFFORD H. PEARSON (Bar No. 108523)
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DANIEL L. WARSHAW (Bar No. 185365)
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BOBBY POUYA (Bar No. 245527)
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PEARSON, SIMON & WARSHAW, LLP
555 Montgomery Street, Suite 1205
San Francisco, CA 94111
Telephone: (415) 433-9000
Facsimile: (415) 433-9008

Plaintiffs' Co-Lead Class Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON SENNE, et al., Individually and on
Behalf of All Those Similarly Situated,

Plaintiffs,

vs.

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as MAJOR LEAGUE
BASEBALL, et al.,

Defendants.

CASE NO. 3:14-cv-00608-JCS (consolidated with
3:14-cv-03289-JCS)

CLASS ACTION

DECLARATION OF BRIAN T. FITZPATRICK

Hearing Date and Time: Feb. 17, 2023 9:30 a.m.
Courtroom: F, 15th Floor
Judge: Honorable Joseph C. Spero

1 I, Brian T. Fitzpatrick, hereby declare as follows:

2 I. Background and qualifications

3 1. I am the Milton R. Underwood Chair in Free Enterprise and Professor of Law at
 4 Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after
 5 serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I
 6 graduated from the University of Notre Dame in 1997 and Harvard Law School in 2000. After law
 7 school, I served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States Court of
 8 Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme
 9 Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is
 10 attached as Exhibit 1. I speak only for myself and not for Vanderbilt.

11 2. My teaching and research at Vanderbilt have focused on class action litigation. I teach
 12 the Civil Procedure, Federal Courts, and Complex Litigation courses. In addition, I have published a
 13 number of articles on class action litigation in such journals as the University of Pennsylvania Law
 14 Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the Fordham Law
 15 Review, the NYU Journal of Law & Business, and the University of Arizona Law Review. My work
 16 has been cited by numerous courts, scholars, and media outlets such as the New York Times, USA
 17 Today, and Wall Street Journal. I have also been invited to speak at symposia and other events about
 18 class action litigation, such as the ABA National Institutes on Class Actions in 2011, 2015, 2016, 2017,
 19 and 2019; and the ABA Annual Meeting in 2012. Since 2010, I have also served on the Executive
 20 Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies.
 21 In 2015, I was elected to the membership of the American Law Institute. Last year, I became the co-
 22 editor of THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (with
 23 Randall Thomas).

24 3. In December 2010, I published an article in the Journal of Empirical Legal Studies
 25 entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811
 26 (2010) (hereinafter "Empirical Study"). This article is still what I believe to be the most
 27 comprehensive examination of federal class action settlements and attorneys' fees that has ever been
 28 published. Unlike other studies of class actions, which have been confined to one subject matter or

1 have been based on samples of cases that were not intended to be representative of the whole (such
 2 as settlements approved in published opinions), my study attempted to examine *every* class action
 3 settlement approved by a federal court over a two-year period (2006-2007). *See id.* at 812-13. As such,
 4 not only is my study an unbiased sample of settlements, but the number of settlements included in my
 5 study is also several times the number of settlements per year that has been identified in any other
 6 empirical study of class action settlements: over this two-year period, I found 688 settlements,
 7 including 169 from the Ninth Circuit alone. *See id.* at 817. I presented the findings of my study at the
 8 Conference on Empirical Legal Studies at the University of Southern California School of Law in
 9 2009, the Meeting of the Midwestern Law and Economics Association at the University of Notre
 10 Dame in 2009, and before the faculties of many law schools in 2009 and 2010. Since then, this study
 11 has been relied upon regularly by a number of courts, scholars, and testifying experts.¹ This study is
 12 attached as Exhibit 2.

14 ¹ *See, e.g., In re Stericycle Sec. Litig.*, 35 F.4th 555, 561 (7th Cir. 2022) (relying on article to assess fees);
 15 *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (same); *In re Ranbaxy Generic Drug*
 16 *Application Antitrust Litig.*, 2022 WL 4329646, at *5 (D. Mass., Sep. 19, 2022) (same); *de la Cruz v.*
 17 *Manhattan Parking Group*, 2022 WL 3155399, at *4 (S.D.N.Y., Aug. 8, 2022) (same); *Kukorinis v.*
 18 *Walmart*, 2021 WL 8892812, at *4 (S.D.Fla., Sep. 21, 2021) (same); *Kuhn v. Mayo Clinic Jacksonville*, No.
 19 3:19-cv-453-MMH-MCR, 2021 WL 1207878, at *12-13 (M.D. Fla. Mar. 30, 2021) (same); *In re*
 20 *LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MD 2262 (NRB), 2020 WL 6891417, at *3
 21 (S.D.N.Y. Nov. 24, 2020) (same); *Shah v. Zimmer Biomet Holdings, Inc.*, No. 3:16-cv-815-PPS-MGG,
 22 2020 WL 5627171, at *10 (N.D. Ind. Sept. 18, 2020) (same); *In re GSE Bonds Antitrust Litig.*, No. 19-
 23 cv-1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020) (same); *In re Wells Fargo & Co.*
 24 *S'holder Derivative Litig.*, No. 16-cv-05541-JST, 2020 WL 1786159, at *11 (N.D. Cal. Apr. 7, 2020)
 25 (same); *Arkansas Teacher Ret. Sys. v. State St. Bank & Trust Co.*, No. CV 11-10230-MLW, 2020 WL
 26 949885, 2020 WL 949885, at *52 (D. Mass. Feb. 27, 2020), *appeal dismissed sub nom. Arkansas Tchr. Ret.*
 27 *Sys. v. State St. Corp.*, No. 20-1365, 2020 WL 5793216 (1st Cir. Sept. 3, 2020) (same); *In re Equifax Inc.*
 28 *Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *34 (N.D. Ga. Jan. 13,
 2020) (same); *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. 3:07-cv-05634-CRB, 2019 WL
 6327363, at *4-5 (N.D. Cal. Nov. 26, 2019) (same); *Espinal v. Victor's Cafe 52nd St., Inc.*, No. 16-CV-
 8057 (VEC), 2019 WL 5425475, at *2 (S.D.N.Y. Oct. 23, 2019) (same); *James v. China Grill Mgmt., Inc.*,
 No. 18 Civ. 455 (LGS), 2019 WL 1915298, at *2 (S.D.N.Y. Apr. 30, 2019) (same); *Grice v. Pepsi*
Beverages Co., 363 F. Supp. 3d 401, 407 (S.D.N.Y. 2019) (same); *Alaska Elec. Pension Fund v. Bank of Am.*
Corp., No. 14-CV-7126 (JMF), 2018 WL 6250657, at *2 (S.D.N.Y. Nov. 29, 2018) (same); *Rodman v.*
Safeway Inc., No. 11-cv-03003-JST, 2018 WL 4030558, at *5 (N.D. Cal. Aug. 23, 2018) (same); *Little v.*
Washington Metro. Area Transit Auth., 313 F. Supp. 3d 27, 38 (D.D.C. 2018) (same); *Hillson v. Kelly Servs.*
Inc., No. 2:15-cv-10803, 2017 WL 3446596, at *4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W.*
Virginia-Am. Water Co., No. 14-1374, 2017 WL 2884535, at *23, *27 (S.D.W. Va. July 6, 2017) (same);
McGreevy v. Life Alert Emergency Response, Inc., 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v.*

4. In addition to my empirical works, I have also published many law-and-economics papers on the incentives of attorneys and others in class action litigation. *See, e.g.*, Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 Fordham L. Rev. 1151 (2021) (hereinafter "A Fiduciary Judge"); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043 (2010) (hereinafter "Class Action Lawyers"); Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623 (2009). Much of this work was discussed in a book I published with the University of Chicago Press entitled *THE CONSERVATIVE CASE FOR CLASS ACTIONS* (2019). The thesis of the book is that the so-called "private attorney general" is superior to the public attorney general in the enforcement of the rules that free markets need in order to operate effectively and that courts should provide proper incentives to encourage such private attorney general behavior. This work, too, has been relied upon by courts and scholars.²

Rita's Water Ice Franchise Co. LLC, No. 15–3509, 2017 WL 1021025, at *9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, No. 13MD2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (same); *Gebrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1246 (D.N.M. 2016); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, No. 3:07-cv-5944 JST, 2016 WL 721680, at *42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, No. MDL 2328, 2015 WL 4528880, at *19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11–cv–4462, 2015 WL 2147679, at *2-4 (N.D. Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11–cv–4462, 2015 WL 1399367, at *3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 797 (N.D. Ill. 2015) (same); *In re Neurontin Marketing and Sales Practices Litig.*, 58 F.Supp.3d 167, 172 (D. Mass. 2014) (same); *Tennille v. W. Union Co.*, No. 09–cv–00938–JLK–KMT, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Fed. Nat'l Mortg. Association Sec., Derivative, and "ERISA" Litig.*, 4 F. Supp. 3d 94, 111-12 (D.D.C. 2013) (same); *In re Viocxx Prod. Liab. Litig.*, No. 11–1546, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 98-99 (D.D.C. 2013) (same); *In re Se. Milk Antitrust Litig.*, No. 2:07–CV 208, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, No. 10 C 816, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

² *See, e.g.*, *Briseno v. Henderson*, 998 F.3d 1014, 1025, 1029 (9th Cir. 2021); *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 960 (11th Cir. 2020) (Jordan, J., dissenting); *Neese et al. v. Becerra*, 2022 WL 9497214, at *2 n.1 (N.D.Tex., Oct. 14, 2022); *Tersbakovec v. Ford Motor Co.*, 2021 WL 2700347, at *18 (S.D. Fla. July 1, 2021); *Vita Nuova, Inc. v. Azar*, 2020 WL 8271942, at *3 n.5 (N.D. Tex. Dec. 2, 2020).

1 5. I have been asked by class counsel to opine on whether the attorneys' fees they have
2 requested here are reasonable in light of the empirical studies and research on economic incentives in
3 class action litigation. In order to formulate my opinion, I reviewed a number of documents provided
4 to me by class counsel; I have attached a list of these documents in Exhibit 3. As I explain, based on
5 my study of settlements across the country and in the Ninth Circuit in particular, I believe the request
6 here is within the range of reason in light of the empirical and economic research on class actions as
7 applied to the specific facts and circumstances of this case.

8 II. Case background

9 6. This lawsuit was filed almost nine years ago—in February 2014—and, after it was
10 consolidated with a related suit, became one of the most complex and extensively litigated class
11 actions I have ever seen. The lawsuit alleges that Major League Baseball and its ballclubs have failed
12 to pay minor league players the minimum wage and overtime required by federal and state laws;
13 indeed, outside of the championship season (e.g., in spring training), minor league players weren't paid
14 *at all*. Several clubs were dismissed for lack of personal jurisdiction, but the suit overcame motions to
15 dismiss from the other defendants. Discovery was expansive: 137 depositions, hundreds of
16 interrogatories and requests for production, over a million documents produced, and extensive expert
17 discovery. There were several rounds of class and collective action certification battles; this court first
18 certified the federal collective, then decertified it and denied the initial motion to certify state law
19 classes, then re-certified it and a California state-law class before the Ninth Circuit stepped in on an
20 interlocutory appeal under Rule 23(f), which resulted in a published Ninth Circuit opinion. Following
21 the lengthy appellate process, the court certified an additional injunctive relief class, resulting in the
22 certification of five separate class or collectives against various defendants: an opt-in class under
23 federal law, three opt-out classes for state law violations, and one injunctive class against Major
24 League Baseball from facilitating future violations. The suit survived comprehensive summary
25 judgment motions and was scheduled for trial in June 2022, when, in the midst of final trial
26 preparations in May, the parties finally reached a global settlement covering all the class and the
27 collective actions (the members of which I will refer to as "class" members regardless of whether they
28 are formally in a class or collective action). The court preliminarily approved the settlement on

1 August 26, 2022. The parties are now seeking final approval and class counsel is seeking a fee award.

2 7. Under the settlement, the defendants will pay the class members \$185 million in cash.
 3 *See* Settlement Agreement ¶ 1(x). After deducting costs for notice and settlement administration,
 4 service awards to the class representatives, PAGA penalties to the state of California, and any
 5 attorneys' fees and expenses awarded by the court, the monies will be distributed to class members on
 6 a pro rata basis based on their proportion of the total damages in the case. *See id.* at ¶¶ 14, 16. *This*
 7 *money will be distributed without a requirement to file claim forms and none of this money can revert to the defendants;*
 8 *to the extent money remains (because checks go uncashed), it will be redistributed to class members*
 9 *until there is a de minimis amount left, at which time any remainder will go to a workers' rights charity*
 10 *called Legal Aid at Work. See id.* at ¶ 13. Finally, Major League Baseball has agreed as part of the
 11 settlement to revise its employment policy to no longer prohibit ballclubs from paying minor league
 12 players outside the championship season. In exchange for these benefits, class members agree to
 13 release Major League Baseball and all its member ballclubs from various wage-and-hour and uniform-
 14 player-contract claims through October 31, 2022. *These parties are not released from any future claims. See*
 15 *id.* at ¶ 10.

16 8. Class counsel have now moved the court for an award of fees of 30% of the \$185
 17 million settlement fund. In my opinion, this request is beyond reasonable.

18 III. Assessment of the reasonableness of the request for attorneys' fees

19 9. This settlement is a so-called "common fund" settlement where attorneys for the
 20 plaintiffs have created a settlement fund for the benefit of class members. When a fee-shifting statute
 21 is inapplicable in such cases (as it is here), courts award fees from class members' proceeds pursuant
 22 to the common law of unjust enrichment. This is sometimes called the "common fund" or "common
 23 benefit" doctrine.

24 10. At one time, courts that awarded fees in such cases did so using the familiar lodestar
 25 approach. *See Fitzpatrick, Class Action Lawyers, supra*, at 2051. Under this approach, courts awarded
 26 counsel a fee equal to the number of hours they worked on the case (to the extent the hours were
 27 reasonable), multiplied by a reasonable hourly rate as well as by a discretionary multiplier that courts
 28 often based on the risk of non-recovery and other factors. *See id.* Over time, however, the lodestar

1 approach fell out of favor, largely for two reasons. First, courts came to dislike the lodestar method
 2 because it was difficult to calculate the lodestar; courts had to review voluminous time records and the
 3 like. Second—and more importantly—courts came to dislike the lodestar method because it did not
 4 align the interests of counsel with the interests of their clients; to wit, counsel’s recovery did not
 5 depend on how much was recovered, but, rather, on how many hours could be spent on the case. *See*
 6 *id.* at 2051-52. According to my empirical study, the lodestar method is now used to award fees in
 7 only a small percentage of class action and derivative cases, usually those involving fee-shifting
 8 statutes or those where the relief is injunctive in nature and the value of the injunction cannot be
 9 reliably calculated. *See* Fitzpatrick, *Empirical Study*, *supra*, at 832 (finding the lodestar method used in
 10 only 12% of settlements). The other large-scale academic studies of fees agree. *See, e.g.*, Theodore
 11 Eisenberg et al., *Attorneys’ Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Review 937, 945 (2017)
 12 (hereinafter “Eisenberg-Miller 2017”) (finding the lodestar method used only 6.29% of the time from
 13 2009-2013, down from 13.6% from 1993-2002 and 9.6% from 2003-2008).

14 11. The more widely utilized method of calculating attorneys’ fees today is known as the
 15 “percentage” method. Under this approach, courts select a percentage that they believe is fair to
 16 counsel, multiply the settlement amount by that percentage, and then award counsel the resulting
 17 amount. The percentage approach became popular precisely because it corrected the deficiencies of
 18 the lodestar method: it is less cumbersome to calculate, and, more importantly, it aligns the interests
 19 of counsel with the interests of their clients because the greater the recovery, the more counsel
 20 receives. *See* Fitzpatrick, *Class Action Lawyers*, *supra*, at 2052.

21 12. In the Ninth Circuit, district courts have the discretion to use either the lodestar
 22 method or the percentage method. *See, e.g., In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 570
 23 (9th Cir. 2019) (en banc) (“No presumption in favor of either the percentage or the lodestar method
 24 encumbers the district court’s discretion to choose one of the other.”). In light of the well-recognized
 25 disadvantages of the lodestar method and the well-recognized advantages of the percentage method, it
 26 is my opinion that courts should generally use the percentage method when enough of the value of
 27 the settlement can be reliably calculated. It is my opinion that courts should use the lodestar method
 28 only where the value of the settlement cannot be reliably calculated (and the percentage method is

1 therefore not feasible) or a fee-shifting statute requiring the lodestar method is applicable. This is not
 2 just my opinion. It is the consensus opinion of class action scholars. *See* American Law Institute,
 3 Principles of the Law of Aggregate Litigation § 3.13(b) (2010) (“[A] percentage-of-the-fund approach
 4 should be the method utilized in most common-fund cases.”). In this case, the settlement includes a
 5 \$185 million cash payment, which can be easily valued. Thus, in my opinion, the court should use the
 6 percentage method and I will proceed under that method here.

7 13. Under the percentage method, courts must 1) calculate the value of the benefits
 8 conferred by the litigation and then 2) select a percentage of that value to award to counsel. When
 9 selecting the percentage, courts in the Ninth Circuit use 25% as the “‘bench mark’ percentage for the
 10 fee award,” which “can then be adjusted upward or downward to account for any unusual
 11 circumstances involved in the case.” *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th
 12 Cir. 1989). In various cases, the Ninth Circuit has identified at least eight different factors that district
 13 courts can examine in deciding whether to increase or decrease an award from the benchmark:

- 14 1) the percentages awarded in other cases, *see Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
 15 1050 (9th Cir. 2002);
- 16 2) the results achieved by counsel, *see Six Mexican Workers v. Arizona Citrus Growers*, 904
 17 F.2d 1301, 1311 (9th Cir. 1990); *Vizcaino*, 290 F.3d at 1048;
- 18 3) the complexity of the case, *see Six Mexican Workers*, 904 F.2d at 1311; *In re Pacific Enters.*
 19 *Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995);
- 20 4) the risks the case involved, *see In re Pacific Enters. Securities Litig.*, 47 F.3d at 379;
 21 *Vizcaino*, 290 F.3d at 1048-49;
- 22 5) the length the case has transpired, *see Six Mexican Workers*, 904 F.2d at 1311; *Vizcaino*,
 23 290 F.3d at 1050;
- 24 6) any non-monetary benefits obtained by counsel, *see In re Pacific Enters. Securities Litig.*, 47
 25 F.3d at 379; *Vizcaino*, 290 F.3d at 1049; *Staton*, 327 F.3d at 946;
- 26 7) the percentages in standard contingency-fee agreements in similar individual cases, *see*
 27 *Vizcaino*, 290 F.3d at 1049; and
- 28 8) counsel’s lodestar, *see id.* at 1050-51.

1 14. When calculating the value of the benefits, most courts include any benefits conferred
2 by the litigation, whether cash relief, non-cash relief, attorneys' fees and expenses, or administrative
3 expenses. Although some of these things do not go directly to the class, they facilitate compensation
4 to the class (e.g., notice and administration expenses), provide future savings to the class, or deter
5 defendants from future misconduct by making defendants pay more when they cause harm. Thus, in
6 my opinion, it is appropriate to include them all in the denominator of the percentage method. *See*
7 *also* Principles of the Law of Aggregate Litigation, *supra*, § 3.13(b) (“[A] percentage of the fund
8 approach should be the method utilized in most common-fund cases, with the percentage being based
9 on both the monetary and nonmonetary value of the judgment or settlement.”).

10 15. As I explain below, although the fee request here is above the Ninth Circuit's 25%
11 benchmark for the cash portion of the settlement, this is an exceptional case by any measure. It is my
12 opinion that the request is reasonable under the Ninth Circuit's factors in light of the empirical studies
13 of class action fees and in light of the research on the economic incentives in class action litigation.

14 Valuation of the settlement

15 16. Let me begin with the valuation of the settlement. The cash component is easy to
16 quantify because none of it can revert to the defendants: \$185 million. The agreement by Major
17 League Baseball to revise its uniform contract to permit ballclubs to pay players outside the
18 championship season going forward is harder to quantify. It is true that the agreement by Major
19 League Baseball does not *obligate* the clubs to make these payments, but, in light of the fact that the
20 court already ruled against the clubs on this question under Arizona law, it will be very difficult for the
21 clubs to avoid making these payments everywhere, lest an unlevel playing field be created within the
22 League. In other words, I think it is reasonable to assume that this lawsuit will confer not only \$185
23 million of past compensation on class members, but will also create hundreds of millions of dollars in
24 future compensation for them. But because class counsel have not attempted to quantify the future
25 benefits that will be conferred by this settlement, and, in order to be conservative as possible, I will
26 not include any such benefits in the valuation of the settlement. As I explain later, there is another
27 way to give class counsel due credit for securing such benefits. Thus, for present purposes, I will
28 consider the settlement's total valuation to be \$185 million.

1 Selecting the percentage

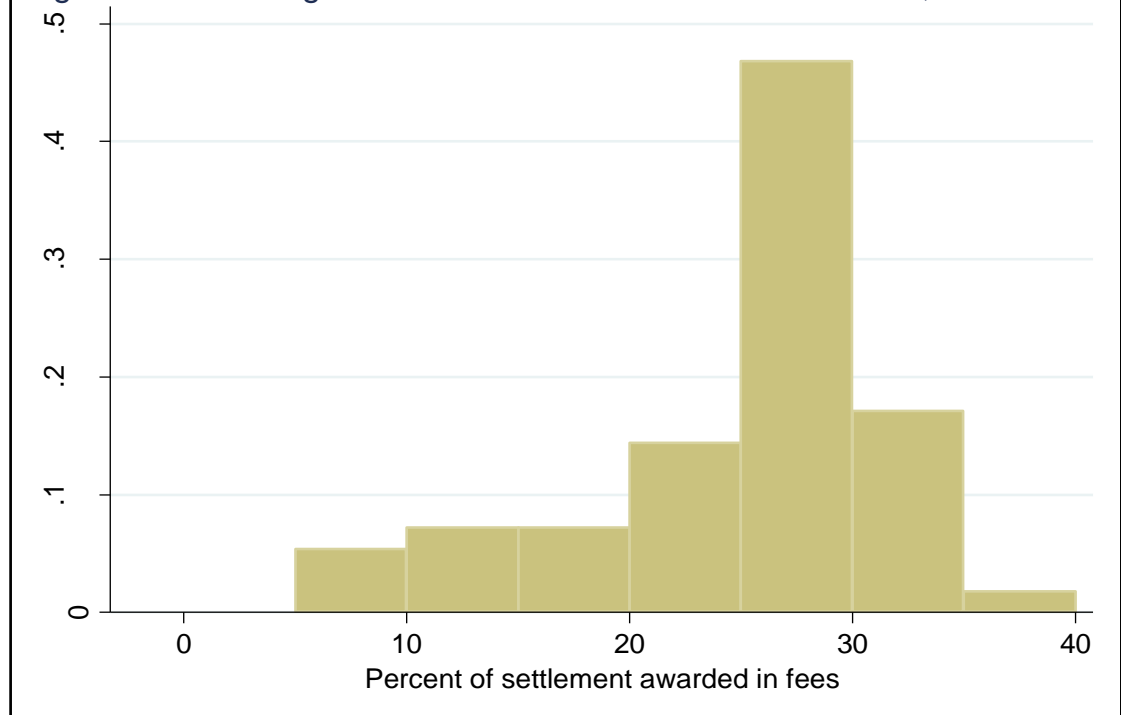
2 17. Class counsel have requested 30% of the settlement fund in fees. As I noted above, it
3 is my opinion that this percentage is easily justified under the Ninth Circuit's factors.

4 18. Consider first factor (1): the awards in other cases. According to my empirical study,
5 the most common percentages awarded by all federal courts in 2006 and 2007 using the percentage
6 method were 25%, 30%, and 33%, with nearly two-thirds of awards between 25% and 35%, and with
7 a mean award of 25.4% and a median award of 25%. See Fitzpatrick, *Empirical Study*, *supra*, at 833-34,
8 838. In light of the Ninth Circuit's 25% benchmark, it is no surprise that the numbers for the 111
9 settlements in the Ninth Circuit where the percentage method was used were quite similar: the mean
10 was 23.9% and the median 25%. My numbers agree with the other large-scale academic studies of
11 class action fee awards. See Theodore Eisenberg & Geoffrey P. Miller, *Attorneys' Fees and Expenses in*
12 *Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 260 (2010) (hereinafter "Eisenberg-
13 Miller 2010") (finding mean and median of 24% and 25% nationwide, and 25% in Ninth Circuit);
14 Eisenberg-Miller 2017, *supra*, at 951 (finding mean and median of 27% and 29% nationwide, and 26%
15 and 25% in the Ninth Circuit). The request here is admittedly above the mean and median, but it is
16 still within one of the most common fee percentage ranges awarded in class action litigation.

17 19. In order to visualize how typical the fee request here is, I graphed the distribution of
18 the Ninth Circuit's percentage awards from my study in Figure 1, below. The figure shows what
19 fraction of settlements (y-axis) had fee awards within each five-point range of fee percentages (x-axis).
20 The range that includes class counsel's 30 percent request is the range between 30% (inclusive) and
21 35%. This range is the second highest bar in the Figure, meaning it is the second most common
22 range of fees in the Ninth Circuit. Courts in the Ninth Circuit awarded fees of 30% or more in
23 approximately twenty percent (.2 in the Figure) of cases. Thus, one way to look at the fee request in
24 this case is as follows: is this settlement in the top fifth of class action settlements in the Ninth
25 Circuit? As I explain below in reference to the other factors, I think the answer to that question is
26 clearly "yes."

27
28

Figure 1: Percentage-method fee awards in the Ninth Circuit, 2006-2007



20. With all of that said, it should be noted that the settlement here is unusually large; few settlements each year reach \$185 million. This is notable because some courts analyze the “other cases” factor in reference to the size of the settlement. For this reason, my empirical study and the other large-scale academic studies show that settlement size has a statistically significant but inverse relationship with fee percentages—*i.e.*, that some courts awarded lower percentages in cases where settlements were larger. See Fitzpatrick, *Empirical Study*, *supra*, at 838, 842-44; Eisenberg-Miller 2010, *supra*, at 263-65; Eisenberg-Miller 2017, *supra*, at 947-48. Thus, for example, the mean and median fee percentages awarded in settlements in my dataset between \$100 million and \$250 million were only 17.9% and 16.9%, respectively. See *id.* at 839. (The Eisenberg-Miller studies do not break settlements down as granularly.) The fee request here is above those numbers to a greater degree. Nonetheless, for several reasons, this does not change my opinion that the request is reasonable.

21. First, “some courts” in the above paragraph does not mean “all courts.” The data from my study is nationwide data—the data points are too few to break them down by Circuit—and different Circuits have different answers to the question of whether fees should be lowered in bigger

1 settlements. For example, there is nothing in Ninth Circuit law that requires the Court to assess the
 2 “other cases” factor in reference only to similarly-sized settlements. In *Vizcaino*, the Ninth Circuit
 3 directly confronted the argument that a district court erred because it “fail[ed] to take into account
 4 that this is a megafund case to which it should have applied . . . the increase-decrease rule.” 290 F.3d
 5 at 1047. The Ninth Circuit rejected the argument, holding that it had “not adopt[ed] this . . . principle
 6 governing fee awards.” *Id.* The Ninth Circuit recently reaffirmed this holding in *In re Optical Disk*
 7 *Drive Products Antitrust Litigation*: “we have already declined to adopt a bright-line rule requiring the use
 8 of sliding-scale fee awards for class counsel in megafund cases, and we are bound by circuit
 9 precedent.” 959 F.3d 922, 933 (9th Cir. 2020).

10 22. Second, when, as here, courts are not required to assess the “other cases” factor in
 11 reference to similarly-sized settlements, it is my opinion that courts should not exercise their
 12 discretion to do so anyway. The reason is the one I intimated above when discussing the percentage
 13 versus lodestar methods: it creates poor incentives for class counsel. *See, e.g., In re Cendant Corp.*
 14 *Litigation*, 264 F.3d 201, 284 n. 55 (3d Cir. 2001) (“Th[e] position [that the percentage of a recovery
 15 devoted to attorneys fees should decrease as the size of the overall settlement or recovery increases] . .
 16 . has been criticized by respected courts and commentators, who contend that such a fee scale often
 17 gives counsel an incentive to settle cases too early and too cheaply.” (alteration in original)); *Allapattab*
 18 *Servs. Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1213 (S.D. Fla. 2006) (“By not rewarding Class Counsel
 19 for the additional work necessary to achieve a better outcome for the class, the sliding scale approach
 20 creates the perverse incentive for Class Counsel to settle too early for too little”); *In re Checking Account*
 21 *Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011) (quoting *Allapattab*); *In re Toyota Motor Corp.*
 22 *Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, No. 10-ml-02151, at 17
 23 n.16 (C.D. Cal., Jun. 17, 2013)) (“The Court . . . agrees with . . . other courts . . . which have found
 24 that decreasing a fee percentage based only on the size of the fund would provide a perverse
 25 disincentive to counsel to maximize recovery for the class.”). Consider the following example: if
 26 courts award attorneys 25% of settlements if they are under \$100 million but only 18% of settlements
 27 if they are over \$100 million (e.g., the average percentage I found in my study for settlements between
 28 \$100 and \$250 million), then rational attorneys will prefer to settle cases for \$90 million (*i.e.*, an \$22.5

1 million fee award) rather than \$120 million (*i.e.*, a \$21.6 million fee award)! Such incentives are
 2 obviously perverse. Indeed, cutting fee percentages when lawyers recover more money has been
 3 deemed so irrational—at least when not done only on the margin (e.g., for the *portion* above \$100
 4 million)—that it has been banned in at least one Circuit on the ground that “[p]rivate parties would
 5 never contract for such an arrangement” *See Synthroid I*, 264 F.3d 712, 718 (7th Cir. 2001). This
 6 is why studies of sophisticated corporate clients do not report any such practice among them when
 7 they hire lawyers on contingency, even in the biggest cases like patent litigation. *See, e.g.*, David L.
 8 Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 Ala. L. Rev. 335, 360 (2012)
 9 (finding that corporations either agree to flat rates of, on average, 38.6% or graduated rates that start,
 10 on average, at 28% and accelerate, on average, to 40.2%); Fitzpatrick, *A Fiduciary Judge*, *supra*, at 1159-
 11 63. But if class members would never contract for such an arrangement on their own, why should
 12 courts force it upon them in class actions? Given that courts are supposed to act as “fiduciaries” for
 13 absent class members, the answer is clear to me: they should not. *See, e.g.*, Fitzpatrick, *Fiduciary Judge*,
 14 *supra*, at 1154-55.

15 23. Third, it bears noting that there is a large range around average fee percentages in class
 16 action litigation. For example, the standard deviation in my study was 5.2% in the \$100 to \$250
 17 million range.³ This means that fee awards can be found that are much higher (and much lower) than
 18 average in big settlements like this one. In other words, the fee request here would hardly be
 19 unprecedented. *See, e.g., In re: Syngenta AG MIR 162 Corn Litigation*, 357 F.Supp.3d 1094, 1110 (D.
 20 Kan. 2018) (33.33% of \$1.5 billion); *In re Urethane Antitrust Litig.*, No. 04 Civ. 1616, 2016 WL 4060156,
 21 at *6 (D. Kan. July 29, 2016) (33.33% of \$835 million); *Dahl v. Bain Capital Partners, LLC*, No. 07-cv-
 22 12388, Dkt. 1095 (D. Mass. Feb. 2, 2015) (33% of \$590.5 million); *In re Initial Pub. Offering Sec. Litig.*,

23

24

25 ³ Professors Eisenberg and Miller have taken the view that, the greater the number of standard
 26 deviations fee requests are from the mean, the greater justification is needed to approve them. *See*
 27 Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1
 28 J. Empirical L. Studies 27, 74 (2004). In light of the considerations I discuss below—e.g., the
 extraordinary fact that this case was litigated to the very eve of trial as well as the fact that it has
 recovered so much despite so many risks—there is no doubt in my mind that this fee request meets
 their test.

671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (33% of \$510 million); *In re Vitamins Antitrust Litig.*, No. Misc. 99-197 (TFH), 2001 WL 34312839, at *10, 14 (D.D.C. July 16, 2001) (34% of \$359 million); *Hale v. State Farm*, No. 12-00660-DRH-SCW (S.D.Ill., Dec. 16, 2018) (33.33% of \$250 million); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340-SLR, ECF No. 543 (D. Del. 2009) (33% of \$250 million); *In re Buspirone Antitrust Litig.*, No. 01-md-1413 (S.D.N.Y. Apr. 11, 2003) (33% of \$220 million); *In re Relafen Antitrust Litig.*, No. 01-12239, at 8 (D. Mass. Apr. 9, 2004) (33% of \$175 million); *In re Apollo Group Inc. Securities Litigation*, 2012 WL 1378677, at *9 (D. Ariz. April 20, 2012) (33% of \$145 million); *In re Combustion Inc.*, 968 F. Supp. 1116, 1142 (W.D. La. 1997) (36% of \$127 million); *City of Greenville v. Syngenta Crop Protection*, 904 F. Supp. 2d 902, 908-09 (S.D. Ill. 2012) (33% of \$105 million).

24. Indeed, for a very recent example of a fee award very much like the one requested here, consider another case in which I submitted an expert declaration: *Andrews v. Plains All American Pipeline L.P.*, 2022 WL 4453864 (C.D. Cal., Sep. 20, 2022). The settlements there totaled \$230 million, and, like here, the case was extremely complex and litigated to very eve of trial, including a trip to the Ninth Circuit. But it took the lawyers only seven some years to get there, they did not recover nearly as much of the class's damages as class counsel here did (see more on that below), and there was no nonmonetary relief like Major League Baseball's agreement to permit clubs to pay players for non-championship-season time (see more on that below, too). Nonetheless, the court there awarded 32% to class counsel, even more than class counsel are seeking here.

25. The reason why there are numerous examples like this of courts awarding above-benchmark fee percentages in cases with so-called "megafund" recoveries is because the "other cases" factor is only one of many factors courts consider when they award fees. The many other factors can push fee awards higher or lower than average. Indeed, as I explain below, these other factors very much justify class counsel's above-benchmark fee request here.

26. Finally, as I noted above, there is nothing in Ninth Circuit law that requires courts to look at the "other cases" factor in reference to similarly-sized recoveries as opposed to cases similar in other ways. In my opinion, a better set of reference cases to look at if the court wishes to look at a smaller set than all class actions is the set of cases with the same procedural maturity as this one. As I

1 noted above, that is how many clients—including sophisticated ones—set contingency fees when they
 2 do not use flat percentages: they vary the percentages based on how far the attorney had to litigate
 3 before the case was resolved. In particular, percentages often increase to 40 percent or more at some
 4 point, usually after summary judgement has been decided. Clients do this because it gives their
 5 lawyers better incentives. *See* Bruce L. Hay, *Optimal Contingent Fees in A World of Settlement*, 26 J. Legal
 6 Stud. 259, 259 (1997) (“[T]he article shows that the client generally benefits from a bifurcated fee
 7 structure in which the attorney gets a large fraction of the recovery in the event of trial but a small
 8 fraction in the event of settlement.”). Courts should want to give class members lawyers with good
 9 incentives, too. It is therefore not surprising that the best available data suggests that courts award
 10 higher fees when class action cases go to trial. Class action trials are very rare and I did not track
 11 them in my empirical study, but Professor William Rubenstein at Harvard tracked them in a data set
 12 of over one-thousand class action cases from 2007-2011 that he found in a publication called *Class*
 13 *Action Attorney Fee Digest*. He discusses some of this data in his Newberg Treatise on Class Actions
 14 (5th ed.). Although he did not discuss class action trial data in the treatise, he has elsewhere. For
 15 example, according to a declaration he filed in a class action case on which we both worked:

16 Among the 1,187 cases in my CAAFD data set, 15 proceeded to trial, 11 of which
 17 contain relevant fee data. The mean fee award across those 11 cases with applicable
 18 data was 36%, with five cases having awards of 38.9% or more and three of those
 19 having fee awards of 40% or more.

20 Expert Declaration of William B. Rubenstein in Support of the Plaintiffs’ Motion for Attorney’s Fees
 21 and Expenses in *Hale* (Oct. 16, 2018) ¶ 18. Thus, compared to the few class action cases that proceed
 22 as far as this one has, the fee request here might not be unusual at all. That is, contrary to the more
 23 general class action data, the class action trial data suggests that the fee request here would not need
 24 any special justification. But, as I explain below, if further justification is needed, the other
 25 exceptional circumstances of this settlement supply it.

26 27. Consider next factors (2), (3), and (4): the results achieved by counsel compared to the
 27 risks and complexities counsel faced. Under the settlement, the defendants will pay approximately
 28 137% of class members’ unpaid wages. Although extracompensatory damages were also sought (such

as statutory penalties and liquidated damages), it is customary when assessing the quality of a class action recovery to exclude extracompensatory relief like this. For example, in antitrust class actions, courts tend not to compare settlements to what damages would be if trebled, even though trebling is permitted under the antitrust statutes. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 964 (9th Cir.2009) (“[C]ourts generally determine fairness of an antitrust class action settlement based on how it compensates the class for past injuries, without giving much, if any, consideration to treble damages.”). Although we do not have data on the typical recovery-as-a-percentage-of-damages in labor class actions, compared to the areas where we do have data—antitrust and securities fraud—the recovery here is extraordinary. *See, e.g.,* https://www.nera.com/content/dam/nera/publications/2019/PUB_Year_End_Trends_012819_Final.pdf, at 36 (finding that the median securities fraud class action between 2008 and 2017 settled for between 1.3% and 2.6% of the most common measure of investor losses, depending on the year); John M. Connor & Robert H. Lande, *Not Treble Damages: Cartel Recoveries are Mostly Less Than Single Damages*, 100 Iowa L. Rev. 1997, 2010 (2015) (finding the weighted average of recoveries—the authors’ preferred measure—to be 19% of single damages for cartel cases between 1990 and 2014). But even without empirical studies in labor cases, I can safely say that, based on my own experience studying class action cases for many years now, it is *extremely rare* to see a class action recover full compensatory damages—let alone *more* than full compensatory damages.

28. Nonetheless, it is impossible to assess these recoveries intelligently without comparing them to the risks the classes faced. If the case were especially easy, perhaps we should have expected class counsel to recover so much. But, in my opinion, the case here was anything but easy. Far from it. For example, these were only a few of the mountains the classes still had to overcome at the time of the settlement:

- Whether portions of the classes must be dismissed for lack of standing;
- Whether the defendants were exempt from liability under several laws because spring training activities constituted seasonal or amusement and recreational establishments;
- Whether liquidated damages were available in light of the defendants’ assertion it tried to comply with the law in good faith;
- Whether any misconduct by the defendants’ was willful;

- Whether a jury would accept plaintiffs' damages models, including the refusal to credit defendants for offsets for other forms of compensation.

29. In addition, there were a number of mountains that the classes had overcome at the time of settlement but that could have been upended on appeal if the parties had not settled. These risks, too, must be factored into a full assessment of class counsel's success here:

- Whether class members were "employees" of the defendants outside the championship season;
- Whether the federal Save America's Pastime Act was incorporated in Florida law and thereby defeated liability there;
- Whether Major League Baseball was an "employer" of class members;
- The extent to which travel time was compensable;
- Whether the defendants were exempted from liability under several laws because they are creative professionals; and
- Whether the defendants violated state record-keeping and wage-statement laws.

30. In my opinion, if one multiplies the risks above against one another all along the litigation decision tree that is presented in this case, it is beyond question that the 137% recovery here is exceptionally good.

31. Finally, none of the above even considers how much longer the classes would have to wait to get any money even if they prevailed at trial and on appeal. This case has already been pending for almost nine years. Although trial was imminent, the post-trial motions and the inevitable appeal probably would have consumed at least two or three more years (the first appeal in this case, on class certification, took three-and-a-half years). For this reason, too, there is no doubt in my mind that these factors strongly support class counsel's fee request.

32. Consider next factor (5): the length the litigation has transpired. As I noted above, this case is almost nine years old. This is already *three times longer* than the typical time-to-final-approval that I found in my empirical study. See Fitzpatrick, *Empirical Study*, *supra*, at 820 (finding median time-to-final-approval just below three years and mean time just above three years). This is important because the longer class counsel must wait to get paid for their work, the lower their

1 “effective” fee becomes. This is what is known as the “time value of money”: a dollar today is worth
 2 more to us than a dollar several years from now. Moreover, as I noted above, the case has not been
 3 idle during this time: it was fully litigated to the eve of trial. As I also noted, many contingency fee
 4 agreements increase the attorney’s percentage when cases go to trial. For both these reasons, this
 5 factor, too, strongly weighs in favor of the fee request.

6 33. Consider next factor (6): the non-monetary benefits conferred by the litigation. The
 7 purpose behind this factor is to ensure that class counsel is compensated for securing non-monetary
 8 benefits that cannot be valued and included in the denominator of the percentage method by, for
 9 example, increasing the percentage class counsel is awarded from the cash portion of a settlement.
 10 This is what I referenced above when I said that there are other ways to give class counsel due credit
 11 for securing Major League Baseball’s agreement to change the uniform contract to permit
 12 compensation outside of the championship season. Only a minority of class action settlements
 13 include non-monetary relief like this. *See Fitzpatrick, Empirical Study, supra*, at 824 (finding only 25%
 14 of settlements with such relief). This factor is therefore another way in which this settlement is
 15 exceptional and it is another way in which class counsel deserves an above-benchmark fee.

16 34. Indeed, for a very recent example of an above-average fee award supported by similar
 17 non-monetary relief, consider another case in which I submitted an expert declaration: *In re Blue Cross*
 18 *Blue Shield Antitrust Litig.*, MDL No. 2406 (N.D. Ala., Aug. 9, 2022). The plaintiffs there brought
 19 antitrust claims against the state insurance entities and ended up settling for \$2.67 billion in cash, and,
 20 as importantly, an agreement by the entities to change their policies to allow them to compete with
 21 one another across state lines. Although it was unknown how much the policy change would save
 22 class members in the future, it was clear it would be substantial, and the court relied upon that fact to
 23 support a fee award to class counsel of 23.47% of the monetary portion of the settlement—even
 24 though the average fee percentage in billion-dollar settlements is roughly half that number. *See id.*
 25 (“The Settlement also provides historic, transformative, pro-competitive injunctive and equitable relief
 26 that will greatly benefit the members of the Subscribers Class”); *see also Fitzpatrick, Empirical*
 27 *Study, supra*, at 839.

1 35. Consider next factor (7): the percentages in standard contingency-fee agreements in
 2 similar individual cases. It is well known that standard contingency-fee percentages in individual
 3 litigation are one-third or greater. *See, e.g., Fitzpatrick, Fiduciary Judge, supra*, at 1159-63 (canvassing the
 4 empirical studies). This is true even among sophisticated clients, and, as I noted above, it is especially
 5 true when a case goes to trial as this one all but did. *See, e.g., Schwartz, supra*, at 360 (finding that
 6 corporations either agree to flat rates of, on average, 38.6% or graduated rates that start, on average, at
 7 28% and accelerate, on average, to 40.2%); *Fitzpatrick, A Fiduciary Judge, supra*, at 1159-63. The fee
 8 request here is below these numbers. Thus, this factor, too, strongly supports the fee request.

9 36. Finally, consider factor (8): counsel's lodestar. This factor—known as the “lodestar
 10 crosscheck”—is designed to prevent class counsel from collecting a so-called “windfall.” But it is
 11 important to note that the crosscheck is not required in the Ninth Circuit. *See, e.g., Farrell v. Bank of*
 12 *Am. Corp., N.A.*, 827 F. App'x 628, 630 (9th Cir. 2020) (“This Court has consistently refused to adopt
 13 a crosscheck requirement, and we do so once more.”). Moreover, only a minority of courts
 14 nationwide perform the crosscheck with the percentage method. *See Fitzpatrick, supra*, at 833 (finding
 15 that only 49% of courts consider lodestar when awarding fees with the percentage method); *Eisenberg-*
 16 *Miller 2017, supra*, at 945 (finding percent method with lodestar crosscheck used 38% of the time
 17 versus 54% for percent method without lodestar crosscheck). In my opinion, the majority approach
 18 is the better one. Courts that entertain the lodestar crosscheck do not create good incentives for
 19 lawyers. In particular, the lodestar crosscheck reintroduces the very same undesirable consequences
 20 of the lodestar method that the percentage method was designed to correct in the first place. For
 21 example, if counsel believe that courts will cap the percentage awarded at some multiple of their
 22 lodestar, then they will have precisely the same incentives they would if courts used the lodestar
 23 method alone: to be inefficient, perform unnecessary projects, delay results, and overbill and overstaff
 24 work in order to run up their lodestar. The lodestar crosscheck also caps the amount of
 25 compensation counsel can receive from a settlement, thereby misaligning their incentives from those
 26 of their clients and blunting their incentive to achieve the largest possible award. *See Fitzpatrick, Class*
 27 *Action Lawyers, supra*, at 2065-66. For these reasons, to my knowledge, real clients have never reported
 28 using lodestar crosschecks when they hire lawyers on contingency, *see Fitzpatrick, A Fiduciary Judge,*

1 *supra*, at 1167, and, for that reason, the Seventh Circuit has all but banned it in awarding class action
 2 fees, *see Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) (“The . . . argument . .
 3 . that any percentage fee award exceeding a certain lodestar multiplier is excessive . . . echoes the
 4 ‘megafund’ cap we rejected in *Synthroid*.”).

5 37. Nonetheless, class counsel have reported their lodestar and work performed in case
 6 the Court wishes to try to perform a crosscheck. As such, I would be remiss if I did not note that
 7 class counsel’s lodestar only confirms that their fee request is reasonable. Class counsel have reported
 8 a lodestar of approximately \$36.3 million, which would result in a lodestar multiplier of approximately
 9 1.53 if the Court grants their fee request. This multiplier is so modest and the wait for fees has been
 10 so long that there is no conceivable basis to think that anything like a “windfall” could result here.
 11 For example, this multiplier would be very close to the typical multiplier in even run-of-the-mill cases.
 12 *See Fitzpatrick, Empirical Study, supra*, at 834 (finding mean and median lodestar multipliers in cases
 13 using the percentage method with the lodestar crosscheck were 1.65 and 1.34, respectively); *Eisenberg-*
 14 *Miller 2010, supra*, at 273 (finding mean multiplier of 1.81 for cases between 1993 and 2008); *Eisenberg-*
 15 *Miller 2017, supra*, at 965 (finding mean multiplier of 1.48 for cases between 2009 and 2013). But it
 16 would be a fraction of the lodestar multipliers in complex cases with large recoveries like the
 17 settlement here. *See Eisenberg-Miller 2010, supra*, at 274 (finding mean and median multipliers of 3.18
 18 and 2.60, respectively, for recoveries above \$175.5 million). And it would be way below the outer
 19 bounds of previous cases both within this Circuit and outside it. *See, e.g., Vizcaino v. Microsoft Corp.*,
 20 290 F.3d 1043, 1051 n.6 (9th Cir. 2002) (noting multipliers of up to 19.6); *Lloyd v. Navy Fed. Credit*
 21 *Union*, 2019 WL 2269958, at *13 (S.D. Cal. May 28, 2019) (awarding fee even though “[t]he Court is
 22 aware that a lodestar cross-check would likely result in a multiplier of around 10.96”); *see also Americas*
 23 *Mining Corp. v. Theriault*, 51 A.3d 1213, 1252 (Del. 2012) (awarding fee with a 66 multiplier); *Health*
 24 *Republic Ins. Co. v. United States*, 156 Fed. Cl. 67, 82 (2021) (“[E]ven if the Court applied the lodestar
 25 cross-check, a multiplier of 18–19 would, at least, not be outside the realm of reasonableness.”); *Stop*
 26 *& Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. Civ.A. 03–4578, 2005 WL 1213926, at *18
 27 (E.D. Pa. May 19, 2005) (awarding fee with 15.6 multiplier); *In re Doral Financial Corp. Securities*
 28 *Litigation*, No. 05-cv-04014-RO (S.D.N.Y. Jul. 17, 2007) (ECF 65) (awarding fee with 10.26

multiplier); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (“Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.”); *Bais Yaakov of Spring Valley v. Peterson’s Nelnat, LLC*, No. 11-cv-00011 (D.N.J., Jan. 26, 2015) (awarding fee with 8.91 multiplier); *Raetsch v. Lucent Tech., Inc.*, No. 05-cv-05134 (D.N.J., Nov. 8., 2010) (awarding fee with 8.77 multiplier); *Thacker v. Chesapeake Appalachia, L.L.C.*, No. 07-cv-00026 (E.D.Ky. Mar. 3, 2010) (awarding fee with 8.47 multiplier); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, No. 05-11148-PBS, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (awarding fee with 8.3 multiplier). Thus, no matter how you slice it, this factor, too, supports the fee request.

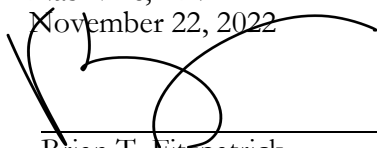
38. For all these reasons, I believe the fee award requested here is within the range of reasonable awards in light of the empirical and research on economic incentives in class action litigation.

39. My compensation in this matter was a flat fee in no way dependent on the outcome of class counsel’s fee petition.

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

Nashville, TN

November 22, 2022



Brian T. Fitzpatrick

EXHIBIT 1

BRIAN T. FITZPATRICK

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ACADEMIC APPOINTMENTS

VANDERBILT UNIVERSITY LAW SCHOOL, *Milton R. Underwood Chair in Free Enterprise*, 2020 to present

- *FedEx Research Professor*, 2014-2015
- *Professor of Law*, 2012 to present
- *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Complex Litigation, Federal Courts
- Hall-Hartman Outstanding Professor Award, 2008-2009
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

HARVARD LAW SCHOOL, *Visiting Professor*, Fall 2018

- Classes: Civil Procedure, Litigation Finance

FORDHAM LAW SCHOOL, *Visiting Professor*, Fall 2010

- Classes: Civil Procedure

EDUCATION

HARVARD LAW SCHOOL, J.D., *magna cum laude*, 2000

- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

UNIVERSITY OF NOTRE DAME, B.S., Chemical Engineering, *summa cum laude*, 1997

- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

CLERKSHIPS

HON. ANTONIN SCALIA, Supreme Court of the United States, 2001-2002

HON. DIARMUID O'SCANNLAIN, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

EXPERIENCE

NEW YORK UNIVERSITY SCHOOL OF LAW, Feb. 2006 to June 2007
John M. Olin Fellow

HON. JOHN CORNYN, United States Senate, July 2005 to Jan. 2006
Special Counsel for Supreme Court Nominations

SIDLEY AUSTIN LLP, Washington, DC, 2002 to 2005
Litigation Associate

BOOKS

THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (Cambridge University Press 2021) (ed., with Randall Thomas)

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press 2019) (winner of the Pound Institute's 2022 Civil Justice Scholarship Award)

ACADEMIC ARTICLES

Distributing Attorney Fees in Multidistrict Litigation, 13 J. Leg. Anal. 558 (2021) (with Ed Cheng & Paul Edelman)

A Fiduciary Judge's Guide to Awarding Fees in Class Actions, 89 FORD. L. REV. 1151 (2021)

Many Minds, Many MDL Judges, 84 L. & Contemp. Problems 107 (2021)

Objector Blackmail Update: What Have the 2018 Amendments Done?, 89 FORD. L. REV. 437 (2020)

Why Class Actions are Something both Liberals and Conservatives Can Love, 73 VAND. L. REV. 1147 (2020)

Deregulation and Private Enforcement, 24 LEWIS & CLARK L. REV. 685 (2020)

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Can the Class Action be Made Business Friendly?, 24 N.Z. BUS. L. & Q. 169 (2018)

Can and Should the New Third-Party Litigation Financing Come to Class Actions?, 19 THEORETICAL INQUIRIES IN LAW 109 (2018)

Scalia in the Casebooks, 84 U. CHI. L. REV. 2231 (2017)

The Ideological Consequences of Judicial Selection, 70 VAND. L. REV. 1729 (2017)

Judicial Selection and Ideology, 42 OKLAHOMA CITY UNIV. L. REV. 53 (2017)

Justice Scalia and Class Actions: A Loving Critique, 92 NOTRE DAME L. REV. 1977 (2017)

A Tribute to Justice Scalia: Why Bad Cases Make Bad Methodology, 69 VAND. L. REV. 991 (2016)

The Hidden Question in Fisher, 10 NYU J. L. & LIBERTY 168 (2016)

An Empirical Look at Compensation in Consumer Class Actions, 11 NYU J. L. & BUS. 767 (2015) (with Robert Gilbert)

The End of Class Actions?, 57 ARIZ. L. REV. 161 (2015)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, 98 VA. L. REV. 839 (2012)

Twombly and Iqbal Reconsidered, 87 NOTRE DAME L. REV. 1621 (2012)

An Empirical Study of Class Action Settlements and their Fee Awards, 7 J. EMPIRICAL L. STUD. 811 (2010) (selected for the 2009 Conference on Empirical Legal Studies)

Do Class Action Lawyers Make Too Little?, 158 U. PA. L. REV. 2043 (2010)

Originalism and Summary Judgment, 71 OHIO ST. L.J. 919 (2010)

The End of Objector Blackmail?, 62 VAND. L. REV. 1623 (2009) (selected for the 2009 Stanford-Yale Junior Faculty Forum)

The Politics of Merit Selection, 74 MISSOURI L. REV. 675 (2009)

Errors, Omissions, and the Tennessee Plan, 39 U. MEMPHIS L. REV. 85 (2008)

Election by Appointment: The Tennessee Plan Reconsidered, 75 TENN. L. REV. 473 (2008)

Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?, 13 MICH. J. RACE & LAW 277 (2007)

BOOK CHAPTERS

How Many Class Actions are Meritless?, in THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (ed., with Randall Thomas, Cambridge University Press 2021)

The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?, in THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (ed., with Randall Thomas, Cambridge University Press 2021) (with Randall Thomas)

Do Class Actions Deter Wrongdoing? in THE CLASS ACTION EFFECT (Catherine Piché, ed., Éditions Yvon Blais, Montreal, 2018)

Judicial Selection in Illinois in AN ILLINOIS CONSTITUTION FOR THE TWENTY-FIRST CENTURY (Joseph E. Tabor, ed., Illinois Policy Institute, 2017)

Civil Procedure in the Roberts Court in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, 2016)

Is the Future of Affirmative Action Race Neutral? in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)

ACADEMIC PRESENTATIONS

Developments in Discovery Reform, George Mason Law & Economics Center Fifteenth Annual Judicial Symposium on Civil Justice Issues, Charleston, SC (Nov. 16, 2021) (panelist)

Locality Litigation and Public Entity Incentives to File Lawsuits: Public Interest, Politics, Public Finance or Financial Gain?, George Mason Law & Economics Center Symposium on Novel Liability Theories and the Incentives Driving Them, Nashville, TN (Oct. 25, 2021) (panelist)

A Fiduciary Judge's Guide to Awarding Fees in Class Actions, University of California Hastings College of the Law, San Francisco, CA (Nov. 3, 2020)

A Fiduciary Judge's Guide to Awarding Fees in Class Actions, The Judicial Role in Professional Regulation, Stein Colloquium, Fordham Law School, New York, NY (Oct. 9, 2020)

Objector Blackmail Update: What Have the 2018 Amendments Done?, Institute for Law and Economic Policy, Fordham Law School, New York, NY (Feb. 28, 2020)

Keynote Debate: The Conservative Case for Class Actions, Miami Law Class Action & Complex Litigation Forum, University of Miami School of Law, Miami, FL (Jan. 24, 2020)

The Future of Class Actions, National Consumer Law Center Class Action Symposium, Boston, MA (Nov. 16, 2019) (panelist)

The Conservative Case for Class Actions, Center for Civil Justice, NYU Law School, New York, NY (Nov. 11, 2019)

Deregulation and Private Enforcement, Class Actions, Mass Torts, and MDLs: The Next 50 Years, Pound Institute Academic Symposium, Lewis & Clark Law School, Portland, OR (Nov. 2, 2019)

Class Actions and Accountability in Finance, Investors and the Rule of Law Conference, Institute for Investor Protection, Loyola University Chicago Law School, Chicago, IL (Oct. 25, 2019) (panelist)

Incentivizing Lawyers as Teams, University of Texas at Austin Law School, Austin, TX (Oct. 22, 2019)

"Dueling Pianos": A Debate on the Continuing Need for Class Actions, Twenty Third Annual National Institute on Class Actions, American Bar Association, Nashville, TN (Oct. 18, 2019) (panelist)

A Debate on the Utility of Class Actions, Contemporary Issues in Complex Litigation Conference, Northwestern Law School, Chicago, IL (Oct. 16, 2019) (panelist)

Litigation Funding, Forty Seventh Annual Meeting, Intellectual Property Owners Association, Washington, DC (Sep. 26, 2019) (panelist)

The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?, International Class Actions Conference, Vanderbilt Law School, Nashville, TN (Aug. 24, 2019)

A New Source of Class Action Data, Corporate Accountability Conference, Institute for Law and Economic Policy, San Juan, Puerto Rico (April 12, 2019)

The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?, Ninth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 14, 2018)

MDL: Uniform Rules v. Best Practices, Miami Law Class Action & Complex Litigation Forum, University of Miami Law School, Miami, FL (Dec. 7, 2018) (panelist)

Third Party Finance of Attorneys in Traditional and Complex Litigation, George Washington Law School, Washington, D.C. (Nov. 2, 2018) (panelist)

MDL at 50 - The 50th Anniversary of Multidistrict Litigation, New York University Law School, New York, New York (Oct. 10, 2018) (panelist)

The Discovery Tax, Law & Economics Seminar, Harvard Law School, Cambridge, Massachusetts (Sep. 11, 2018)

Empirical Research on Class Actions, Civil Justice Research Initiative, University of California at Berkeley, Berkeley, California (Apr. 9, 2018)

A Political Future for Class Actions in the United States?, The Future of Class Actions Symposium, University of Auckland Law School, Auckland, New Zealand (Mar. 15, 2018)

The Indian Class Actions: How Effective Will They Be?, Eighth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 19, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 8, 2017) (panelist)

Critical Issues in Complex Litigation, Contemporary Issues in Complex Litigation, Northwestern Law School (Nov. 29, 2017) (panelist)

The Conservative Case for Class Actions, Consumer Class Action Symposium, National Consumer Law Center, Washington, DC (Nov. 19, 2017)

The Conservative Case for Class Actions—A Monumental Debate, ABA National Institute on Class Actions, Washington, DC (Oct. 26, 2017) (panelist)

One-Way Fee Shifting after Summary Judgment, 2017 Meeting of the Midwestern Law and Economics Association, Marquette Law School, Milwaukee, WI (Oct. 20, 2017)

The Conservative Case for Class Actions, Pepperdine Law School Malibu, CA (Oct. 17, 2017)

One-Way Fee Shifting after Summary Judgment, Vanderbilt Law Review Symposium on The Future of Discovery, Vanderbilt Law School, Nashville, TN (Oct. 13, 2017)

The Constitution Revision Commission and Florida's Judiciary, 2017 Annual Florida Bar Convention, Boca Raton, FL (June 22, 2017)

Class Actions After Spokeo v. Robins: Supreme Court Jurisprudence, Article III Standing, and Practical Implications for the Bench and Practitioners, Northern District of California Judicial Conference, Napa, CA (Apr. 29, 2017) (panelist)

The Ironic History of Rule 23, Conference on Secrecy, Institute for Law & Economic Policy, Naples, FL (Apr. 21, 2017)

Justice Scalia and Class Actions: A Loving Critique, University of Notre Dame Law School, South Bend, Indiana (Feb. 3, 2017)

Should Third-Party Litigation Financing Be Permitted in Class Actions?, Fifty Years of Class Actions—A Global Perspective, Tel Aviv University, Tel Aviv, Israel (Jan. 4, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 2, 2016) (panelist)

The Ideological Consequences of Judicial Selection, William J. Brennan Lecture, Oklahoma City University School of Law, Oklahoma, City, Oklahoma (Nov. 10, 2016)

After Fifty Years, What's Class Action's Future, ABA National Institute on Class Actions, Las Vegas, Nevada (Oct. 20, 2016) (panelist)

Where Will Justice Scalia Rank Among the Most Influential Justices, State University of New York at Stony Brook, Long Island, New York (Sep. 17, 2016)

The Ironic History of Rule 23, University of Washington Law School, Seattle, WA (July 14, 2016)

A Respected Judiciary—Balancing Independence and Accountability, 2016 Annual Florida Bar Convention, Orlando, FL (June 16, 2016) (panelist)

What Will and Should Happen to Affirmative Action After Fisher v. Texas, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

Litigation Funding: The Basics and Beyond, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

Arbitration and the End of Class Actions?, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

The Next Steps for Discovery Reform: Requester Pays, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

Private Attorney General: Good or Bad?, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

Liberty, Judicial Independence, and Judicial Power, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

The Economics of Objecting for All the Right Reasons, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

Compensation in Consumer Class Actions: Data and Reform, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

The End of Class Actions?, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, George Mason Law School, Arlington, VA (Mar. 6, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

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The Problem: AT & T as It Is Unfolding, Conference on *AT & T Mobility v. Concepcion*, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

Standing under the Statements and Accounts Clause, Conference on Representation without Accountability, Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

The End of Class Actions?, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

Is Summary Judgment Unconstitutional? Some Thoughts About Originalism, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

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Twombly and Iqbal Reconsidered, Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

Do Class Action Lawyers Make Too Little?, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

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The Politics of Merit Selection, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

The End of Objector Blackmail?, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

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Memo to Mitch: Repeal the Republican Tax Increase, THE HILL (July 17, 2020)

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Kagan is an Intellect Capable of Serving Court, THE TENNESSEAN (Jun. 13, 2010)

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Tennessee's Plan to Appoint Judges Takes Power Away from the Public, THE TENNESSEAN (Mar. 14, 2008)

Process of Picking Judges Broken, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

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10 Percent Fraud, WASHINGTON TIMES (Nov. 15, 2002)

OTHER PRESENTATIONS

Does the Way We Choose our Judges Affect Case Outcomes?, American Legislative Exchange Council 2018 Annual Meeting, New Orleans, Louisiana (August 10, 2018) (panelist)

Oversight of the Structure of the Federal Courts, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, United States Senate, Washington, D.C. (July 31, 2018)

Where Will Justice Scalia Rank Among the Most Influential Justices, The Leo Bearman, Sr. American Inn of Court, Memphis, TN (Mar. 21, 2017)

Bringing Justice Closer to the People: Examining Ideas for Restructuring the 9th Circuit, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Mar. 16, 2017)

Supreme Court Review 2016: Current Issues and Cases Update, Nashville Bar Association, Nashville, TN (Sep. 15, 2016) (panelist)

A Respected Judiciary—Balancing Independence and Accountability, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

Future Amendments in the Pipeline: Rule 23, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

Hedge Funds + Lawsuits = A Good Idea?, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

Judicial Selection in Historical and National Perspective, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

Life as a Supreme Court Law Clerk and Views on the Health Care Debate, Exchange Club, Nashville, TN (Apr. 3, 2012)

The Tennessee Judicial Selection Process—Shaping Our Future, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

Reexamining the Class Action Practice, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

Judicial Selection in Kansas, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

Judicial Selection and the Tennessee Constitution, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

Judicial Selection in Tennessee, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

Ethical Implications of Tennessee's Judicial Selection Process, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

PROFESSIONAL ASSOCIATIONS

Member, American Law Institute
Referee, Journal of Law, Economics and Organization
Referee, Journal of Empirical Legal Studies
Reviewer, Oxford University Press
Reviewer, Supreme Court Economic Review
Member, American Bar Association
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights, 2009-2015
Board of Directors, Tennessee Stonewall Bar Association
American Swiss Foundation Young Leaders' Conference, 2012

Bar Admission, District of Columbia & California (inactive)

COMMUNITY ACTIVITIES

Board of Directors, Nashville Ballet, 2011-2017 & 2019-present; Board of Directors, Beacon Center, 2018-present; Nashville Talking Library for the Blind, 2008-2009

EXHIBIT 2



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An Empirical Study of Class Action Settlements and Their Fee Awards

*Brian T. Fitzpatrick**

This article is a comprehensive empirical study of class action settlements in federal court. Although there have been prior empirical studies of federal class action settlements, these studies have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). By contrast, in this article, I attempt to study every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first attempt to collect a complete set of federal class action settlements for any given year. I find that district court judges approved 688 class action settlements over this two-year period, involving nearly \$33 billion. Of this \$33 billion, roughly \$5 billion was awarded to class action lawyers, or about 15 percent of the total. Most judges chose to award fees by using the highly discretionary percentage-of-the-settlement method, and the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Fee percentages were strongly and inversely associated with the size of the settlement. The age of the case at settlement was positively associated with fee percentages. There was some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located, with lower percentages in securities cases and in settlements from the Second and Ninth Circuits. There was no evidence that fee percentages were associated with whether the class action was certified as a settlement class or with the political affiliation of the judge who made the award.

I. INTRODUCTION

Class actions have been the source of great controversy in the United States. Corporations fear them.¹ Policymakers have tried to corral them.² Commentators and scholars have

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¹See, e.g., Robert W. Wood, *Defining Employees and Independent Contractors*, *Bus. L. Today* 45, 48 (May–June 2008).

²See Private Securities Litigation Reform Act (PSLRA) of 1995, Pub. L. No. 104-67, 109 Stat. 737 (codified as amended in scattered sections of 15 U.S.C.); Class Action Fairness Act of 2005, 28 U.S.C. §§ 1453, 1711–1715 (2006).

suggested countless ways to reform them.³ Despite all the attention showered on class actions, and despite the excellent empirical work on class actions to date, the data that currently exist on how the class action system operates in the United States are limited. We do not know, for example, how much money changes hands in class action litigation every year. We do not know how much of this money goes to class action lawyers rather than class members. Indeed, we do not even know how many class action cases are resolved on an annual basis. To intelligently assess our class action system as well as whether and how it should be reformed, answers to all these questions are important. Answers to these questions are equally important to policymakers in other countries who are currently thinking about adopting U.S.-style class action devices.⁴

This article tries to answer these and other questions by reporting the results of an empirical study that attempted to gather all class action settlements approved by federal judges over a recent two-year period, 2006 and 2007. I use class action settlements as the basis of the study because, even more so than individual litigation, virtually all cases certified as class actions and not dismissed before trial end in settlement.⁵ I use federal settlements as the basis of the study for practical reasons: it was easier to identify and collect settlements approved by federal judges than those approved by state judges. Systematic study of class action settlements in state courts must await further study;⁶ these future studies are important because there may be more class action settlements in state courts than there are in federal court.⁷

This article attempts to make three contributions to the existing empirical literature on class action settlements. First, virtually all the prior empirical studies of federal class action settlements have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). In this article, by contrast, I attempt to collect every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first to attempt to collect a complete set of federal class action settlements for

³See, e.g., Robert G. Bone, *Agreeing to Fair Process: The Problem with Contractarian Theories of Procedural Fairness*, 83 B.U.L. Rev. 485, 490–94 (2003); Allan Erbsen, *From “Predominance” to “Resolvability”: A New Approach to Regulating Class Actions*, 58 Vand. L. Rev. 995, 1080–81 (2005).

⁴See, e.g., Samuel Issacharoff & Geoffrey Miller, *Will Aggregate Litigation Come to Europe?*, 62 Vand. L. Rev. 179 (2009).

⁵See, e.g., Emery Lee & Thomas E. Willing, *Impact of the Class Action Fairness Act on the Federal Courts: Preliminary Findings from Phase Two’s Pre-CAFA Sample of Diversity Class Actions* 11 (Federal Judicial Center 2008); Tom Baker & Sean J. Griffith, *How the Merits Matter: D&O Insurance and Securities Settlements*, 157 U. Pa. L. Rev. 755 (2009).

⁶Empirical scholars have begun to study state court class actions in certain subject areas and in certain states. See, e.g., Robert B. Thompson & Randall S. Thomas, *The Public and Private Faces of Derivative Suits*, 57 Vand. L. Rev. 1747 (2004); Robert B. Thompson & Randall S. Thomas, *The New Look of Shareholder Litigation: Acquisition-Oriented Class Actions*, 57 Vand. L. Rev. 133 (2004); *Findings of the Study of California Class Action Litigation* (Administrative Office of the Courts) (First Interim Report, 2009).

⁷See Deborah R. Hensler et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* 56 (2000).

any given year.⁸ As such, this article allows us to see for the first time a complete picture of the cases that are settled in federal court. This includes aggregate annual statistics, such as how many class actions are settled every year, how much money is approved every year in these settlements, and how much of that money class action lawyers reap every year. It also includes how these settlements are distributed geographically as well as by litigation area, what sort of relief was provided in the settlements, how long the class actions took to reach settlement, and an analysis of what factors were associated with the fees awarded to class counsel by district court judges.

Second, because this article analyzes settlements that were approved in both published and unpublished opinions, it allows us to assess how well the few prior studies that looked beyond securities cases but relied only on published opinions capture the complete picture of class action settlements. To the extent these prior studies adequately capture the complete picture, it may be less imperative for courts, policymakers, and empirical scholars to spend the considerable resources needed to collect unpublished opinions in order to make sound decisions about how to design our class action system.

Third, this article studies factors that may influence district court judges when they award fees to class counsel that have not been studied before. For example, in light of the discretion district court judges have been delegated over fees under Rule 23, as well as the salience the issue of class action litigation has assumed in national politics, realist theories of judicial behavior would predict that Republican judges would award smaller fee percentages than Democratic judges. I study whether the political beliefs of district court judges are associated with the fees they award and, in doing so, contribute to the literature that attempts to assess the extent to which these beliefs influence the decisions of not just appellate judges, but trial judges as well. Moreover, the article contributes to the small but growing literature examining whether the ideological influences found in published judicial decisions persist when unpublished decisions are examined as well.

In Section II of this article, I briefly survey the existing empirical studies of class action settlements. In Section III, I describe the methodology I used to collect the 2006–2007 federal class action settlements and I report my findings regarding these settlements. District court judges approved 688 class action settlements over this two-year period, involving over \$33 billion. I report a number of descriptive statistics for these settlements, including the number of plaintiff versus defendant classes, the distribution of settlements by subject matter, the age of the case at settlement, the geographic distribution of settlements, the number of settlement classes, the distribution of relief across settlements, and various statistics on the amount of money involved in the settlements. It should be noted that despite the fact that the few prior studies that looked beyond securities settlements appeared to oversample larger settlements, much of the analysis set forth in this article is consistent with these prior studies. This suggests that scholars may not need to sample unpublished as well as published opinions in order to paint an adequate picture of class action settlements.

⁸Of course, I cannot be certain that I found every one of the class actions that settled in federal court over this period. Nonetheless, I am confident that if I did not find some, the number I did not find is small and would not contribute meaningfully to the data reported in this article.

In Section IV, I perform an analysis of the fees judges awarded to class action lawyers in the 2006–2007 settlements. All told, judges awarded nearly \$5 billion over this two-year period in fees and expenses to class action lawyers, or about 15 percent of the total amount of the settlements. Most federal judges chose to award fees by using the highly discretionary percentage-of-the-settlement method and, unsurprisingly, the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Using regression analysis, I confirm prior studies and find that fee percentages are strongly and inversely associated with the size of the settlement. Further, I find that the age of the case is positively associated with fee percentages but that the percentages were not associated with whether the class action was certified as a settlement class. There also appeared to be some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all other areas, and district courts in some circuits—the Ninth and the Second (in securities cases)—awarded lower fee percentages than courts in many other circuits. Finally, the regression analysis did not confirm the realist hypothesis: there was no association between fee percentage and the political beliefs of the judge in any regression.

II. PRIOR EMPIRICAL STUDIES OF CLASS ACTION SETTLEMENTS

There are many existing empirical studies of federal securities class action settlements.⁹ Studies of securities settlements have been plentiful because for-profit organizations maintain lists of all federal securities class action settlements for the benefit of institutional investors that are entitled to file claims in these settlements.¹⁰ Using these data, studies have shown that since 2005, for example, there have been roughly 100 securities class action settlements in federal court each year, and these settlements have involved between \$7 billion and \$17 billion per year.¹¹ Scholars have used these data to analyze many different aspects of these settlements, including the factors that are associated with the percentage of

⁹See, e.g., James D. Cox & Randall S. Thomas, Does the Plaintiff Matter? An Empirical Analysis of Lead Plaintiffs in Securities Class Actions, 106 Colum. L. Rev. 1587 (2006); James D. Cox, Randall S. Thomas & Lynn Bai, There are Plaintiffs and . . . there are Plaintiffs: An Empirical Analysis of Securities Class Action Settlements, 61 Vand. L. Rev. 355 (2008); Theodore Eisenberg, Geoffrey Miller & Michael A. Perino, A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after *Goldberger v. Integrated Resources, Inc.*, 29 Wash. U.J.L. & Pol'y 5 (2009); Michael A. Perino, Markets and Monitors: The Impact of Competition and Experience on Attorneys' Fees in Securities Class Actions (St. John's Legal Studies, Research Paper No. 06-0034, 2006), available at <<http://ssrn.com/abstract=870577>> [hereinafter Perino, Markets and Monitors]; Michael A. Perino, The Milberg Weiss Prosecution: No Harm, No Foul? (St. John's Legal Studies, Research Paper No. 08-0135, 2008), available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1133995> [hereinafter Perino, Milberg Weiss].

¹⁰See, e.g., RiskMetrics Group, available at <<http://www.riskmetrics.com/scas>>.

¹¹See Cornerstone Research, Securities Class Action Settlements: 2007 Review and Analysis 1 (2008), available at <http://securities.stanford.edu/Settlements/REVIEW_1995-2007/Settlements_Through_12_2007.pdf>.

the settlements that courts have awarded to class action lawyers.¹² These studies have found that the mean and median fees awarded by district court judges are between 20 percent and 30 percent of the settlement amount.¹³ These studies have also found that a number of factors are associated with the percentage of the settlement awarded as fees, including (inversely) the size of the settlement, the age of the case, whether a public pension fund was the lead plaintiff, and whether certain law firms were class counsel.¹⁴ None of these studies has examined whether the political affiliation of the federal district court judge awarding the fees was associated with the size of awards.

There are no comparable organizations that maintain lists of nonsecurities class action settlements. As such, studies of class action settlements beyond the securities area are much rarer and, when they have been done, rely on samples of settlements that were not intended to be representative of the whole. The two largest studies of class action settlements not limited to securities class actions are a 2004 study by Ted Eisenberg and Geoff Miller,¹⁵ which was recently updated to include data through 2008,¹⁶ and a 2003 study by Class Action Reports.¹⁷ The Eisenberg-Miller studies collected data from class action settlements in both state and federal courts found from court opinions published in the Westlaw and Lexis databases and checked against lists maintained by the CCH Federal Securities and Trade Regulation Reporters. Through 2008, their studies have now identified 689 settlements over a 16-year period, or less than 45 settlements per year.¹⁸ Over this 16-year period, their studies found that the mean and median settlement amounts were, respectively, \$116 million and \$12.5 million (in 2008 dollars), and that the mean and median fees awarded by district courts were 23 percent and 24 percent of the settlement, respectively.¹⁹ Their studies also performed an analysis of fee percentages and fee awards. For the data through 2002, they found that the percentage of the settlement awarded as fees was associated with the size of the settlement (inversely), the age of the case, and whether the

¹²See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 17–24, 28–36; Perino, *Markets and Monitors*, *supra* note 9, at 12–28, 39–44; Perino, Milberg Weiss, *supra* note 9, at 32–33, 39–60.

¹³See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 17–18, 22, 28, 33; Perino, *Markets and Monitors*, *supra* note 9, at 20–21, 40; Perino, Milberg Weiss, *supra* note 9, at 32–33, 51–53.

¹⁴See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 14–24, 29–30, 33–34; Perino, *Markets and Monitors*, *supra* note 9, at 20–28, 41; Perino, Milberg Weiss, *supra* note 9, at 39–58.

¹⁵See Theodore Eisenberg & Geoffrey Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27 (2004).

¹⁶See Theodore Eisenberg & Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248 (2010) [hereinafter Eisenberg & Miller II].

¹⁷See Stuart J. Logan, Jack Moshman & Beverly C. Moore, Jr., *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 169 (Mar.–Apr. 2003).

¹⁸See Eisenberg & Miller II, *supra* note 16, at 251.

¹⁹*Id.* at 258–59.

district court went out of its way to comment on the level of risk that class counsel had assumed in pursuing the case.²⁰ For the data through 2008, they regressed only fee awards and found that the awards were inversely associated with the size of the settlement, that state courts gave lower awards than federal courts, and that the level of risk was still associated with larger awards.²¹ Their studies have not examined whether the political affiliations of the federal district court judges awarding fees were associated with the size of the awards.

The Class Action Reports study collected data on 1,120 state and federal settlements over a 30-year period, or less than 40 settlements per year.²² Over the same 10-year period analyzed by the Eisenberg-Miller study, the Class Action Reports data found mean and median settlements of \$35.4 and \$7.6 million (in 2002 dollars), as well as mean and median fee percentages between 25 percent and 30 percent.²³ Professors Eisenberg and Miller performed an analysis of the fee awards in the Class Action Reports study and found the percentage of the settlement awarded as fees was likewise associated with the size of the settlement (inversely) and the age of the case.²⁴

III. FEDERAL CLASS ACTION SETTLEMENTS, 2006 AND 2007

As far as I am aware, there has never been an empirical study of all federal class action settlements in a particular year. In this article, I attempt to make such a study for two recent years: 2006 and 2007. To compile a list of all federal class settlements in 2006 and 2007, I started with one of the aforementioned lists of securities settlements, the one maintained by RiskMetrics, and I supplemented this list with settlements that could be found through three other sources: (1) broad searches of district court opinions in the Westlaw and Lexis databases,²⁵ (2) four reporters of class action settlements—*BNA Class Action Litigation Report*, *Mealey's Jury Verdicts and Settlements*, *Mealey's Litigation Report*, and the *Class Action World* website²⁶—and (3) a list from the Administrative Office of Courts of all district court cases

²⁰See Eisenberg & Miller, *supra* note 15, at 61–62.

²¹See Eisenberg & Miller II, *supra* note 16, at 278.

²²See Eisenberg & Miller, *supra* note 15, at 34.

²³*Id.* at 47, 51.

²⁴*Id.* at 61–62.

²⁵The searches consisted of the following terms: (“class action” & (settle! /s approv! /s (2006 2007))); (((counsel attorney) /s fee /s award!) & (settle! /s (2006 2007)) & “class action”); (“class action” /s settle! & da(aft 12/31/2005 & bef 1/1/2008)); (“class action” /s (fair reasonable adequate) & da(aft 12/31/2005 & bef 1/1/2008)).

²⁶See <<http://classactionworld.com/>>.

coded as class actions that terminated by settlement between 2005 and 2008.²⁷ I then removed any duplicate cases and examined the docket sheets and court orders of each of the remaining cases to determine whether the cases were in fact certified as class actions under either Rule 23, Rule 23.1, or Rule 23.2.²⁸ For each of the cases verified as such, I gathered the district court's order approving the settlement, the district court's order awarding attorney fees, and, in many cases, the settlement agreements and class counsel's motions for fees, from electronic databases (such as Westlaw or PACER) and, when necessary, from the clerk's offices of the various federal district courts. In this section, I report the characteristics of the settlements themselves; in the next section, I report the characteristics of the attorney fees awarded to class counsel by the district courts that approved the settlements.

A. Number of Settlements

I found 688 settlements approved by federal district courts during 2006 and 2007 using the methodology described above. This is almost the exact same number the Eisenberg-Miller study found over a 16-year period in both federal *and* state court. Indeed, the number of annual settlements identified in this study is *several times* the number of annual settlements that have been identified in any prior empirical study of class action settlements. Of the 688 settlements I found, 304 were approved in 2006 and 384 were approved in 2007.²⁹

B. Defendant Versus Plaintiff Classes

Although Rule 23 permits federal judges to certify either a class of plaintiffs or a class of defendants, it is widely assumed that it is extremely rare for courts to certify defendant classes.³⁰ My findings confirm this widely held assumption. Of the 688 class action settlements approved in 2006 and 2007, 685 involved plaintiff classes and only three involved

²⁷I examined the AO lists in the year before and after the two-year period under investigation because the termination date recorded by the AO was not necessarily the same date the district court approved the settlement.

²⁸See Fed. R. Civ. P. 23, 23.1, 23.2. I excluded from this analysis opt-in collective actions, such as those brought pursuant to the provisions of the Fair Labor Standards Act (see 29 U.S.C. § 216(b)), if such actions did not also include claims certified under the opt-out mechanism in Rule 23.

²⁹A settlement was assigned to a particular year if the district court judge's order approving the settlement was dated between January 1 and December 31 of that year. Cases involving multiple defendants sometimes settled over time because defendants would settle separately with the plaintiff class. All such partial settlements approved by the district court on the same date were treated as one settlement. Partial settlements approved by the district court on different dates were treated as different settlements.

³⁰See, e.g., Robert H. Klonoff, Edward K.M. Bilich & Suzette M. Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* 1061 (2d ed. 2006).

defendant classes. All three of the defendant-class settlements were in employment benefits cases, where companies sued classes of current or former employees.³¹

C. Settlement Subject Areas

Although courts are free to certify Rule 23 classes in almost any subject area, it is widely assumed that securities settlements dominate the federal class action docket.³² At least in terms of the number of settlements, my findings reject this conventional wisdom. As Table 1 shows, although securities settlements comprised a large percentage of the 2006 and 2007 settlements, they did not comprise a majority of those settlements. As one would have

Table 1: The Number of Class Action Settlements Approved by Federal Judges in 2006 and 2007 in Each Subject Area

Subject Matter	Number of Settlements	
	2006	2007
Securities	122 (40%)	135 (35%)
Labor and employment	41 (14%)	53 (14%)
Consumer	40 (13%)	47 (12%)
Employee benefits	23 (8%)	38 (10%)
Civil rights	24 (8%)	37 (10%)
Debt collection	19 (6%)	23 (6%)
Antitrust	13 (4%)	17 (4%)
Commercial	4 (1%)	9 (2%)
Other	18 (6%)	25 (6%)
Total	304	384

NOTE: Securities: cases brought under federal and state securities laws. Labor and employment: workplace claims brought under either federal or state law, with the exception of ERISA cases. Consumer: cases brought under the Fair Credit Reporting Act as well as cases for consumer fraud and the like. Employee benefits: ERISA cases. Civil rights: cases brought under 42 U.S.C. § 1983 or cases brought under the Americans with Disabilities Act seeking nonworkplace accommodations. Debt collection: cases brought under the Fair Debt Collection Practices Act. Antitrust: cases brought under federal or state antitrust laws. Commercial: cases between businesses, excluding antitrust cases. Other: includes, among other things, derivative actions against corporate managers and directors, environmental suits, insurance suits, Medicare and Medicaid suits, product liability suits, and mass tort suits.

SOURCES: Westlaw, PACER, district court clerks' offices.

³¹See *Halliburton Co. v. Graves*, No. 04-00280 (S.D. Tex., Sept. 28, 2007); *Rexam, Inc. v. United Steel Workers of Am.*, No. 03-2998 (D. Minn. Aug. 29, 2007); *Rexam, Inc. v. United Steel Workers of Am.*, No. 03-2998 (D. Minn. Sept. 17, 2007).

³²See, e.g., John C. Coffee, Jr., *Reforming the Security Class Action: An Essay on Deterrence and its Implementation*, 106 Colum. L. Rev. 1534, 1539–40 (2006) (describing securities class actions as “the 800-pound gorilla that dominates and overshadows other forms of class actions”).

expected in light of Supreme Court precedent over the last two decades,³³ there were almost no mass tort class actions (included in the “Other” category) settled over the two-year period.

Although the Eisenberg-Miller study through 2008 is not directly comparable on the distribution of settlements across litigation subject areas—because its state and federal court data cannot be separated (more than 10 percent of the settlements were from state court³⁴) and because it excludes settlements in fee-shifting cases—their study through 2008 is the best existing point of comparison. Interestingly, despite the fact that state courts were included in their data, their study through 2008 found about the same percentage of securities cases (39 percent) as my 2006–2007 data set shows.³⁵ However, their study found many more consumer (18 percent) and antitrust (10 percent) cases, while finding many fewer labor and employment (8 percent), employee benefits (6 percent), and civil rights (3 percent) cases.³⁶ This is not unexpected given their reliance on published opinions and their exclusion of fee-shifting cases.

D. Settlement Classes

The Federal Rules of Civil Procedure permit parties to seek certification of a suit as a class action for settlement purposes only.³⁷ When the district court certifies a class in such circumstances, the court need not consider whether it would be manageable to try the litigation as a class.³⁸ So-called settlement classes have always been more controversial than classes certified for litigation because they raise the prospect that, at least where there are competing class actions filed against the same defendant, the defendant could play class counsel off one another to find the one willing to settle the case for the least amount of money.³⁹ Prior to the Supreme Court’s 1997 opinion in *Amchem Products, Inc. v. Windsor*,⁴⁰ it was uncertain whether the Federal Rules even permitted settlement classes. It may therefore be a bit surprising to learn that 68 percent of the federal settlements in 2006 and 2007 were settlement classes. This percentage is higher than the percentage found in the Eisenberg-Miller studies, which found that only 57 percent of class action settlements in

³³See, e.g., Samuel Issacharoff, *Private Claims, Aggregate Rights*, 2008 Sup. Ct. Rev. 183, 208.

³⁴See Eisenberg & Miller II, *supra* note 16, at 257.

³⁵*Id.* at 262.

³⁶*Id.*

³⁷See Martin H. Redish, *Settlement Class Actions, The Case-or-Controversy Requirement, and the Nature of the Adjudicatory Process*, 73 U. Chi. L. Rev. 545, 553 (2006).

³⁸See *Amchem Prods., Inc v Windsor*, 521 U.S. 591, 620 (1997).

³⁹See Redish, *supra* note 368, at 557–59.

⁴⁰521 U.S. 591 (1997).

state and federal court between 2003 and 2008 were settlement classes.⁴¹ It should be noted that the distribution of litigation subject areas among the settlement classes in my 2006–2007 federal data set did not differ much from the distribution among nonsettlement classes, with two exceptions. One exception was consumer cases, which were nearly three times as prevalent among settlement classes (15.9 percent) as among nonsettlement classes (5.9 percent); the other was civil rights cases, which were four times as prevalent among nonsettlement classes (18.0 percent) as among settlements classes (4.5 percent). In light of the skepticism with which the courts had long treated settlement classes, one might have suspected that courts would award lower fee percentages in such settlements. Nonetheless, as I report in Section III, whether a case was certified as a settlement class was not associated with the fee percentages awarded by federal district court judges.

E. The Age at Settlement

One interesting question is how long class actions were litigated before they reached settlement. Unsurprisingly, cases reached settlement over a wide range of ages.⁴² As shown in Table 2, the average time to settlement was a bit more than three years (1,196 days) and the median time was a bit under three years (1,068 days). The average and median ages here are similar to those found in the Eisenberg-Miller study through 2002, which found averages of 3.35 years in fee-shifting cases and 2.86 years in non-fee-shifting cases, and

Table 2: The Number of Days, 2006–2007, Federal Class Action Cases Took to Reach Settlement in Each Subject Area

<i>Subject Matter</i>	<i>Average</i>	<i>Median</i>	<i>Minimum</i>	<i>Maximum</i>
Securities	1,438	1,327	392	3,802
Labor and employment	928	786	105	2,497
Consumer	963	720	127	4,961
Employee benefits	1,162	1,161	164	3,157
Civil rights	1,373	1,360	181	3,354
Debt collection	738	673	223	1,973
Antitrust	1,140	1,167	237	2,480
Commercial	1,267	760	163	5,443
Other	1,065	962	185	3,620
All	1,196	1,068	105	5,443

SOURCE: PACER.

⁴¹See Eisenberg & Miller II, *supra* note 16, at 266.

⁴²The age of the case was calculated by subtracting the date the relevant complaint was filed from the date the settlement was approved by the district court judge. The dates were taken from PACER. For consolidated cases, I used the date of the earliest complaint. If the case had been transferred, consolidated, or removed, the date the complaint was filed was not always available from PACER. In such cases, I used the date the case was transferred, consolidated, or removed as the start date.

medians of 4.01 years in fee-shifting cases and 3.0 years in non-fee-shifting cases.⁴³ Their study through 2008 did not report case ages.

The shortest time to settlement was 105 days in a labor and employment case.⁴⁴ The longest time to settlement was nearly 15 years (5,443 days) in a commercial case.⁴⁵ The average and median time to settlement varied significantly by litigation subject matter, with securities cases generally taking the longest time and debt collection cases taking the shortest time. Labor and employment cases and consumer cases also settled relatively early.

F. The Location of Settlements

The 2006–2007 federal class action settlements were not distributed across the country in the same way federal civil litigation is in general. As Figure 1 shows, some of the geographic circuits attracted much more class action attention than we would expect based on their docket size, and others attracted much less. In particular, district courts in the First, Second, Seventh, and Ninth Circuits approved a much larger share of class action settlements than the share of all civil litigation they resolved, with the First, Second, and Seventh Circuits approving nearly double the share and the Ninth Circuit approving one-and-one-half times the share. By contrast, the shares of class action settlements approved by district courts in the Fifth and Eighth Circuits were less than one-half of their share of all civil litigation, with the Third, Fourth, and Eleventh Circuits also exhibiting significant underrepresentation.

With respect to a comparison with the Eisenberg-Miller studies, their federal court data through 2008 can be separated from their state court data on the question of the geographic distribution of settlements, and there are some significant differences between their federal data and the numbers reflected in Figure 1. Their study reported considerably higher proportions of settlements than I found from the Second (23.8 percent), Third (19.7 percent), Eighth (4.8 percent), and D.C. (3.3 percent) Circuits, and considerably lower proportions from the Fourth (1.3 percent), Seventh (6.8 percent), and Ninth (16.6 percent) Circuits.⁴⁶

Figure 2 separates the class action settlement data in Figure 1 into securities and nonsecurities cases. Figure 2 suggests that the overrepresentation of settlements in the First and Second Circuits is largely attributable to securities cases, whereas the overrepresentation in the Seventh Circuit is attributable to nonsecurities cases, and the overrepresentation in the Ninth is attributable to both securities and nonsecurities cases.

It is interesting to ask why some circuits received more class action attention than others. One hypothesis is that class actions are filed in circuits where class action lawyers

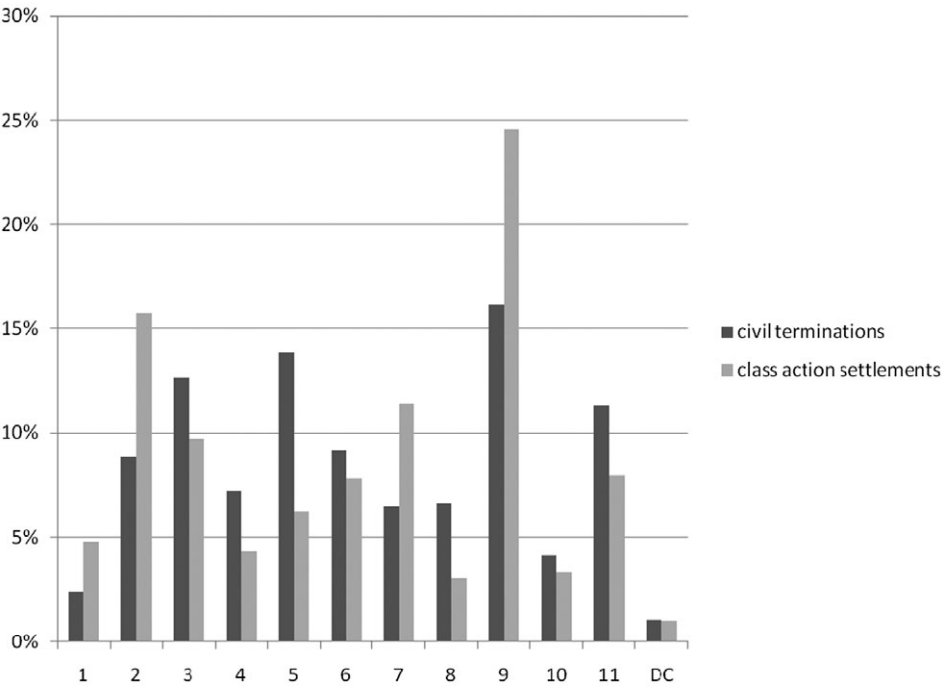
⁴³See Eisenberg & Miller, *supra* note 15, at 59–60.

⁴⁴See *Clemmons v. Rent-a-Center W., Inc.*, No. 05-6307 (D. Or. Jan. 20, 2006).

⁴⁵See *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006).

⁴⁶See Eisenberg & Miller II, *supra* note 16, at 260.

Figure 1: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



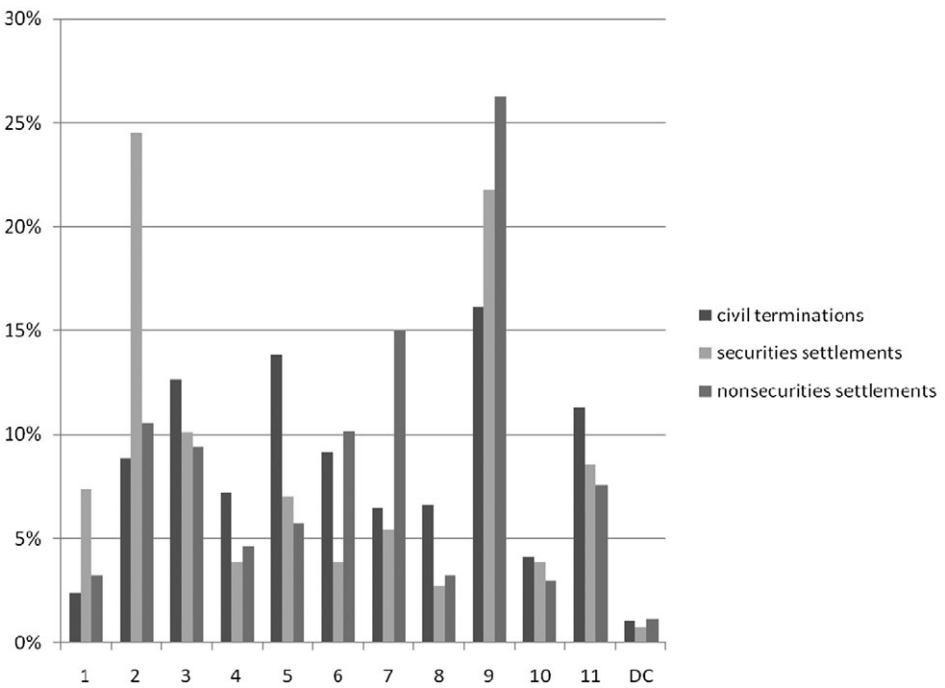
SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <<http://www.uscourts.gov/stats/index.html>>).

believe they can find favorable law or favorable judges. Federal class actions often involve class members spread across multiple states and, as such, class action lawyers may have a great deal of discretion over the district in which file suit.⁴⁷ One way law or judges may be favorable to class action attorneys is with regard to attorney fees. In Section III, I attempt to test whether district court judges in the circuits with the most over- and undersubscribed class action dockets award attorney fees that would attract or discourage filings there; I find no evidence that they do.

Another hypothesis is that class action suits are settled in jurisdictions where defendants are located. This might be the case because although class action lawyers may have discretion over where to file, venue restrictions might ultimately restrict cases to jurisdic-

⁴⁷See Samuel Issacharoff & Richard Nagareda, Class Settlements Under Attack, 156 U. Pa. L. Rev. 1649, 1662 (2008).

Figure 2: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <<http://www.uscourts.gov/stats/index.html>>).

tions in which defendants have their corporate headquarters or other operations.⁴⁸ This might explain why the Second Circuit, with the financial industry in New York, sees so many securities suits, and why other circuits with cities with a large corporate presence, such as the First (Boston), Seventh (Chicago), and Ninth (Los Angeles and San Francisco), see more settlements than one would expect based on the size of their civil dockets.

Another hypothesis might be that class action lawyers file cases wherever it is most convenient for them to litigate the cases—that is, in the cities in which their offices are located. This, too, might explain the Second Circuit’s overrepresentation in securities settlements, with prominent securities firms located in New York, as well as the

⁴⁸See 28 U.S.C. §§ 1391, 1404, 1406, 1407. See also *Foster v. Nationwide Mut. Ins. Co.*, No. 07-04928, 2007 U.S. Dist. LEXIS 95240 at *2–17 (N.D. Cal. Dec. 14, 2007) (transferring venue to jurisdiction where defendant’s corporate headquarters were located). One prior empirical study of securities class action settlements found that 85 percent of such cases are filed in the home circuit of the defendant corporation. See James D. Cox, Randall S. Thomas & Lynn Bai, Do Differences in Pleading Standards Cause Forum Shopping in Securities Class Actions?: Doctrinal and Empirical Analyses, 2009 Wis. L. Rev. 421, 429, 440, 450–51 (2009).

overrepresentation of other settlements in some of the circuits in which major metropolitan areas with prominent plaintiffs’ firms are found.

G. Type of Relief

Under Rule 23, district court judges can certify class actions for injunctive or declaratory relief, for money damages, or for a combination of the two.⁴⁹ In addition, settlements can provide money damages both in the form of cash as well as in the form of in-kind relief, such as coupons to purchase the defendant’s products.⁵⁰

As shown in Table 3, the vast majority of class actions settled in 2006 and 2007 provided cash relief to the class (89 percent), but a substantial number also provided in-kind relief (6 percent) or injunctive or declaratory relief (23 percent). As would be

Table 3: The Percentage of 2006 and 2007 Class Action Settlements Providing Each Type of Relief in Each Subject Area

<i>Subject Matter</i>	<i>Cash</i>	<i>In-Kind Relief</i>	<i>Injunctive or Declaratory Relief</i>
Securities (<i>n</i> = 257)	100%	0%	2%
Labor and employment (<i>n</i> = 94)	95%	6%	29%
Consumer (<i>n</i> = 87)	74%	30%	37%
Employee benefits (<i>n</i> = 61)	90%	0%	34%
Civil rights (<i>n</i> = 61)	49%	2%	75%
Debt collection (<i>n</i> = 42)	98%	0%	12%
Antitrust (<i>n</i> = 30)	97%	13%	7%
Commercial (<i>n</i> = 13)	92%	0%	62%
Other (<i>n</i> = 43)	77%	7%	33%
All (<i>n</i> = 688)	89%	6%	23%

NOTE: Cash: cash, securities, refunds, charitable contributions, contributions to employee benefit plans, forgiven debt, relinquishment of liens or claims, and liquidated repairs to property. In-kind relief: vouchers, coupons, gift cards, warranty extensions, merchandise, services, and extended insurance policies. Injunctive or declaratory relief: modification of terms of employee benefit plans, modification of compensation practices, changes in business practices, capital improvements, research, and unliquidated repairs to property.

SOURCES: Westlaw, PACER, district court clerks’ offices.

⁴⁹See Fed. R. Civ. P. 23(b).

⁵⁰These coupon settlements have become very controversial in recent years, and Congress discouraged them in the Class Action Fairness Act of 2005 by tying attorney fees to the value of coupons that were ultimately redeemed by class members as opposed to the value of coupons offered class members. See 28 U.S.C. § 1712.

expected in light of the focus on consumer cases in the debate over the anti-coupon provision in the Class Action Fairness Act of 2005,⁵¹ consumer cases had the greatest percentage of settlements providing for in-kind relief (30 percent). Civil rights cases had the greatest percentage of settlements providing for injunctive or declaratory relief (75 percent), though almost half the civil rights cases also provided some cash relief (49 percent). The securities settlements were quite distinctive from the settlements in other areas in their singular focus on cash relief: every single securities settlement provided cash to the class and almost none provided in-kind, injunctive, or declaratory relief. This is but one example of how the focus on securities settlements in the prior empirical scholarship can lead to a distorted picture of class action litigation.

H. Settlement Money

Although securities settlements did not comprise the majority of federal class action settlements in 2006 and 2007, they did comprise the majority of the money—indeed, the *vast majority* of the money—involved in class action settlements. In Table 4, I report the total amount of ascertainable value involved in the 2006 and 2007 settlements. This amount

Table 4: The Total Amount of Money Involved in Federal Class Action Settlements in 2006 and 2007

Subject Matter	Total Ascertainable Monetary Value in Settlements (and Percentage of Overall Annual Total)			
	2006 (n = 304)		2007 (n = 384)	
Securities	\$16,728	76%	\$8,038	73%
Labor and employment	\$266.5	1%	\$547.7	5%
Consumer	\$517.3	2%	\$732.8	7%
Employee benefits	\$443.8	2%	\$280.8	3%
Civil rights	\$265.4	1%	\$81.7	1%
Debt collection	\$8.9	<1%	\$5.7	<1%
Antitrust	\$1,079	5%	\$660.5	6%
Commercial	\$1,217	6%	\$124.0	1%
Other	\$1,568	7%	\$592.5	5%
Total	\$22,093	100%	\$11,063	100%

NOTE: Dollar amounts are in millions. Includes all determinate payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.

SOURCES: Westlaw, PACER, district court clerks’ offices.

⁵¹See, e.g., 151 Cong. Rec. H723 (2005) (statement of Rep. Sensenbrenner) (arguing that consumers are “seeing all of their gains go to attorneys and them just getting coupon settlements from the people who have allegedly done them wrong”).

includes all determinate⁵² payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.⁵³ I did not attempt to assign a value to any relief that was not valued by the district court (even if it may have been valued by class counsel). It should be noted that district courts did not often value in-kind or injunctive relief—they did so only 18 percent of the time—and very little of Table 4—only \$1.3 billion, or 4 percent—is based on these valuations. It should also be noted that the amounts in Table 4 reflect only what defendants *agreed to pay*; they do not reflect the amounts that defendants *actually paid* after the claims administration process concluded. Prior empirical research has found that, depending on how settlements are structured (e.g., whether they awarded a fixed amount of money to each class member who eventually files a valid claim or a pro rata amount of a fixed settlement to each class member), defendants can end up paying much less than they agreed.⁵⁴

Table 4 shows that in both years, around three-quarters of all the money involved in federal class action settlements came from securities cases. Thus, in this sense, the conventional wisdom about the dominance of securities cases in class action litigation is correct. Figure 3 is a graphical representation of the contribution each litigation area made to the total number and total amount of money involved in the 2006–2007 settlements.

Table 4 also shows that, in total, over \$33 billion was approved in the 2006–2007 settlements. Over \$22 billion was approved in 2006 and over \$11 billion in 2007. It should be emphasized again that the totals in Table 4 understate the amount of money defendants agreed to pay in class action settlements in 2006 and 2007 because they exclude the unascertainable value of those settlements. This understatement disproportionately affects litigation areas, such as civil rights, where much of the relief is injunctive because, as I noted, very little of such relief was valued by district courts. Nonetheless, these numbers are, as far as I am aware, the first attempt to calculate how much money is involved in federal class action settlements in a given year.

The significant discrepancy between the two years is largely attributable to the 2006 securities settlement related to the collapse of Enron, which totaled \$6.6 billion, as well as to the fact that seven of the eight 2006–2007 settlements for more than \$1 billion were approved in 2006.⁵⁵ Indeed, it is worth noting that the eight settlements for more than \$1

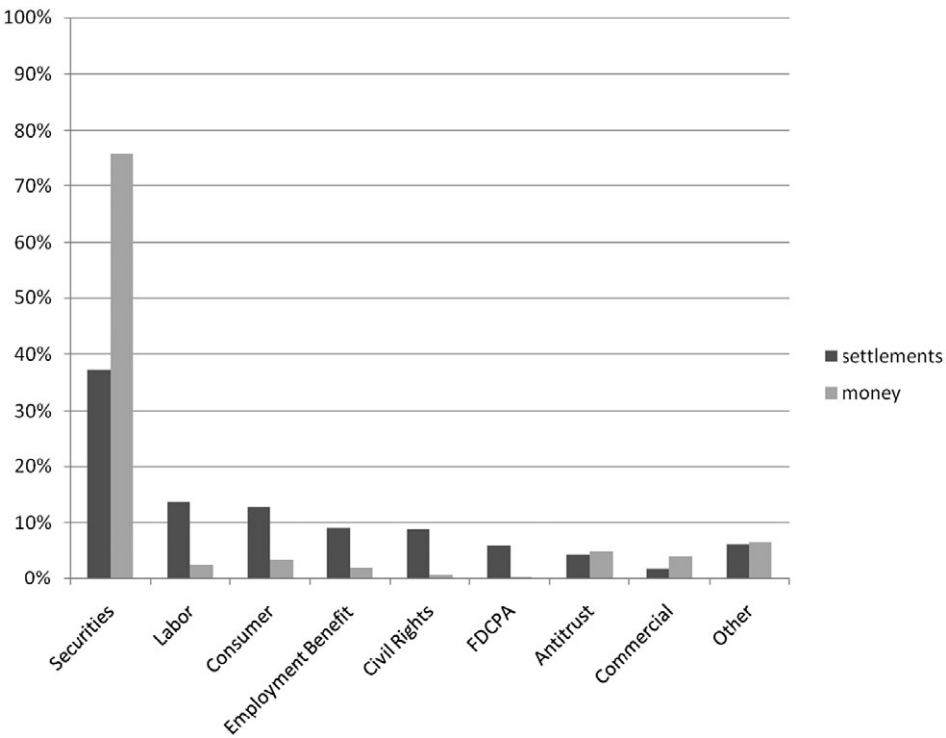
⁵²For example, I excluded awards of a fixed amount of money to each class member who eventually filed a valid claim (as opposed to settlements that awarded a pro rata amount of a fixed settlement to each class member) if the total amount of money set aside to pay the claims was not set forth in the settlement documents.

⁵³In some cases, the district court valued the relief in the settlement over a range. In these cases, I used the middle point in the range.

⁵⁴See Hensler et al., *supra* note 7, at 427–30.

⁵⁵See *In re Enron Corp. Secs. Litig.*, MDL 1446 (S.D. Tex. May 24, 2006) (\$6,600,000,000); *In re Tyco Int'l Ltd. Multidistrict Litig.*, MDL 02-1335 (D.N.H. Dec. 19, 2007) (\$3,200,000,000); *In re AOL Time Warner, Inc. Secs. & "ERISA" Litig.*, MDL 1500 (S.D.N.Y. Apr. 6, 2006) (\$2,500,000,000); *In re Diet Drugs Prods. Liab. Litig.*, MDL 1203 (E.D. Pa. May 24, 2006) (\$1,275,000,000); *In re Nortel Networks Corp. Secs. Litig. (Nortel I)*, No. 01-1855 (S.D.N.Y. Dec. 26, 2006) (\$1,142,780,000); *In re Royal Ahold N.V. Secs. & ERISA Litig.*, 03-1539 (D. Md. Jun. 16, 2006)

Figure 3: The percentage of 2006–2007 federal class action settlements and settlement money from each subject area.



SOURCES: Westlaw, PACER, district court clerks’ offices.

billion accounted for almost \$18 billion of the \$33 billion that changed hands over the two-year period. That is, a mere 1 percent of the settlements comprised over 50 percent of the value involved in federal class action settlements in 2006 and 2007. To give some sense of the distribution of settlement size in the 2006–2007 data set, Table 5 sets forth the number of settlements with an ascertainable value beyond fee, expense, and class-representative incentive awards (605 out of the 688 settlements). Nearly two-thirds of all settlements fell below \$10 million.

Given the disproportionate influence exerted by securities settlements on the total amount of money involved in class actions, it is unsurprising that the average securities settlement involved more money than the average settlement in most of the other subject areas. These numbers are provided in Table 6, which includes, again, only the settlements

(\$1,100,000,000); Allapattah Servs. Inc. v. Exxon Corp., No. 91-0986 (S.D. Fla. Apr. 7, 2006) (\$1,075,000,000); In re Nortel Networks Corp. Secs. Litig. (Nortel II), No. 05-1659 (S.D.N.Y. Dec. 26, 2006) (\$1,074,270,000).

Table 5: The Distribution by Size of 2006–2007 Federal Class Action Settlements with Ascertainable Value

<i>Settlement Size (in Millions)</i>	<i>Number of Settlements</i>
[\$0 to \$1]	131 (21.7%)
(\$1 to \$10]	261 (43.1%)
(\$10 to \$50]	139 (23.0%)
(\$50 to \$100]	33 (5.45%)
(\$100 to \$500]	31 (5.12%)
(\$500 to \$6,600]	10 (1.65%)
Total	605

NOTE: Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.
SOURCES: Westlaw, PACER, district court clerks’ offices.

Table 6: The Average and Median Settlement Amounts in the 2006–2007 Federal Class Action Settlements with Ascertainable Value to the Class

<i>Subject Matter</i>	<i>Average</i>	<i>Median</i>
Securities (<i>n</i> = 257)	\$96.4	\$8.0
Labor and employment (<i>n</i> = 88)	\$9.2	\$1.8
Consumer (<i>n</i> = 65)	\$18.8	\$2.9
Employee benefits (<i>n</i> = 52)	\$13.9	\$5.3
Civil rights (<i>n</i> = 34)	\$9.7	\$2.5
Debt collection (<i>n</i> = 40)	\$0.37	\$0.088
Antitrust (<i>n</i> = 29)	\$60.0	\$22.0
Commercial (<i>n</i> = 12)	\$111.7	\$7.1
Other (<i>n</i> = 28)	\$76.6	\$6.2
All (<i>N</i> = 605)	\$54.7	\$5.1

NOTE: Dollar amounts are in millions. Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.
SOURCES: Westlaw, PACER, district court clerks’ offices.

with an ascertainable value beyond fee, expense, and class-representative incentive awards. The average settlement over the entire two-year period for all types of cases was almost \$55 million, but the median was only \$5.1 million. (With the \$6.6 billion Enron settlement excluded, the average settlement for all ascertainable cases dropped to \$43.8 million and, for securities cases, dropped to \$71.0 million.) The average settlements varied widely by litigation area, with securities and commercial settlements at the high end of around \$100

million, but the median settlements for nearly every area were bunched around a few million dollars. It should be noted that the high average for commercial cases is largely due to one settlement above \$1 billion;⁵⁶ when that settlement is removed, the average for commercial cases was only \$24.2 million.

Table 6 permits comparison with the two prior empirical studies of class action settlements that sought to include nonsecurities as well as securities cases in their purview. The Eisenberg-Miller study through 2002, which included both common-fund and fee-shifting cases, found that the mean class action settlement was \$112 million and the median was \$12.9 million, both in 2006 dollars,⁵⁷ more than double the average and median I found for all settlements in 2006 and 2007. The Eisenberg-Miller update through 2008 included only common-fund cases and found mean and median settlements in federal court of \$115 million and \$11.7 million (both again in 2006 dollars),⁵⁸ respectively; this is still more than double the average and median I found. This suggests that the methodology used by the Eisenberg-Miller studies—looking at district court opinions that were published in Westlaw or Lexis—oversampled larger class actions (because opinions approving larger class actions are, presumably, more likely to be published than opinions approving smaller ones). It is also possible that the exclusion of fee-shifting cases from their data through 2008 contributed to this skew, although, given that their data through 2002 included fee-shifting cases and found an almost identical mean and median as their data through 2008, the primary explanation for the much larger mean and median in their study through 2008 is probably their reliance on published opinions. Over the same years examined by Professors Eisenberg and Miller, the Class Action Reports study found a smaller average settlement than I did (\$39.5 million in 2006 dollars), but a larger median (\$8.48 million in 2006 dollars). It is possible that the Class Action Reports methodology also oversampled larger class actions, explaining its larger median, but that there are more “mega” class actions today than there were before 2003, explaining its smaller mean.⁵⁹

It is interesting to ask how significant the \$16 billion that was involved annually in these 350 or so federal class action settlements is in the grand scheme of U.S. litigation. Unfortunately, we do not know how much money is transferred every year in U.S. litigation. The only studies of which I am aware that attempt even a partial answer to this question are the estimates of how much money is transferred in the U.S. “tort” system every year by a financial services consulting firm, Tillinghast-Towers Perrin.⁶⁰ These studies are not directly

⁵⁶See *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006) (approving \$1,075,000,000 settlement).

⁵⁷See Eisenberg & Miller, *supra* note 15, at 47.

⁵⁸See Eisenberg & Miller II, *supra* note 16, at 262.

⁵⁹There were eight class action settlements during 2006 and 2007 of more than \$1 billion. See note 55 *supra*.

⁶⁰Some commentators have been critical of Tillinghast’s reports, typically on the ground that the reports overestimate the cost of the tort system. See M. Martin Boyer, *Three Insights from the Canadian D&O Insurance Market: Inertia, Information and Insiders*, 14 *Conn. Ins. L.J.* 75, 84 (2007); John Fabian Witt, *Form and Substance in the Law of*

comparable to the class action settlement numbers because, again, the number of tort class action settlements in 2006 and 2007 was very small. Nonetheless, as the tort system no doubt constitutes a large percentage of the money transferred in all litigation, these studies provide something of a point of reference to assess the significance of class action settlements. In 2006 and 2007, Tillinghast-Towers Perrin estimated that the U.S. tort system transferred \$160 billion and \$164 billion, respectively, to claimants and their lawyers.⁶¹ The total amount of money involved in the 2006 and 2007 federal class action settlements reported in Table 4 was, therefore, roughly 10 percent of the Tillinghast-Towers Perrin estimate. This suggests that in merely 350 cases every year, federal class action settlements involve the same amount of wealth as 10 percent of the entire U.S. tort system. It would seem that this is a significant amount of money for so few cases.

IV. ATTORNEY FEES IN FEDERAL CLASS ACTION SETTLEMENTS, 2006 AND 2007

A. Total Amount of Fees and Expenses

As I demonstrated in Section III, federal class action settlements involved a great deal of money in 2006 and 2007, some \$16 billion a year. A perennial concern with class action litigation is whether class action lawyers are reaping an outsized portion of this money.⁶² The 2006–2007 federal class action data suggest that these concerns may be exaggerated. Although class counsel were awarded some \$5 billion in fees and expenses over this period, as shown in Table 7, only 13 percent of the settlement amount in 2006 and 20 percent of the amount in 2007 went to fee and expense awards.⁶³ The 2006 percentage is lower than the 2007 percentage in large part because the class action lawyers in the Enron securities settlement received less than 10 percent of the \$6.6 billion corpus. In any event, the percentages in both 2006 and 2007 are far lower than the portions of settlements that contingency-fee lawyers receive in individual litigation, which are usually at least 33 percent.⁶⁴ Lawyers received less than 33 percent of settlements in fees and expenses in virtually every subject area in both years.

Counterinsurgency Damages, 41 *Loy. L.A.L. Rev.* 1455, 1475 n.135 (2008). If these criticisms are valid, then class action settlements would appear even more significant as compared to the tort system.

⁶¹See Tillinghast-Towers Perrin, *U.S. Tort Costs: 2008 Update 5* (2008). The report calculates \$252 billion in total tort “costs” in 2007 and \$246.9 billion in 2006, *id.*, but only 65 percent of those costs represent payments made to claimants and their lawyers (the remainder represents insurance administration costs and legal costs to defendants). See Tillinghast-Towers Perrin, *U.S. Tort Costs: 2003 Update 17* (2003).

⁶²See, e.g., Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?* 158 *U. Pa. L. Rev.* 2043, 2043–44 (2010).

⁶³In some of the partial settlements, see note 29 *supra*, the district court awarded expenses for all the settlements at once and it was unclear what portion of the expenses was attributable to which settlement. In these instances, I assigned each settlement a pro rata portion of expenses. To the extent possible, all the fee and expense numbers in this article exclude any interest known to be awarded by the courts.

⁶⁴See, e.g., Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 *DePaul L. Rev.* 267, 284–86 (1998) (reporting results of a survey of Wisconsin lawyers).

Table 7: The Total Amount of Fees and Expenses Awarded to Class Action Lawyers in Federal Class Action Settlements in 2006 and 2007

Subject Matter	Total Fees and Expenses Awarded in Settlements (and as Percentage of Total Settlement Amounts) in Each Subject Area	
	2006 (n = 292)	2007 (n = 363)
Securities	\$1,899 (11%)	\$1,467 (20%)
Labor and employment	\$75.1 (28%)	\$144.5 (26%)
Consumer	\$126.4 (24%)	\$65.3 (9%)
Employee benefits	\$57.1 (13%)	\$71.9 (26%)
Civil rights	\$31.0 (12%)	\$32.2 (39%)
Debt collection	\$2.5 (28%)	\$1.1 (19%)
Antitrust	\$274.6 (26%)	\$157.3 (24%)
Commercial	\$347.3 (29%)	\$18.2 (15%)
Other	\$119.3 (8%)	\$103.3 (17%)
Total	\$2,932 (13%)	\$2,063 (20%)

NOTE: Dollar amounts are in millions. Excludes settlements in which fees were not (or at least not yet) sought (22 settlements), settlements in which fees have not yet been awarded (two settlements), and settlements in which fees could not be ascertained due to indefinite award amounts, missing documents, or nonpublic side agreements (nine settlements).

SOURCES: Westlaw, PACER, district court clerks’ offices.

It should be noted that, in some respects, the percentages in Table 7 overstate the portion of settlements that were awarded to class action attorneys because, again, many of these settlements involved indefinite cash relief or noncash relief that could not be valued.⁶⁵ If the value of all this relief could have been included, then the percentages in Table 7 would have been even lower. On the other hand, as noted above, not all the money defendants agree to pay in class action settlements is ultimately collected by the class.⁶⁶ To the extent leftover money is returned to the defendant, the percentages in Table 7 understate the portion class action lawyers received relative to their clients.

B. Method of Awarding Fees

District court judges have a great deal of discretion in how they set fee awards in class action cases. Under Rule 23, federal judges are told only that the fees they award to class counsel

⁶⁵Indeed, the large year-to-year variation in the percentages in labor, consumer, and employee benefits cases arose because district courts made particularly large valuations of the equitable relief in a few settlements and used the lodestar method to calculate the fees in these settlements (and thereby did not consider their large valuations in calculating the fees).

⁶⁶See Hensler et al., *supra* note 7, at 427–30.

must be “reasonable.”⁶⁷ Courts often exercise this discretion by choosing between two approaches: the lodestar approach or the percentage-of-the-settlement approach.⁶⁸ The lodestar approach works much the way it does in individual litigation: the court calculates the fee based on the number of hours class counsel actually worked on the case multiplied by a reasonable hourly rate and a discretionary multiplier.⁶⁹ The percentage-of-the-settlement approach bases the fee on the size of the settlement rather than on the hours class counsel actually worked: the district court picks a percentage of the settlement it thinks is reasonable based on a number of factors, one of which is often the fee lodestar (sometimes referred to as a “lodestar cross-check”).⁷⁰ My 2006–2007 data set shows that the percentage-of-the-settlement approach has become much more common than the lodestar approach. In 69 percent of the settlements reported in Table 7, district court judges employed the percentage-of-the-settlement method with or without the lodestar cross-check. They employed the lodestar method in only 12 percent of settlements. In the other 20 percent of settlements, the court did not state the method it used or it used another method altogether.⁷¹ The pure lodestar method was used most often in consumer (29 percent) and debt collection (45 percent) cases. These numbers are fairly consistent with the Eisenberg-Miller data from 2003 to 2008. They found that the lodestar method was used in only 9.6 percent of settlements.⁷² Their number is no doubt lower than the 12 percent number found in my 2006–2007 data set because they excluded fee-shifting cases from their study.

C. Variation in Fees Awarded

Not only do district courts often have discretion to choose between the lodestar method and the percentage-of-the-settlement method, but each of these methods leaves district courts with a great deal of discretion in how the method is ultimately applied. The courts

⁶⁷Fed. R. Civ. P. 23(h).

⁶⁸The discretion to pick between these methods is most pronounced in settlements where the underlying claim was not found in a statute that would shift attorney fees to the defendant. See, e.g., *In re Thirteen Appeals Arising out of San Juan DuPont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (permitting either percentage or lodestar method in common-fund cases); *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (same); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (same). By contrast, courts typically used the lodestar approach in settlements arising from fee-shifting cases.

⁶⁹See Eisenberg & Miller, *supra* note 15, at 31.

⁷⁰*Id.* at 31–32.

⁷¹These numbers are based on the fee method described in the district court’s order awarding fees, unless the order was silent, in which case the method, if any, described in class counsel’s motion for fees (if it could be obtained) was used. If the court explicitly justified the fee award by reference to its percentage of the settlement, I counted it as the percentage method. If the court explicitly justified the award by reference to a lodestar calculation, I counted it as the lodestar method. If the court explicitly justified the award by reference to both, I counted it as the percentage method with a lodestar cross-check. If the court calculated neither a percentage nor the fee lodestar in its order, then I counted it as an “other” method.

⁷²See Eisenberg & Miller II, *supra* note 16, at 267.

that use the percentage-of-the-settlement method usually rely on a multifactor test⁷³ and, like most multifactor tests, it can plausibly yield many results. It is true that in many of these cases, judges examine the fee percentages that other courts have awarded to guide their discretion.⁷⁴ In addition, the Ninth Circuit has adopted a presumption that 25 percent is the proper fee award percentage in class action cases.⁷⁵ Moreover, in securities cases, some courts presume that the proper fee award percentage is the one class counsel agreed to when it was hired by the large shareholder that is now usually selected as the lead plaintiff in such cases.⁷⁶ Nonetheless, presumptions, of course, can be overcome and, as one court has put it, “[t]here is no hard and fast rule mandating a certain percentage . . . which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case.”⁷⁷ The court added: “[i]ndividualization in the exercise of a discretionary power [for fee awards] will alone retain equity as a living system and save it from sterility.”⁷⁸ It is therefore not surprising that district courts awarded fees over a broad range when they used the percentage-of-the-settlement method. Figure 4 is a graph of the distribution of fee awards as a percentage of the settlement in the 444 cases where district courts used the percentage method with or without a lodestar cross-check and the fee percentages were ascertainable. These fee awards are exclusive of awards for expenses whenever the awards could be separated by examining either the district court’s order or counsel’s motion for fees and expenses (which was 96 percent of the time). The awards ranged from 3 percent of the settlement to 47 percent of the settlement. The average award was 25.4 percent and the median was 25 percent. Most fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent. The Eisenberg-Miller study through 2008 found a slightly lower mean (24 percent) but the same median (25 percent) among its federal court settlements.⁷⁹

It should be noted that in 218 of these 444 settlements (49 percent), district courts said they considered the lodestar calculation as a factor in assessing the reasonableness of the fee percentages awarded. In 204 of these settlements, the lodestar multiplier resulting

⁷³The Eleventh Circuit, for example, has identified a nonexclusive list of 15 factors that district courts might consider. See *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 772 n.3, 775 (11th Cir. 1991). See also *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265 (D.N.H. 2007) (five factors); *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (six factors); *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) (seven factors); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006) (13 factors); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (12 factors); *In re Baan Co. Sec. Litig.*, 288 F. Supp. 2d 14, 17 (D.D.C. 2003) (seven factors).

⁷⁴See *Eisenberg & Miller*, *supra* note 15, at 32.

⁷⁵See *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003).

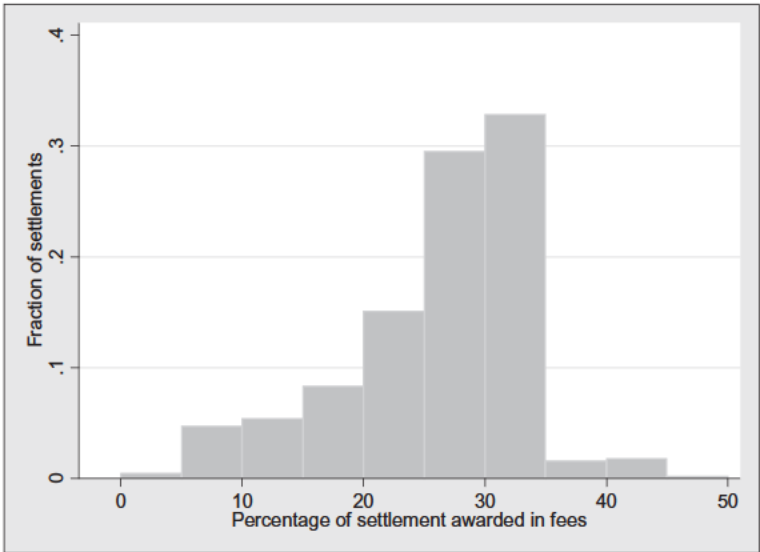
⁷⁶See, e.g., *In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001).

⁷⁷*Camden I Condo. Ass’n*, 946 F.2d at 774.

⁷⁸*Camden I Condo. Ass’n*, 946 F.2d at 774 (alterations in original and internal quotation marks omitted).

⁷⁹See *Eisenberg & Miller II*, *supra* note 16, at 259.

Figure 4: The distribution of 2006–2007 federal class action fee awards using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks’ offices.

from the fee award could be ascertained. The lodestar multiplier in these cases ranged from 0.07 to 10.3, with a mean of 1.65 and a median of 1.34. Although there is always the possibility that class counsel are optimistic with their timesheets when they submit them for lodestar consideration, these lodestar numbers—only one multiplier above 6.0, with the bulk of the range not much above 1.0—strike me as fairly parsimonious for the risk that goes into any piece of litigation and cast doubt on the notion that the percentage-of-the-settlement method results in windfalls to class counsel.⁸⁰

Table 8 shows the mean and median fee percentages awarded in each litigation subject area. The fee percentages did not appear to vary greatly across litigation subject areas, with most mean and median awards between 25 percent and 30 percent. As I report later in this section, however, after controlling for other variables, there were statistically significant differences in the fee percentages awarded in some subject areas compared to others. The mean and median percentages for securities cases were 24.7 percent and 25.0 percent, respectively; for all nonsecurities cases, the mean and median were 26.1 percent and 26.0 percent, respectively. The Eisenberg-Miller study through 2008 found mean awards ranging from 21–27 percent and medians from 19–25 percent,⁸¹ a bit lower than the ranges in my

⁸⁰It should be emphasized, of course, that these 204 settlements may not be representative of the settlements where the percentage-of-the-settlement method was used without the lodestar cross-check.

⁸¹See Eisenberg & Miller II, *supra* note 16, at 262.

Table 8: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

Subject Matter	Percentage of Settlement Awarded as Fees	
	Mean	Median
Securities (n = 233)	24.7	25.0
Labor and employment (n = 61)	28.0	29.0
Consumer (n = 39)	23.5	24.6
Employee benefits (n = 37)	26.0	28.0
Civil rights (n = 20)	29.0	30.3
Debt collection (n = 5)	24.2	25.0
Antitrust (n = 23)	25.4	25.0
Commercial (n = 7)	23.3	25.0
Other (n = 19)	24.9	26.0
All (N = 444)	25.7	25.0

SOURCES: Westlaw, PACER, district court clerks’ offices.

2006–2007 data set, which again, may be because they oversampled larger settlements (as I show below, district courts awarded smaller fee percentages in larger cases).

In light of the fact that, as I noted above, the distribution of class action settlements among the geographic circuits does not track their civil litigation dockets generally, it is interesting to ask whether one reason for the pattern in class action cases is that circuits oversubscribed with class actions award higher fee percentages. Although this question will be taken up with more sophistication in the regression analysis below, it is worth describing here the mean and median fee percentages in each of the circuits. Those data are presented in Table 9. Contrary to the hypothesis set forth in Section III, two of the circuits most oversubscribed with class actions, the Second and the Ninth, were the only circuits in which the mean fee awards were *under* 25 percent. As I explain below, these differences are statistically significant and remain so after controlling for other variables.

The lodestar method likewise permits district courts to exercise a great deal of leeway through the application of the discretionary multiplier. Figure 5 shows the distribution of lodestar multipliers in the 71 settlements in which district courts used the lodestar method and the multiplier could be ascertained. The average multiplier was 0.98 and the median was 0.92, which suggest that courts were not terribly prone to exercise their discretion to deviate from the amount of money encompassed in the lodestar calculation. These 71

Table 9: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Circuit</i>	<i>Percentage of Settlement Awarded as Fees</i>	
	<i>Mean</i>	<i>Median</i>
First (<i>n</i> = 27)	27.0	25.0
Second (<i>n</i> = 72)	23.8	24.5
Third (<i>n</i> = 50)	25.4	29.3
Fourth (<i>n</i> = 19)	25.2	28.0
Fifth (<i>n</i> = 27)	26.4	29.0
Sixth (<i>n</i> = 25)	26.1	28.0
Seventh (<i>n</i> = 39)	27.4	29.0
Eighth (<i>n</i> = 15)	26.1	30.0
Ninth (<i>n</i> = 111)	23.9	25.0
Tenth (<i>n</i> = 18)	25.3	25.5
Eleventh (<i>n</i> = 35)	28.1	30.0
DC (<i>n</i> = 6)	26.9	26.0

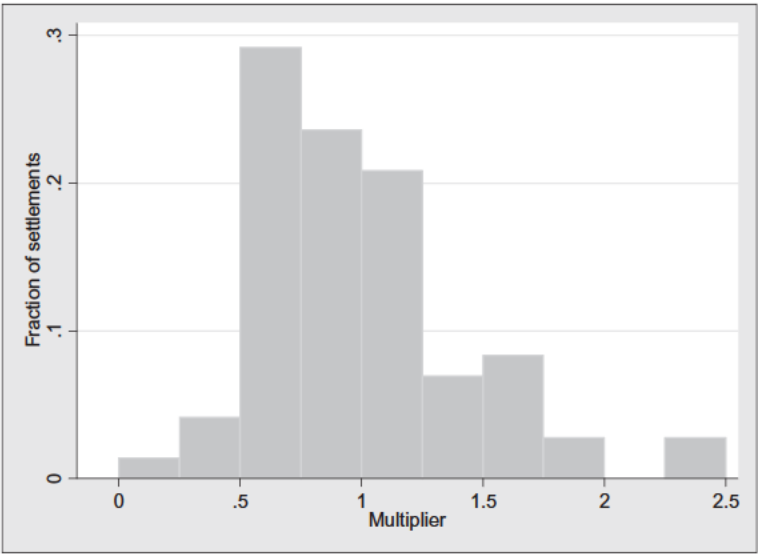
SOURCES: Westlaw, PACER, district court clerks’ offices.

settlements were heavily concentrated within the consumer (median multiplier 1.13) and debt collection (0.66) subject areas. If cases in which district courts used the percentage-of-the-settlement method with a lodestar cross-check are combined with the lodestar cases, the average and median multipliers (in the 263 cases where the multipliers were ascertainable) were 1.45 and 1.19, respectively. Again—putting to one side the possibility that class counsel are optimistic with their timesheets—these multipliers appear fairly modest in light of the risk involved in any piece of litigation.

D. Factors Influencing Percentage Awards

Whether district courts are exercising their discretion over fee awards wisely is an important public policy question given the amount of money at stake in class action settlements. As shown above, district court judges awarded class action lawyers nearly \$5 billion in fees and expenses in 2006–2007. Based on the comparison to the tort system set forth in Section III, it is not difficult to surmise that in the 350 or so settlements every year, district court judges

Figure 5: The distribution of lodestar multipliers in 2006–2007 federal class action fee awards using the lodestar method.



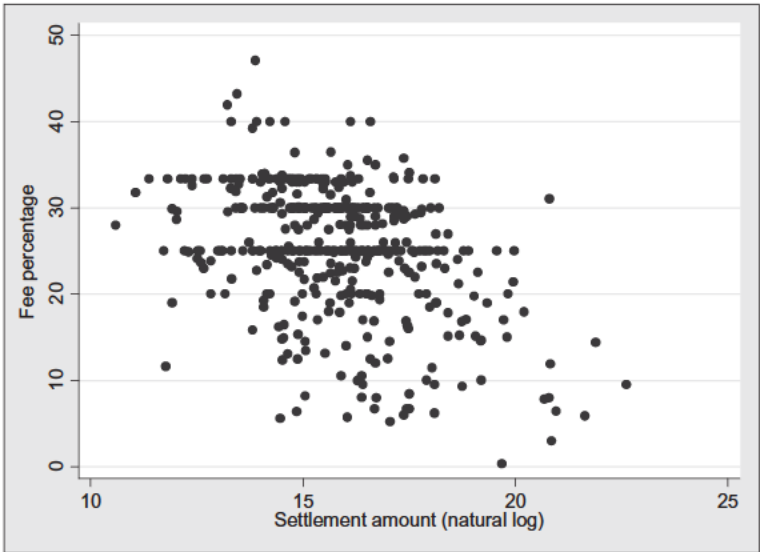
SOURCES: Westlaw, PACER, district court clerks’ offices.

are awarding a significant portion of all the annual compensation received by contingency-fee lawyers in the United States. Moreover, contingency fees are arguably the engine that drives much of the noncriminal regulation in the United States; unlike many other nations, we regulate largely through the ex post, decentralized device of litigation.⁸² To the extent district courts could have exercised their discretion to award billions more or billions less to class action lawyers, district courts have been delegated a great deal of leeway over a big chunk of our regulatory horsepower. It is therefore worth examining how district courts exercise their discretion over fees. This examination is particularly important in cases where district courts use the percentage-of-the-settlement method to award fees: not only do such cases comprise the vast majority of settlements, but they comprise the vast majority of the money awarded as fees. As such, the analysis that follows will be confined to the 444 settlements where the district courts used the percentage-of-the-settlement method.

As I noted, prior empirical studies have shown that fee percentages are strongly and inversely related to the size of the settlement both in securities fraud and other cases. As shown in Figure 6, the 2006–2007 data are consistent with prior studies. Regression analysis, set forth in more detail below, confirms that after controlling for other variables, fee percentage is strongly and inversely associated with settlement size among all cases, among securities cases, and among all nonsecurities cases.

⁸²See, e.g., Samuel Issacharoff, *Regulating after the Fact*, 56 DePaul L. Rev. 375, 377 (2007).

Figure 6: Fee awards as a function of settlement size in 2006–2007 class action cases using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks’ offices.

As noted above, courts often look to fee percentages in other cases as one factor they consider in deciding what percentage to award in a settlement at hand. In light of this practice, and in light of the fact that the size of the settlement has such a strong relationship to fee percentages, scholars have tried to help guide the practice by reporting the distribution of fee percentages across different settlement sizes.⁸³ In Table 10, I follow the Eisenberg-Miller studies and attempt to contribute to this guidance by setting forth the mean and median fee percentages, as well as the standard deviation, for each decile of the 2006–2007 settlements in which courts used the percentage-of-the-settlement method to award fees. The mean percentages ranged from over 28 percent in the first decile to less than 19 percent in the last decile.

It should be noted that the last decile in Table 10 covers an especially wide range of settlements, those from \$72.5 million to the Enron settlement of \$6.6 billion. To give more meaningful data to courts that must award fees in the largest settlements, Table 11 shows the last decile broken into additional cut points. When both Tables 10 and 11 are examined together, it appears that fee percentages tended to drift lower at a fairly slow pace until a settlement size of \$100 million was reached, at which point the fee percentages plunged well below 20 percent, and by the time \$500 million was reached, they plunged well below 15 percent, with most awards at that level under even 10 percent.

⁸³See Eisenberg & Miller II, *supra* note 16, at 265.

Table 10: Mean, Median, and Standard Deviation of Fee Awards by Settlement Size in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Settlement Size (in Millions)</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>
[\$0 to \$0.75] (<i>n</i> = 45)	28.8%	29.6%	6.1%
(\$0.75 to \$1.75] (<i>n</i> = 44)	28.7%	30.0%	6.2%
(\$1.75 to \$2.85] (<i>n</i> = 45)	26.5%	29.3%	7.9%
(\$2.85 to \$4.45] (<i>n</i> = 45)	26.0%	27.5%	6.3%
(\$4.45 to \$7.0] (<i>n</i> = 44)	27.4%	29.7%	5.1%
(\$7.0 to \$10.0] (<i>n</i> = 43)	26.4%	28.0%	6.6%
(\$10.0 to \$15.2] (<i>n</i> = 45)	24.8%	25.0%	6.4%
(\$15.2 to \$30.0] (<i>n</i> = 46)	24.4%	25.0%	7.5%
(\$30.0 to \$72.5] (<i>n</i> = 42)	22.3%	24.9%	8.4%
(\$72.5 to \$6,600] (<i>n</i> = 45)	18.4%	19.0%	7.9%

SOURCES: Westlaw, PACER, district court clerks’ offices.

Table 11: Mean, Median, and Standard Deviation of Fee Awards of the Largest 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Settlement Size (in Millions)</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>
(\$72.5 to \$100] (<i>n</i> = 12)	23.7%	24.3%	5.3%
(\$100 to \$250] (<i>n</i> = 14)	17.9%	16.9%	5.2%
(\$250 to \$500] (<i>n</i> = 8)	17.8%	19.5%	7.9%
(\$500 to \$1,000] (<i>n</i> = 2)	12.9%	12.9%	7.2%
(\$1,000 to \$6,600] (<i>n</i> = 9)	13.7%	9.5%	11%

SOURCES: Westlaw, PACER, district court clerks’ offices.

Prior empirical studies have not examined whether fee awards are associated with the political affiliation of the district court judges making the awards. This is surprising because realist theories of judicial behavior would predict that political affiliation would influence fee decisions.⁸⁴ It is true that as a general matter, political affiliation may influence district court judges to a lesser degree than it does appellate judges (who have been the focus of most of the prior empirical studies of realist theories): district court judges decide more routine cases and are subject to greater oversight on appeal than appellate judges. On the other hand, class action settlements are a bit different in these regards than many other decisions made by district court judges. To begin with, class action settlements are almost never appealed, and when they are, the appeals are usually settled before the appellate court hears the case.⁸⁵ Thus, district courts have much less reason to worry about the constraint of appellate review in fashioning fee awards. Moreover, one would think the potential for political affiliation to influence judicial decision making is greatest when legal sources lead to indeterminate outcomes and when judicial decisions touch on matters that are salient in national politics. (The more salient a matter is, the more likely presidents will select judges with views on the matter and the more likely those views will diverge between Republicans and Democrats.) Fee award decisions would seem to satisfy both these criteria. The law of fee awards, as explained above, is highly discretionary, and fee award decisions are wrapped up in highly salient political issues such as tort reform and the relative power of plaintiffs' lawyers and corporations. I would expect to find that judges appointed by Democratic presidents awarded higher fees in the 2006–2007 settlements than did judges appointed by Republican presidents.

The data, however, do not appear to bear this out. Of the 444 fee awards using the percentage-of-the-settlement approach, 52 percent were approved by Republican appointees, 45 percent were approved by Democratic appointees, and 4 percent were approved by non-Article III judges (usually magistrate judges). The mean fee percentage approved by Republican appointees (25.6 percent) was slightly *greater* than the mean approved by Democratic appointees (24.9 percent). The medians (25 percent) were the same.

To examine whether the realist hypothesis fared better after controlling for other variables, I performed regression analysis of the fee percentage data for the 427 settlements approved by Article III judges. I used ordinary least squares regression with the dependent variable the percentage of the settlement that was awarded in fees.⁸⁶ The independent

⁸⁴See generally C.K. Rowland & Robert A. Carp, *Politics and Judgment in Federal District Courts* (1996). See also Max M. Schanzenbach & Emerson H. Tiller, *Reviewing the Sentencing Guidelines: Judicial Politics, Empirical Evidence, and Reform*, 75 U. Chi. L. Rev. 715, 724–25 (2008).

⁸⁵See Brian T. Fitzpatrick, *The End of Objector Blackmail?* 62 Vand. L. Rev. 1623, 1640, 1634–38 (2009) (finding that less than 10 percent of class action settlements approved by federal courts in 2006 were appealed by class members).

⁸⁶Professors Eisenberg and Miller used a square root transformation of the fee percentages in some of their regressions. I ran all the regressions using this transformation as well and it did not appreciably change the results. I also ran the regressions using a natural log transformation of fee percentage and with the dependent variable natural log of the fee amount (as opposed to the fee percentage). None of these models changed the results

variables were the natural log of the amount of the settlement, the natural log of the age of the case (in days), indicator variables for whether the class was certified as a settlement class, for litigation subject areas, and for circuits, as well as indicator variables for whether the judge was appointed by a Republican or Democratic president and for the judge's race and gender.⁸⁷

The results for five regressions are in Table 12. In the first regression (Column 1), only the settlement amount, case age, and judge's political affiliation, gender, and race were included as independent variables. In the second regression (Column 2), all the independent variables were included. In the third regression (Column 3), only securities cases were analyzed, and in the fourth regression (Column 4), only nonsecurities cases were analyzed.

In none of these regressions was the political affiliation of the district court judge associated with fee percentage in a statistically significant manner.⁸⁸ One possible explanation for the lack of evidence for the realist hypothesis is that district court judges elevate other preferences above their political and ideological ones. For example, district courts of both political stripes may succumb to docket-clearing pressures and largely rubber stamp whatever fee is requested by class counsel; after all, these requests are rarely challenged by defendants. Moreover, if judges award class counsel whatever they request, class counsel will not appeal and, given that, as noted above, class members rarely appeal settlements (and when they do, often settle them before the appeal is heard),⁸⁹ judges can thereby virtually guarantee there will be no appellate review of their settlement decisions. Indeed, scholars have found that in the vast majority of cases, the fees ultimately awarded by federal judges are little different than those sought by class counsel.⁹⁰

Another explanation for the lack of evidence for the realist hypothesis is that my data set includes both unpublished as well as published decisions. It is thought that realist theories of judicial behavior lose force in unpublished judicial decisions. This is the case because the kinds of questions for which realist theories would predict that judges have the most room to let their ideologies run are questions for which the law is ambiguous; it is

appreciably. The regressions were also run with and without the 2006 Enron settlement because it was such an outlier (\$6.6 billion); the case did not change the regression results appreciably. For every regression, the data and residuals were inspected to confirm the standard assumptions of linearity, homoscedasticity, and the normal distribution of errors.

⁸⁷Prior studies of judicial behavior have found that the race and sex of the judge can be associated with his or her decisions. See, e.g., Adam B. Cox & Thomas J. Miles, *Judging the Voting Rights Act*, 108 *Colum. L. Rev.* 1 (2008); Donald R. Songer et al., *A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals*, 56 *J. Pol.* 425 (1994).

⁸⁸Although these coefficients are not reported in Table 8, the gender of the district court judge was never statistically significant. The race of the judge was only occasionally significant.

⁸⁹See Fitzpatrick, *supra* note 85, at 1640.

⁹⁰See Eisenberg & Miller II, *supra* note 16, at 270 (finding that state and federal judges awarded the fees requested by class counsel in 72.5 percent of settlements); Eisenberg, Miller & Perino, *supra* note 9, at 22 ("judges take a light touch when it comes to reviewing fee requests").

Table 12: Regression of Fee Percentages in 2006–2007 Settlements Using Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Independent Variable</i>	<i>Regression Coefficients (and Robust t Statistics)</i>				
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
Settlement amount (natural log)	–1.77 (–5.43)**	–1.76 (–8.52)**	–1.76 (–7.16)**	–1.41 (–4.00)**	–1.78 (–8.67)**
Age of case (natural log days)	1.66 (2.31)**	1.99 (2.71)**	1.13 (1.21)	1.72 (1.47)	2.00 (2.69)**
Judge’s political affiliation (1 = Democrat)	–0.630 (–0.83)	–0.345 (–0.49)	0.657 (0.76)	–1.43 (–1.20)	–0.232 (–0.34)
Settlement class		0.150 (0.19)	0.873 (0.84)	–1.62 (–1.00)	0.124 (0.15)
1st Circuit		3.30 (2.74)**	4.41 (3.32)**	0.031 (0.01)	0.579 (0.51)
2d Circuit		0.513 (0.44)	–0.813 (–0.61)	2.93 (1.14)	–2.23 (–1.98)**
3d Circuit		2.25 (1.99)**	4.00 (3.85)**	–1.11 (–0.50)	—
4th Circuit		2.34 (1.22)	0.544 (0.19)	3.81 (1.35)	—
5th Circuit		2.98 (1.90)*	1.09 (0.65)	6.11 (1.97)**	0.230 (0.15)
6th Circuit		2.91 (2.28)**	0.838 (0.57)	4.41 (2.15)**	—
7th Circuit		2.55 (2.23)**	3.22 (2.36)**	2.90 (1.46)	–0.227 (–0.20)
8th Circuit		2.12 (0.97)	–0.759 (–0.24)	3.73 (1.19)	–0.586 (–0.28)
9th Circuit		—	—	—	–2.73 (–3.44)**
10th Circuit		1.45 (0.94)	–0.254 (–0.13)	3.16 (1.29)	—
11th Circuit		4.05 (3.44)**	3.85 (3.07)**	4.14 (1.88)*	—
DC Circuit		2.76 (1.10)	2.60 (0.80)	2.41 (0.64)	—
Securities case		—			—
Labor and employment case		2.93 (3.00)**		—	2.85 (2.94)**
Consumer case		–1.65 (–0.88)		–4.39 (–2.20)**	–1.62 (–0.88)
Employee benefits case		–0.306 (–0.23)		–4.23 (–2.55)**	–0.325 (–0.26)
Civil rights case		1.85 (0.99)		–2.05 (–0.97)	1.76 (0.95)
Debt collection case		–4.93 (–1.71)*		–7.93 (–2.49)**	–5.04 (–1.75)*
Antitrust case		3.06 (2.11)**		0.937 (0.47)	2.78 (1.98)**

Table 12 Continued

Independent Variable	Regression Coefficients (and Robust t Statistics)				
	1	2	3	4	5
Commercial case		−0.028 (−0.01)		−2.65 (−0.73)	0.178 (0.05)
Other case		−0.340 (−0.17)		−3.73 (−1.65)	−0.221 (−0.11)
Constant	42.1 (7.29)**	37.2 (6.08)**	43.0 (6.72)**	38.2 (4.14)**	40.1 (7.62)**
N	427	427	232	195	427
R ²	.20	.26	.37	.26	.26
Root MSE	6.59	6.50	5.63	7.24	6.48

NOTE: **significant at the 5 percent level; *significant at the 10 percent level. Standard errors in Column 1 were clustered by circuit. Indicator variables for race and gender were included in each regression but not reported. SOURCES: Westlaw, PACER, district court clerks’ offices, Federal Judicial Center.

thought that these kinds of questions are more often answered in published opinions.⁹¹ Indeed, most of the studies finding an association between ideological beliefs and case outcomes were based on data sets that included only published opinions.⁹² On the other hand, there is a small but growing number of studies that examine unpublished opinions as well, and some of these studies have shown that ideological effects persisted.⁹³ Nonetheless, in light of the discretion that judges exercise with respect to fee award decisions, it hard to characterize *any* decision in this area as “unambiguous.” Thus, even when unpublished, I would have expected the fee award decisions to exhibit an association with ideological beliefs. Thus, I am more persuaded by the explanation suggesting that judges are more concerned with clearing their dockets or insulating their decisions from appeal in these cases than with furthering their ideological beliefs.

In all the regressions, the size of the settlement was strongly and inversely associated with fee percentages. Whether the case was certified as a settlement class was not associated

⁹¹See, e.g., Ahmed E. Taha, Data and Selection Bias: A Case Study, 75 UMKC L. Rev. 171, 179 (2006).

⁹²Id. at 178–79.

⁹³See, e.g., David S. Law, Strategic Judicial Lawmaking: Ideology, Publication, and Asylum Law in the Ninth Circuit, 73 U. Cin. L. Rev. 817, 843 (2005); Deborah Jones Merritt & James J. Brudney, Stalking Secret Law: What Predicts Publication in the United States Courts of Appeals, 54 Vand. L. Rev. 71, 109 (2001); Donald R. Songer, Criteria for Publication of Opinions in the U.S. Courts of Appeals: Formal Rules Versus Empirical Reality, 73 Judicature 307, 312 (1990). At the trial court level, however, the studies of civil cases have found no ideological effects. See Laura Beth Nielsen, Robert L. Nelson & Ryon Lancaster, Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post Civil Rights United States, 7 J. Empirical Legal Stud. 175, 192–93 (2010); Denise M. Keele et al., An Analysis of Ideological Effects in Published Versus Unpublished Judicial Opinions, 6 J. Empirical Legal Stud. 213, 230 (2009); Orley Ashenfelter, Theodore Eisenberg & Stewart J. Schwab, Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes, 24 J. Legal Stud. 257, 276–77 (1995). With respect to criminal cases, there is at least one study at the trial court level that has found ideological effects. See Schanzenbach & Tiller, *supra* note 81, at 734.

with fee percentages in any of the regressions. The age of the case at settlement was associated with fee percentages in the first two regressions, and when the settlement class variable was removed in regressions 3 and 4, the age variable became positively associated with fee percentages in nonsecurities cases but remained insignificant in securities cases. Professors Eisenberg and Miller likewise found that the age of the case at settlement was positively associated with fee percentages in their 1993–2002 data set,⁹⁴ and that settlement classes were not associated with fee percentages in their 2003–2008 data set.⁹⁵

Although the structure of these regressions did not permit extensive comparisons of fee awards across different litigation subject areas, fee percentages appeared to vary somewhat depending on the type of case that settled. Securities cases were used as the baseline litigation subject area in the second and fifth regressions, permitting a comparison of fee awards in each nonsecurities area with the awards in securities cases. These regressions show that awards in a few areas, including labor/employment and antitrust, were more lucrative than those in securities cases. In the fourth regression, which included only nonsecurities cases, labor and employment cases were used as the baseline litigation subject area, permitting comparison between fee percentages in that area and the other nonsecurities areas. This regression shows that fee percentages in several areas, including consumer and employee benefits cases, were lower than the percentages in labor and employment cases.

In the fifth regression (Column 5 of Table 12), I attempted to discern whether the circuits identified in Section III as those with the most overrepresented (the First, Second, Seventh, and Ninth) and underrepresented (the Fifth and Eighth) class action dockets awarded attorney fees differently than the other circuits. That is, perhaps district court judges in the First, Second, Seventh, and Ninth Circuits award greater percentages of class action settlements as fees than do the other circuits, whereas district court judges in the Fifth and Eighth Circuits award smaller percentages. To test this hypothesis, in the fifth regression, I included indicator variables only for the six circuits with unusual dockets to measure their fee awards against the other six circuits combined. The regression showed statistically significant association with fee percentages for only two of the six unusual circuits: the Second and Ninth Circuits. In both cases, however, the direction of the association (i.e., the Second and Ninth Circuits awarded *smaller* fees than the baseline circuits) was opposite the hypothesized direction.⁹⁶

⁹⁴See Eisenberg & Miller, *supra* note 15, at 61.

⁹⁵See Eisenberg & Miller II, *supra* note 16, at 266.

⁹⁶This relationship persisted when the regressions were rerun among the securities and nonsecurities cases separately. I do not report these results, but, even though the First, Second, and Ninth Circuits were oversubscribed with securities class action settlements and the Fifth, Sixth, and Eighth were undersubscribed, there was no association between fee percentages and any of these unusual circuits except, again, the inverse association with the Second and Ninth Circuits. In nonsecurities cases, even though the Seventh and Ninth Circuits were oversubscribed and the Fifth and the Eighth undersubscribed, there was no association between fee percentages and any of these unusual circuits except again for the inverse association with the Ninth Circuit.

The lack of the expected association with the unusual circuits might be explained by the fact that class action lawyers forum shop along dimensions other than their potential fee awards; they might, for example, put more emphasis on favorable class-certification law because there can be no fee award if the class is not certified. As noted above, it might also be the case that class action lawyers are unable to engage in forum shopping at all because defendants are able to transfer venue to the district in which they are headquartered or another district with a significant connection to the litigation.

It is unclear why the Second and Ninth Circuits were associated with lower fee awards despite their heavy class action dockets. Indeed, it should be noted that the Ninth Circuit was the baseline circuit in the second, third, and fourth regressions and, in all these regressions, district courts in the Ninth Circuit awarded smaller fees than courts in many of the other circuits. The lower fees in the Ninth Circuit may be attributable to the fact that it has adopted a presumption that the proper fee to be awarded in a class action settlement is 25 percent of the settlement.⁹⁷ This presumption may make it more difficult for district court judges to award larger fee percentages. The lower awards in the Second Circuit are more difficult to explain, but it should be noted that the difference between the Second Circuit and the baseline circuits went away when the fifth regression was rerun with only nonsecurities cases.⁹⁸ This suggests that the awards in the Second Circuit may be lower *only* in securities cases. In any event, it should be noted that the lower fee awards from the Second and Ninth Circuits contrast with the findings in the Eisenberg-Miller studies, which found no intercircuit differences in fee awards in common-fund cases in their data through 2008.⁹⁹

V. CONCLUSION

This article has attempted to fill some of the gaps in our knowledge about class action litigation by reporting the results of an empirical study that attempted to collect all class action settlements approved by federal judges in 2006 and 2007. District court judges approved 688 class action settlements over this two-year period, involving more than \$33 billion. Of this \$33 billion, nearly \$5 billion was awarded to class action lawyers, or about 15 percent of the total. District courts typically awarded fees using the highly discretionary percentage-of-the-settlement method, and fee awards varied over a wide range under this method, with a mean and median around 25 percent. Fee awards using this method were strongly and inversely associated with the size of the settlement. Fee percentages were positively associated with the age of the case at settlement. Fee percentages were not associated with whether the class action was certified as a settlement class or with the

⁹⁷See note 75 *supra*. It should be noted that none of the results from the previous regressions were affected when the Ninth Circuit settlements were excluded from the data.

⁹⁸The Ninth Circuit's differences persisted.

⁹⁹See Eisenberg & Miller II, *supra* note 16, at 260.

846 *Fitzpatrick*

political affiliation of the judge who made the award. Finally, there appeared to be some variation in fee percentages depending on subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all of the other litigation areas, and district courts in the Ninth Circuit and in the Second Circuit (in securities cases) awarded lower fee percentages than district courts in several other circuits. The lower awards in the Ninth Circuit may be attributable to the fact that it is the only circuit that has adopted a presumptive fee percentage of 25 percent.

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EXHIBIT 3

Documents reviewed:

- Order re: Motions to Dismiss and Motions to Transfer (document 379, filed 5/20/15)
- Order Denying Amended Motion to Dismiss the Second Consolidated Complaint in Part for Lack of Subject Matter Jurisdiction and for Failure to State a Claim (document 420, filed 7/13/15)
- Order Granting Motion for Conditional Certification Pursuant to the Fair Labor Standards Act (document 446, filed 10/20/15)
- Order re: 1) Motion for Class Certification; 2) Motion to Decertify the Fair Labor Standards Act Collective Action; and 3) Motion to Exclude Plaintiffs' Expert Declaration and Testimony (document 687, filed 7/21/16)
- Order re: 1) Motion for Reconsideration regarding Class and Collective Certification; 2) Motion to Exclude; 3) Motion to Intervene; and 4) Motion for Leave to File Sur-Reply (document 782, filed 3/7/17)
- Opinion in Nos. 17-16245, 17-16267, 17-16276 (9th Cir.) (8/16/19)
- Order Granting in Part and Denying in Part Motion for Rule 23(b)(2) Class Certification (document 946, filed 7/23/21)
- Order re: Dispositive Motions, Motions to Exclude, and Motion to Strike (document 1071, filed 3/15/22)
- Notice of Motion and Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement (document 1128, filed 7/15/22)
- Declaration of Garrett R. Broshuis in Support of Motion for Preliminary Approval of Class Action Settlement (document 1128-1, filed 7/15/22), including Exhibit 1 thereto, Joint Stipulation of Class Settlement and Release ("Settlement Agreement")

- Declaration of Bobby Pouya in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (document 1128-2, filed 7/15/22)
- Declaration of Brian Kriegler, Ph.D., in Support of Plaintiffs' Motion for Preliminary Approval of Settlement (document 1128-3, filed 7/15/22)
- Order Granting Motion for Preliminary Approval of Class Action Settlement (document 1141, filed 8/26/22)

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Plaintiffs' Co-Lead Class Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON SENNE, et al., Individually and on
Behalf of All Those Similarly Situated,

Plaintiffs,

vs.

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as MAJOR LEAGUE
BASEBALL, et al.,

Defendants.

CASE NO. 3:14-cv-00608-JCS (consolidated with
3:14-cv-03289-JCS)

CLASS ACTION

**DECLARATION OF ALEXANDER S. WILLIAMS IN
SUPPORT OF MOTION FOR AWARD OF
ATTORNEYS' FEES, LITIGATION COSTS, AND
INCENTIVE AWARDS**

Hearing Date and Time: Feb. 17, 2023 9:30 a.m.

Courtroom: F, 15th Floor

Judge: Honorable Joseph C. Spero

1 I, Alexander S. Williams, hereby declare as follows:

2 1. I am personally familiar with the facts set forth in this Declaration. If called as a
3 witness, I could and would competently testify to the matters stated herein.

4 2. I am a Vice President at JND Legal Administration LLC (“JND”). JND is a legal
5 administration services provider with its headquarters located in Seattle, Washington. JND has
6 extensive experience with all aspects of legal administration and has administered settlements in
7 hundreds of class action cases. This Declaration is based on my personal knowledge, as well as upon
8 information provided to me by experienced JND employees.

9 3. JND is serving as the Class Administrator in the above-captioned litigation for
10 purposes of administering the Joint Stipulation of Class Settlement and Release preliminarily approved
11 by the Court in its Order Granting Motion for Preliminary Approval of Class Action Settlement
12 (“POA”) dated August 26, 2022.

13 4. I am submitting this declaration to report on the projected increase in fees and
14 expenses for the administration of this Settlement.

15 **SUMMARY OF SETTLEMENT ADMINISTRATION WORK**

16 5. Settlement Administration work includes all Class Notice and administrative fees,
17 costs and expenses incurred in administering the Settlement. These tasks include data sanitation and
18 standardization, declaration and notice preparation, printing and postage for mailing, re-mailing Class
19 Notices, emailing and re-emailing Class Notices, development of a website with interactive forms
20 (which allows Class Members to dispute work periods, select an electronic payment and provide
21 current contact information), toll-free line development, preparation of status reports, tax reporting,
22 check mailing, Counsel communications, and handling Class Member communications.

23 **CURRENT ESTIMATE OF FEES AND EXPENSES**

24 6. JND was retained as the Class Administrator in this case through a competitive
25 bidding process. The bid was based on certain assumptions regarding the work that would need to be
26 performed by JND in order to administer the notice and dispute process for the settlement. JND has
27 and will continue to apply the rates for staff and work performed from the estimate to the work
28 performed in this case.

1 7. The amount of work and expenses necessary to complete the settlement notice
 2 process has exceeded the initial bid due to several factors. The following factors are contributing to
 3 the increase in fees and cost:

- 4 a. The volume of Class Member communications, to date, is more than seven times
 5 the total volume previously anticipated for the entire Settlement Administration.
 6 We now project that this element of the Settlement Administration alone will
 7 consume roughly half of the total budget. These are often complex
 8 communications, handled in both English and Spanish, that are intensive in both
 9 the time required to address each contact as well as in the security required to
 10 safeguard the highly sensitive personal data of this class. For each contact, a
 11 personalized response is required after research to confirm the contact's identity,
 12 class membership and relevant class details.
- 13 b. The tax reporting requirements for this Settlement are much more complex and
 14 broader than first anticipated. JND's fees and costs projection also anticipates
 15 engaging an external international tax reporting advisor to address the
 16 requirements for class member disbursements that are subject to non-US
 17 jurisdictions.
- 18 c. The data for this Settlement is complex, highly sensitive, and was transmitted to
 19 JND by multiple sources and in multiple iterations. As a result, JND repeatedly
 20 rationalized and consolidated these varying data sources to prepare a singular
 21 reliable data set for executing the class mailing. This is a foundational element of
 22 the Settlement Administration and, by necessity, involves a significant investment
 23 of time by experienced project and data management professionals.

24 8. As a result of the factors outlined above, and the pace of the administration since
 25 entry of the PAO, JND projects that Settlement Administration Fees and Expenses, without taking
 26 into account the amount that we anticipate will be owed to the expert statistician retained by JND to
 27 assist with calculations (Dr. Brian Kriegler), will total \$820,000 which is significantly more than
 28 previously projected. Dr. Kriegler originally projected that his anticipated cost would be

1 approximately \$175,000. While he has already performed significant work calculating estimated class
2 member payouts, he believes that his original estimate will hold. When Dr. Kriegler's estimate is
3 added to JND's revised estimate, it amounts to \$995,000.

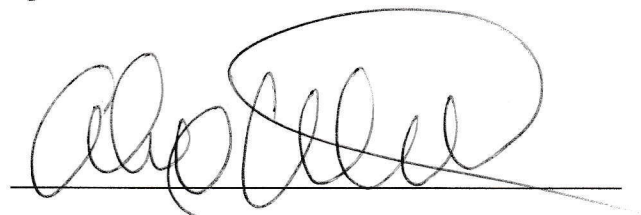
4 9. We make this estimate in good faith, based on the information currently available to
5 JND. We will continue to administer the Settlement as efficiently and economically as possible, and
6 hope that we can find ways to reduce the costs as time progresses.

7 10. JND will send bills to Class Counsel for review, and provide additional documentation
8 for the work performed on the case and final billable amounts prior to the Final Fairness Hearing, or
9 any other hearing in which the Court considers approval of JND's fees for the work performed on
10 this case.

11
12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct.

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15 Executed on November 23, 2022, in Milton, Washington.

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A handwritten signature in black ink, appearing to read 'Alexander S. Williams', is written over a horizontal line. The signature is stylized with large, flowing loops.

Alexander S. Williams

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Plaintiffs' Co-Lead Class Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON SENNE, et al., Individually and on
Behalf of All Those Similarly Situated,

Plaintiffs,

vs.

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as MAJOR LEAGUE
BASEBALL, et al.,

Defendants.

CASE NO. 3:14-cv-00608-JCS (consolidated with
3:14-cv-03289-JCS)

CLASS ACTION

**DECLARATION OF BRIAN P. MURRAY IN
SUPPORT OF MOTION FOR AWARD OF
ATTORNEYS' FEES, LITIGATION COSTS, AND
INCENTIVE AWARDS**

Hearing Date and Time: Feb. 17, 2023, 9:30 a.m.
Courtroom: F, 15th Floor
Judge: Honorable Joseph C. Spero

1 I, Brian P. Murray, hereby declare as follows:

2 1. I am an attorney at the firm Glancy Prongay & Murray LLP. I submit this Declaration
3 in support of Plaintiffs' Motion for Award of Attorneys' Fees, Litigation Costs, and Incentive Awards.

4 2. I am personally familiar with the facts set forth in this Declaration. If called as a
5 witness, I could and would competently testify to the matters stated herein.

6 SUMMARY OF WORK PERFORMED

7 3. During the course of this litigation, our firm assisted Co-Lead Class Counsel Korein
8 Tillery, LLC and Pearson, Simon & Warshaw, LLP ("Class Counsel") by performing work that
9 benefitted the classes. During the course of this litigation, my firm met numerous times with class
10 representative Joel Weeks, to explain the case to him, review the complaint with him and ensure the
11 facts pertaining to him were correct, and preparing him for his deposition. We also defended his
12 deposition and reviewed it with him for possible corrections. In addition, my firm researched an issue
13 of law at the direction of lead counsel.

14 4. In total, my firm worked 154.4 hours on this case. The chart below summarizes the
15 number of hours worked by each attorney and staff member of the firm, along with the billing rates.
16 The chart reflects contemporaneous computerized time records that the firm maintains in the
17 ordinary course of business.

18 NAME	TOTAL HOURS	HOURLY RATE	LODESTAR
19 Brian Murray (P)	125.5	\$975	\$122,362.50
20 Leanne Heine (A)	20.8	\$700	\$14,560.00
21 Jared Pitt (A)	8.1	\$395	\$3,199.50
22 TOTAL	154.4		\$140,122.00

23
24 5. The billing rates provided are the usual rates charged by our firm in similar complex
25 litigation and for non-contingent billing matters. Based on my experience and on my discussions with
26 attorneys at other firms who work in complex litigation, I believe the rates are reasonable and in line
27 with rates charged for similar work by professionals with similar levels of experience and comparable
28

1 reputations. The rates were determined in the ordinary course of business and are a reflection of rates
2 used by the firm in other complex matters.

3 6. Using those rates, our firm's current lodestar for the legal services is \$140,122.00.
4 Class Counsel has reviewed the work performed (and the resulting lodestar) and found it to be
5 reasonable and helpful to the successful prosecution of the action.

6 **LITIGATION COSTS INCURRED**

7 7. Our firm incurred litigation costs directly related to this litigation that were all
8 necessary and reasonable to prosecute this litigation. They are of the type that would be charged to
9 clients under a non-contingent-fee relationship. The total litigation costs amount to \$7,677.26. A
10 breakdown by each cost category follows:

- 11 a. Court fees: \$610.00
12 b. Online Legal Research: \$382.36
13 c. FedEx/UPS: \$382.36
14 d. Travel, Meals, & Lodging: \$6,611.18

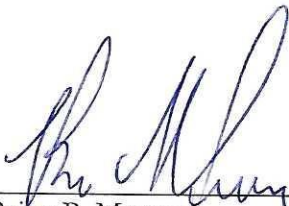
15 **THE RISK OF LITIGATING ON A CONTINGENT BASIS**

16 8. Our firm performed this work on a pure contingency basis, and we have not been paid
17 for attorneys' fees or costs in this matter. Based on my experience, this case involved above-average
18 risks given the number of novel, complex issues, and given the well-resourced defendants. Plaintiffs
19 faced well-funded defendants, who were represented by experienced attorneys with extensive
20 resources at their disposal.

21 9. I believe that Plaintiffs obtained a tremendous result in this case despite the risks and
22 obstacles. The Settlement Agreement provides meaningful backpay to class members and results in
23 important changes to Major League Baseball's employment policies regarding minor leaguers.
24 Plaintiffs also won an important appeal that will benefit other class action litigants in the future.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on November 10, 2022, in Wilton, CT.

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6 Brian P. Murray
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Plaintiffs' Co-Lead Class Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON SENNE, et al., Individually and on
Behalf of All Those Similarly Situated,

Plaintiffs,

vs.

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as MAJOR LEAGUE
BASEBALL, et al.,

Defendants.

CASE NO. 3:14-cv-00608-JCS (consolidated with
3:14-cv-03289-JCS)

CLASS ACTION

**DECLARATION OF RACHEL GEMAN IN
SUPPORT OF MOTION FOR AWARD OF
ATTORNEYS' FEES, LITIGATION COSTS, AND
INCENTIVE AWARDS**

Hearing Date and Time: Feb. 17, 2023, 9:30 a.m.
Courtroom: F, 15th Floor
Judge: Honorable Joseph C. Spero

1 I, Rachel Geman, hereby declare as follows:

2 1. I am a partner at the firm of Lieff Cabraser Heimann & Bernstein, LLP (“Lieff
3 Cabraser”). I submit this Declaration in support of Plaintiffs’ Motion for Award of Attorneys’ Fees,
4 Litigation Costs, and Incentive Awards.

5 2. I am personally familiar with the facts set forth in this Declaration. If called as a
6 witness, I could and would competently testify to the matters stated herein.

7 3. Lieff Cabraser is one of the oldest, largest, most-respected, and most-successful law
8 firms in the country representing plaintiffs in class actions, and brings to the table a wealth of class
9 action experience, including in employment matters (such as wage and hour and anti-discrimination
10 cases). A copy of LCHB’s firm resume is at
11 www.lieffcabraser.com/pdf/Lieff_Cabraser_Firm_Resume.pdf.

12 4. During my tenure at Lieff, Cabraser, I have worked primarily in employment and
13 consumer class actions, and in False Claims Act and whistleblower matters. I also have served as co-
14 lead class counsel, and/or counsel of record, in numerous class or collective action cases in the
15 Northern District of California. *See, e.g., In re Plaid Inc. Privacy Litig.*, No. 4:20-cv-03056 (N.D. Cal. July
16 20, 2022) (\$58 million settlement of consumer privacy claims with robust injunctive relief granted final
17 approval; I served as court-appointed co-lead class counsel); *Foreman v. Apple*, No. 3:22-cv-03902
18 (N.D. Cal.) (pending wage and hour matter). I am the Co-Chair of the ABA’s Workplace and
19 Occupational Safety & Health Committee, the outgoing Chair of the Amicus Committee of National
20 Employment Lawyers’ Association (“NELA”)/New York, and one of the incoming organizers of the
21 NELA Whistleblower Committee.

22 SUMMARY OF WORK PERFORMED

23 5. During the course of this litigation, our firm assisted Co-Lead Class Counsel Korein
24 Tillery, LLC and Pearson, Simon & Warshaw, LLP (“Class Counsel”) by performing work that
25 benefitted the classes. Lieff Cabraser’s work included initial client and case work-up, witness
26 interviews, and assistance to Lead Counsel in the form of legal research, expert/survey information,
27

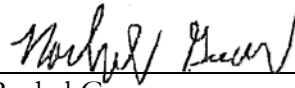
1 strategy relating to class appeals, and information-gathering for aspects of the prospective trial. Our
2 work was done under the direction of lead counsel.

3 6. In total, excluding timekeepers with less than ten hours of work, our firm worked
4 198.3 hours on this case. In Exhibit A, I have attached a chart summarizing the number of hours
5 worked by each attorney and staff member of the firm, along with the billing rates. The chart reflects
6 contemporaneous computerized time records that the firm maintains in the ordinary course of
7 business.

8 7. The billing rates provided in Exhibit A are the usual rates charged by our firm in
9 similar complex litigation. *See, e.g., Diaz et al. v. Google LLC*, No. 5:21-cv-03080-NC (N.D. Cal. Oct.
10 31, 2022) (approving rates set in May, 2022) (most recent case); *see also In re Plaid Inc. Privacy Litig.*, No.
11 4:20-cv-03056 (N.D. Cal. July 20, 2022) (approving hourly rates of \$610 to \$1,025 for partners, \$465
12 to \$535 for associates, and \$370 to \$395 for paralegals and other support staff set forth by declaration
13 at Dkts. 157-1, 182-3), Dkt. 184; *Roberts v. AT&T Mobility LLC*, No. 3:15-cv-03418 (N.D. Cal. Aug.
14 20, 2021) (approving rates of \$510 to \$1,000 for partners, \$485 for associates, and \$375 to \$415 for
15 paralegals and other support staff set forth by declaration at Dkt. 209-1), Dkt. 215; *McDonald v. Kiloo*
16 *A/S*, No. 3:17-cv-04344 (N.D. Cal. Apr. 21, 2021) (approving hourly rates of \$615 to \$975 for
17 partners, \$420 to \$485 for associates, and \$360 to \$415 for paralegals and other support staff set forth
18 by declaration at Dkt. 372-1), Dkts. 408, 408-1, 408-2, 408-3; *In re Lithium Ion Batts. Antitrust Litig.*, No.
19 4:13-md-02420-YGR-DMR, 2020 WL 7264559, at *20 (N.D. Cal. Dec. 10, 2020) (approving hourly
20 rates of \$550 to \$1,075 for partners, \$480 to \$535 for associates, and \$355 to \$495 for paralegals and
21 other support staff set forth by declaration at Dkt. 2487-5); *In re Wells Fargo & Co. S'holder Deriv. Litig.*,
22 445 F. Supp. 3d 508, 527 (N.D. Cal. 2020) (approving hourly rates of \$560 to \$1,075 for partners,
23 \$395 to \$510 for associates, and \$345 to \$495 for paralegals and other support staff set forth by
24 declaration at Dkt. 278-7).

25 8. Based on my experience, I believe the rates are reasonable and in line with rates
26 charged for similar work by professionals with similar levels of experience and comparable
27 reputations. The rates were determined in the ordinary course of business and are a reflection of rates
28 used by the firm in other complex matters.

1 Executed on November 11, 2022, in New York, NY

2
3 

4 Rachel Geman
LIEFF CABRASER HEIMANN
5 & BERNSTEIN, LLP
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6 Telephone: (212) 355-9500
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EXHIBIT A

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 11/08/2022 11:31:05 AM

From
ToInception
Present**Matter Number: 3662-0001****SENNE V. COMMISSIONER OF MAJOR LEAGUE BASEBALL ET AL. -****PARTNER**

NAME	HOURS	RATE	TOTAL
KELLY DERMODY	13.70	1,120.00	15,344.00
RACHEL GEMAN	63.10	980.00	61,838.00
ANNE SHAVER	12.90	765.00	9,868.50
	<u>89.70</u>		<u>87,050.50</u>

ASSOCIATE

NAME	HOURS	RATE	TOTAL
ANNE SHAVER	29.60	465.00	13,764.00
	<u>29.60</u>		<u>13,764.00</u>

PARALEGAL/CLERK

NAME	HOURS	RATE	TOTAL
NIKKI BELUSHKO BARROWS	37.00	360.00	13,320.00
RACHEL TERRELL-PERICA	12.60	260.00	3,276.00
MADELYNE TRIONE	29.40	395.00	11,613.00
	<u>79.00</u>		<u>28,209.00</u>

MATTER TOTALS	198.30		129,023.50
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Plaintiffs' Co-Lead Class Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON SENNE, et al., Individually and on
Behalf of All Those Similarly Situated,

Plaintiffs,

vs.

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as MAJOR LEAGUE
BASEBALL, et al.,

Defendants.

CASE NO. 3:14-cv-00608-JCS (consolidated with
3:14-cv-03289-JCS)

CLASS ACTION

**DECLARATION OF RANDALL K. PULLIAM IN
SUPPORT OF MOTION FOR AWARD OF
ATTORNEYS' FEES, LITIGATION COSTS, AND
INCENTIVE AWARDS**

Hearing Date and Time: Feb. 17, 2023, 9:30 a.m.

Courtroom: F, 15th Floor

Judge: Honorable Joseph C. Spero

NO. 3:14-cv-00608-JCS

1 I, Randall K. Pulliam, hereby declare as follows:

2 1. I am an attorney at the firm Carney Bates & Pulliam, PLLC ("CBP"). I submit this
3 Declaration in support of Plaintiffs' Motion for Award of Attorneys' Fees, Litigation Costs, and
4 Incentive Awards.

5 2. I am personally familiar with the facts set forth in this Declaration. If called as a
6 witness, I could and would competently testify to the matters stated herein.

7 3. CBP has extensive experience in class action and complex litigation, and has served or
8 is serving as co-lead counsel in the following sample of cases: *Ebarle, et al. v. LifeLock, Inc.*, 3:15-cv-
9 00258 (N.D. Cal.) (class action on behalf of customers of the identity theft protection service,
10 resulting in a nationwide settlement of \$81 million that was granted final approval in September 2016);
11 *Caldwell, et al. v. Freedom Mortgage Co.*, No. 3:19-cv-02193-N (N.D. Tex.) (Pay-to-Pay class action,
12 settling for \$2,250,000 and receiving final approval in December 2021); *Phillips, et al. c. Caliber Home*
13 *Loans, Inc.*, 19-cv-02711-WMW-LIB (D. Minn.) (Pay-to-Pay class action settling for \$5,000,000);
14 *Wilson v. Santander Consumer USA*, No. 4:20-cv-00152-KGB (E.D. Ark.) (Pay-to-Pay class action
15 settling for \$800,000); *Williams v. State Farm Mutual Automobile Insurance Company*, 4:11-cv-00749-KGB
16 (E.D. Ark.) (resulting in a settlement of \$21.7 million with 7,635 individuals receiving 100% recovery
17 plus six percent prejudgment interest while releasing no claims or rights (other than named plaintiffs));
18 *Wayne Miner et al. v. Philip Morris USA Inc.*, Case No. 60CV-03-4661 (Pulaski Co. Cir. Ct.) (class action
19 brought on behalf of Arkansas smokers over claims that the defendant misrepresented the safety of
20 its "light" cigarette products, which settled in 2016 for \$45 million).

21 4. Additionally, CBP served as lead counsel in *Econo-Med Pharmacy, Inc. v. Roche Diagnostics*
22 *Corporation*, 1:16-cv-00789-TWP-MPB (S.D. Ind.), representing a class of pharmacies in a Telephone
23 Consumer Protection Act ("TCPA") litigation resulting in a \$17 million settlement, which was granted
24 final approval on September 21, 2017. CBP also served as lead counsel in *ARcare, Inc. v. Qiagen North*
25 *America Holdings, Inc., et al.*, Case No. 43CV-17-46 (Judge Sandy Huckabee, Lonoke Co. Cir. Ct.),
26 representing a class of pharmacies in a TCPA litigation resulting in a \$15.5 million settlement, which
27 was granted final approval on December 3, 2018. CBP has also been involved in such notable data
28 breach cases as *In re: The Home Depot, Inc., Customer Data Security Breach Litigation*, 1:14-md-02583-TWT

(N.D. Ga.) (serving on Plaintiffs' Steering Committee), and *In re: Target Corporation Customer Data Security Breach Litigation*, 0:14-cmd-02522-PAM-JJK (D. Minn.) (serving as counsel for lead plaintiff Umpqua Bank).

SUMMARY OF WORK PERFORMED

5. During the course of this litigation, our firm assisted Co-Lead Class Counsel Korein Tillery, LLC and Pearson, Simon & Warshaw, LLP ("Class Counsel") by performing work that benefitted the classes. To this end and among other tasks, CBP drafted pleadings including a class action complaint, performed legal research and assisted with legal strategy, maintained client relationships including document production and review, and reviewed documents produced in discovery.

6. In total, our firm worked 231.35 hours on this case. Below is a chart summarizing the number of hours worked by each attorney and staff member of the firm, along with the billing rates. The chart reflects contemporaneous computerized time records that the firm maintains in the ordinary course of business.

BILLER	HOURS	RATE
Hank Bates	18.8	\$880.00
C. Williams	6.85	\$350.00
Allen Carney	11	\$880.00
Randall K. Pulliam	111.05	\$880.00
Tiffany Oldham	79.15	\$725.00
David Slade	4.5	\$485.00

7. The billing rates provided in above are the usual rates charged by our firm in similar complex litigation. These rates have been approved by numerous federal courts, including in the Northern District of California. Based on my experience and on my discussions with attorneys at other firms who work in complex litigation, I believe the rates are reasonable and in line with rates charged for similar work by professionals with similar levels of experience and comparable

1 reputations. The rates were determined in the ordinary course of business and are a reflection of rates
2 used by the firm in other complex matters.

3 8. Using those rates, our firm's current lodestar for the legal services is \$186,061.75.
4 Class Counsel has reviewed the work performed (and the resulting lodestar) and found it to be
5 reasonable and helpful to the successful prosecution of the action.

6 LITIGATION COSTS INCURRED

7 9. Our firm incurred litigation costs directly related to this litigation that were all
8 necessary and reasonable to prosecute this litigation. They are of the type that would be charged to
9 clients under a non-contingent-fee relationship. The total litigation costs amount to \$537.72. A
10 breakdown by each cost category follows:

11 a. Filing Fees - \$317.00

12 b. Pacer Fees and Legal Research - \$220.72

13 THE RISK OF LITIGATING ON A CONTINGENT BASIS

14 10. Our firm performed this work on a pure contingency basis, and we have not been paid
15 for attorneys' fees or costs in this matter. Based on my experience, this case involved above-average
16 risks given the number of novel, complex issues, and given the well-resourced defendants. Plaintiffs
17 faced well-funded defendants, who were represented by experienced attorneys with extensive
18 resources at their disposal.

19 11. I believe that Plaintiffs obtained a tremendous result in this case despite the risks and
20 obstacles. The Settlement Agreement provides meaningful backpay to class members and results in
21 important changes to Major League Baseball's employment policies regarding minor leaguers.
22 Plaintiffs also won an important appeal that will benefit other class action litigants in the future.

23
24
25
26
27 I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 21, 2022, in Little Rock, Arkansas

A handwritten signature in blue ink, reading "Randall K. Pullin", is written over a horizontal line.

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Plaintiffs' Co-Lead Class Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON SENNE, et al., Individually and on
Behalf of All Those Similarly Situated,

Plaintiffs,

vs.

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as MAJOR LEAGUE
BASEBALL, et al.,

Defendants.

CASE NO. 3:14-cv-00608-JCS (consolidated with
3:14-cv-03289-JCS)

CLASS ACTION

**DECLARATION OF RAYMOND P. BOUCHER IN
SUPPORT OF MOTION FOR AWARD OF
ATTORNEYS' FEES, LITIGATION COSTS, AND
INCENTIVE AWARDS**

Hearing Date and Time: Feb. 17, 2023, 9:30 a.m.

Courtroom: F, 15th Floor

Judge: Honorable Joseph C. Spero

1 I, Raymond P. Boucher, hereby declare as follows:

2 1. I am an attorney duly admitted to practice before this Court. I am the named partner
3 of Boucher LLP, and Plaintiffs' co-counsel in the above-captioned action. I submit this Declaration in
4 support of Plaintiffs' Motion for Award of Attorneys' Fees, Litigation Costs, and Incentive Awards.

5 2. I am personally familiar with the facts set forth in this Declaration. If called as a
6 witness, I could and would competently testify to the matters stated herein.

7 **QUALIFICATIONS, EXPERIENCE, AND ACHIEVEMENTS**

8 3. The law firm of Boucher LLP and its attorneys have significant experience prosecuting
9 complex class action and mass action litigation on behalf of plaintiffs. Attached as **Exhibits 1 and 2**
10 respectively, are true and correct copies of the Boucher LLP firm resume and my curriculum vitae.

11 4. Both my firm and I have wide-ranging experience leading and managing a variety of
12 complex litigation matters in state and federal courts, including Judicial Council Coordinated
13 Proceedings ("JCCPs") in California state court, multi-district litigation ("MDLs") involving mass tort
14 matters and class actions in federal and state courts, and including state and nationwide class action
15 lawsuits, including wage and hour class actions and representative PAGA actions. A representative
16 sampling of the cases in which attorneys from my firm have held lead, liaison, or co-lead positions in
17 several mass torts, class actions, and complex coordinated actions follows:

18 a. *Adlouni v. UCLA Health Systems Auxiliary, et al.*, Lead Case No. BC589243
19 (Superior Court of California, County of Los Angeles): Court-appointed Plaintiffs' Liaison Counsel in
20 consolidated and related class action cases arising from data breach of medical patient information.
21 Final approval granted.

22 b. *Abrica v. Tosco et al.*, Case No. BC239882 (Superior Court of California, County
23 of Los Angeles): Mass tort relating to toxic refinery fire, which resolved successfully.

24 c. *Bartley v. Camarillo Miramonte Homeowners Association*, Case No. SC020953
25 (Superior Court of California, Ventura County). Class action against real estate developers on behalf
26 of individual unit owners of a condominium project for faulty construction and repairs. The units
27 were constructed over a high-water table and on poor soils which expanded and contracted, causing

the units to sink, and causing floor slabs, foundations, and walls to crack. The defendants knew about the defects but did not disclose them. After receiving complaints, developers failed to repair as promised. Homeowners complained the repairs were not performed, or were not performed improperly. Resolved on eve of trial.

d. *Black v. Blue Cross*, Case No. BC250339 (Superior Court of California, County of Los Angeles): Certified class action against a health insurer for improper mid-year contract modifications which led to a \$22.5 million settlement.

e. *Bustamante v. Southern California Gas Company, et al.*, Case No. BC285598 (Superior Court of California, County of Los Angeles): Class action against energy companies on behalf of California citizens for manipulation of the market for natural gas by reporting false price and volume information to the price indices and industry publications that were used to establish the cost of natural gas to end users, and the value of natural gas in the commodities markets.

f. *Chavez v. Nestle USA, Inc.*, Case No.: CV09-9192 GW (CWx) (C.D. Cal.): Class action to recover for false advertising in the marketing of a beverage for infants.

g. *Clergy Cases I & II*, California Judicial Council Coordinated Proceedings (“JCCPs”) 4286, 4297, and 4359: Litigated childhood sexual abuse cases against the Archdioceses of Los Angeles, San Diego, and Orange and other Catholic entities with the total settlement exceeding \$1.2 billion.

h. *Colin Higgins Productions, LTD. v. Universal City Studios, LLC*, Case No. BC499180 (Superior Court of California, County of Los Angeles). Class action against movie studio arising from studio’s calculation of profit participation from home video distribution of films. Final approval of class action settlement granted. Boucher LLP served as Co-Class Counsel.

i. *Colin Higgins Productions, LTD. v. Paramount Pictures Corporation*, Case No. BC499179 (Superior Court of California, County of Los Angeles). Class action against movie studio arising from studio’s calculation of profit participation from home video distribution of films. Final approval of class action settlement granted. Boucher LLP served as Co-Class Counsel.

j. *Del Campo v. Hometown Buffet, Inc. et al.*, C.D. Cal. 2:14-cv-04378-RGK-SH. Court-appointed as Class Counsel in “wage and hour” class action against major restaurant chain. Final approval of settlement granted.

k. *Espinoza, et al. v. Vander-Bend Manufacturing, LLC*, Santa Clara County Superior Court Case No. 1-15-CV-283929. Court-appointed as Class Counsel in wage and hour class and representative action on behalf of employees of Defendant. Final approval of settlement granted.

l. *In Re Crestor Products Liability Cases*, California JCCP No. 4713. Appointed Plaintiff’s Co-Lead and Co-Liaison Counsel in coordinated proceeding involving alleged personal injuries from ingestion and use of prescription drug Crestor. Settled.

m. *In re Transient Occupancy Tax Cases*, California JCCP 4472: Represented the City of Los Angeles in a class action proceeding on behalf of all cities in the state of California to recover unremitted occupancy taxes from certain online travel companies.

n. *In re Galvanized Steel Pipe Litigation*, Case No. BC174649 (Superior Court of California, County of Los Angeles): Class action involving construction defects that resolved successfully for \$41 million.

o. *In re Wholesale Electricity Antitrust Cases I & II*, California JCCP 4204-00005 and 4204-00006: Actions in which the plaintiffs sought to recover damages from energy traders for unfair business practices.

p. *In re Wellpoint, Inc. Out-of-Network “UCR” Rates Litig.*, MDL No. 09-2074 (C.D. Cal.): Served in a leadership role in a consolidated action to recover for anti-competitive price fixing and for artificial deflation of medical payments and reimbursements, leading to underpayments to doctors for medical care that they provided, and to artificially high charges for out-of-pocket costs to insured individuals for medical care that they received.

q. *In Re: Wright Medical Technology, Inc., Conserve Hip Implant Products Liability Litigation*, MDL No. 2329 and Wright California JCCP. Co-Lead Counsel and Plaintiff’s Steering Committees in complex national and state complex litigations involving defective hip system product.

1 r. *Johnson & Johnson Talcum Powder Cases*, California JCCP No. 4872. Co-Liaison
2 Counsel for Plaintiffs in product liability cases involving talc products. Pending.

3 s. *Juarez v. Dignity Health*, Los Angeles Superior Court Case No. BC550950. Class
4 Counsel in certified class action case against hospital chain on behalf of security guards involving
5 donning and doffing and other wage and hour claims. Final approval of settlement granted.

6 t. *JUUL Labs Product Cases*, California JCCP No. 5052. Co-Liaison Counsel for
7 Private Plaintiffs in coordinated proceeding involving personal injuries alleged to arise from use of
8 nicotine vaping product. Pending.

9 u. *Lopez, et al. v. Citrus Valley Health Partners, Inc.*, Super. Ct., Los Angeles County,
10 Case Nos. BC544139 and BC545110. Court-appointed as Class Counsel in “wage and hour” class
11 actions against large California hospital entity. Final approval of settlement granted.

12 v. *Micheli, et al. v. The City of Fresno*, Super. Ct. of Fresno County, Lead Case No.
13 16CECG02937. Court-appointed Co-Class Counsel in consolidated, certified class action by
14 residential water customers of Northeast Fresno, California against a municipality whose water supply
15 to Northeast Fresno is alleged to have destroyed residents’ galvanized plumbing, resulting in the
16 leaching of lead and other heavy metals and receipt of discolored, “rusty” water at their taps.

17 w. *Moppin v. Los Robles Regional Medical Center, et al.*, Case No. 5:15-CV-01551-JGB-
18 DTB (C.D. Cal.). Court-appointed as Class Counsel in wage and hour class action against hospital
19 entity and travel nurse staffing agency on behalf of temporary nurse employees. Final approval of
20 settlement granted.

21 x. *Olmos v. Teamcare, Case No.* Super. Ct., San Bernardino County, Case No.
22 CIVDS1916969. Court-appointed as Class Counsel in “wage and hour” class action against California
23 medical provider. Final approval of settlement granted.

24 y. *Securitas Wage and Hour Cases*, California JCCP No. 4837. Appointed Lead and
25 Co-Liaison Counsel in coordinated class action proceedings against security company on behalf of
26 security guards. Final settlement approval granted.

27

28

1 z. *Silver v. Del Webb*, Nevada Case No. A437325: A certified class construction
 2 defect suit involving the installation of faulty plumbing systems in new homes. The litigation resulted
 3 in a \$21 million settlement.

4 aa. *Skeen, et al. v. BMW of North America LLC*, et al., Case No. 2:13-cv-1531-
 5 WHW-CLW (Dist. N.J.) Appointed Co-Lead Class Counsel in nationwide class action involving
 6 alleged claims for breach of warranties and violations of state consumer protection statutes for
 7 automobile defects in Mini vehicles. Final approval of settlement granted.

8 bb. *Southern California Clergy Cases*, California JCCP No. 5101. Court-appointed
 9 member of Plaintiffs' Liaison Counsel committee in coordinated proceeding against Archdioceses of
 10 Los Angeles and Orange, and other Catholic institutional entities.

11 cc. *Southern California Gas Leak Cases*, California JCCP No. 4861. Appointed to Co-
 12 Chair of the Plaintiffs' Steering Committee for the Class Action Track, and Co-Lead counsel.
 13 Obtained historic \$1.84 Billion settlement of claims arising from natural gas leak at Aliso Canyon
 14 Facility in California.

15 dd. *Zolof Birth Defects Cases*, JCCP No. 4771. Appointed Plaintiff's Co-Lead
 16 Counsel in coordinated proceeding involving alleged birth defect claims arising from mother
 17 Plaintiff's use and ingesting of prescription anti-depressant drug

18 5. As more fully set forth in my curriculum vitae, a true and correct copy of which is
 19 attached hereto as **Exhibit 2**, throughout my career I have also held numerous leadership positions in
 20 various legal organizations. I was the 2007 President of Consumer Attorneys of California ("CAOC"),
 21 and the 2005 President of Consumer Attorneys Association of Los Angeles ("CAALA"). I am
 22 presently a member of the Board of Directors of Public Justice, and was the California State Delegate
 23 to the American Association of Justice, a member of the Pepperdine School of Law Board of
 24 Advisors; a member of the Diversity in Law Foundation; the Fort Lewis College Foundation Board,
 25 and the California State Delegate to the Association of Trial Lawyers of America. I also previously
 26 served on the Los Angeles County Bar Association Board of Directors.

1 6. I have been honored with numerous awards and distinctions for my work. Notably, I
2 was the recipient of the Los Angeles Daily Journal Trial Lawyer of the Decade, 2001-2010, in
3 particular for my work in California JCCPs entitled Clergy Cases I & II, JCCPs 4286, 4297, and 4359.
4 In 2007, I received both the CAALA and CAOC Trial Lawyer of the Year Awards. I have also
5 received the Trial Lawyer of the Year Award from the Orange County Trial Lawyers Association. I
6 have twice received the CLAY award from California Lawyer Magazine, which recognizes attorneys
7 from across the state whose achievements have made a profound impact on the law. Additionally, the
8 Honorable Chief Justice Ronald George and the California State Bar honored me with an award for
9 my efforts on behalf of court funding and on behalf of the State Courts of California. In 2006, I was
10 presented with the David S. Casey, Jr. Consumer Advocate Award by the Consumer Attorneys of San
11 Diego; and the Justice Armand Arabian Award by the Project Sister organization. The California
12 League of Conservation Voters awarded me with the 2005 Environmental Leadership Award for my
13 longstanding dedication to the environment and public health rights of individuals, and I was the
14 recipient of the Ted Horn Memorial Award, a CAALA honor for the selfless gift of one's talent.
15 Additionally, I have been the recipient of numerous Presidential Awards, Awards of Merit and
16 Commendation from Trial Bars around the country.

17 7. I personally have extensive trial experience and have briefed and argued many appeals
18 between the Ninth Circuit Court of Appeals and California Courts of Appeal. I am a frequent speaker
19 at CAOC, CAALA, AAJ, law schools, and National College of Advocacy seminars and various
20 educational conventions throughout the country. I also spend a considerable amount of time
21 performing *pro bono* work and community service. I began my career doing *pro bono* work with Cesar
22 Chavez and the United Farm Workers. More recently, I took a humanitarian trip to Uganda to assist
23 improving the Juvenile Justice system. I have spearheaded fundraisers for various local, state and
24 national organizations.

SUMMARY OF WORK PERFORMED

8. During the course of this litigation, our firm assisted Co-Lead Class Counsel Korein Tillery, LLC and Pearson, Simon & Warshaw, LLP (“Class Counsel”) by performing work that benefitted the classes.

9. In late February 2022, our firm was invited to assist Class Counsel in the final stages of trial preparation and to help present the case at trial. Over the course of my career, I have tried more than 80 cases to verdict, and have favorably resolved countless others shortly before and even during trial. Because class actions so rarely go to trial, my specialized skill as a trial attorney was expected to complement Class Counsel’s significant expertise by refining jury selection and trial presentation strategy to maximize the likelihood of a verdict in Plaintiffs’ favor.

10. One of the things my firm does is join cases in the late stages of litigation to serve as trial counsel. Because of this, we have developed streamlined case review procedures designed to efficiently bring ourselves up to speed on the active issues. The complex and unprecedented nature of this case, my unique trial-presentation expertise and anticipated role, and the press of time created by the approaching trial date made it necessary for me to personally perform the majority of work rather than assigning tasks to attorneys at lower hourly rates. When reasonable and appropriate, however, I did assign tasks to others at lower billing rates. I also assigned tasks to others that would help me accomplish high-level analysis more efficiently, but the firm did not bill for time spent assisting me.

11. Here, a detailed review and outline of briefing related to Defendants’ motion for summary judgment, along with some additional legal research, allowed me to outline the significant legal and factual issues in the case. From this outline, I had sufficient background to assess the strengths and weaknesses of each side’s position and presentation so that I could quickly begin developing themes and advising on case staging and presentation, evidentiary matters, and jury-related issues. I assisted Class Counsel in preparing for a jury focus group presentation, along with partner Maria Weitz. Had the case proceeded to trial, Ms. Weitz would have been my first-line for immediate as-needed assistance going forward. Ms. Weitz’s candid feedback, careful analysis, and keen juror observations are often invaluable contributions to a case’s overall success.

12. In addition to consulting on jury matters and attending witness preparation sessions, I reviewed and edited witness outlines, jury instructions, verdict forms, *voir dire* scripts, and jury questionnaire; reviewed and consulted on motions *in limine*; consulted on graphic and visual aids for the liability and damages presentations; refined the Trial Plan strategy; and prepared for expert witness cross-examination before the parties reached a settlement agreement in principle.

13. In total, our firm worked in excess of 225.60 hours on this case. All of the tasks performed, and the time expended, were reasonable and necessary for the prosecution of the class action and I believe this work contributed to the ultimate settlement obtained. The following chart summarizes the hours worked and applicable rate for each member of the firm, as reflected in the contemporaneously maintained time records we keep in the ordinary course of business:

<u>Name</u>	<u>Title</u>	<u>Rate</u>	<u>Hours</u>	<u>Lodestar</u>
Raymond P. Boucher	Name Partner (CA 1984)	\$1,190.00	207.60	\$247,044.00
Maria L. Weitz	Partner (CA 2009)	\$800.00	2.90	\$2,320.00
Michael Gorelik	Associate Attorney (CA 2021)	\$400.00	2.10	\$840.00
Sandra Haro	Paralegal	\$185.00	12.80	\$2,368.00
Tricia Yue	Paralegal	\$185.00	0.20	\$37.00
TOTALS:			225.60	\$252,609.00

14. Using our firm's current hourly billing rates, as reflected in the above chart, the current lodestar for legal services is \$252,609.00. Class Counsel has reviewed the work performed (and the resulting lodestar) and found it to be reasonable and helpful to successful prosecution of the action.

15. The qualifications of the attorneys identified above are set forth in the firm's resume, which is attached as **Exhibit 1**. Additionally, as to staff members Haro and Yue:

a. Sandra Haro is a senior supervising paralegal. She is a graduate of Phillips Junior College in Northridge, California, having obtained her Associate's Degree in Paralegal Studies

1 in 1991. Ms. Haro has worked as a paralegal since 1991, including working with me since 2003. She
2 has attended several legal education seminars over the years.

3 b. Tricia Yue is a senior paralegal. She is a graduate of Cannons Business College
4 in Honolulu, Hawaii and has taken several continuing education courses, including advanced legal
5 writing, enhanced legal research and technology strategies, internet strategies for legal professionals,
6 and similar courses. Prior to joining our law firm in 2017, Ms. Yue worked for several law firms in
7 Washington State in Southern California as a legal assistant and paralegal. She is a member of the
8 Consumer Attorneys Association of Los Angeles and Consumer Attorneys of California, where she
9 helps teach seminars on legal assistant and paralegal processes.

10 16. The billing rates provided in the above chart are the usual rates currently in effect, and
11 the same rates charged by our firm in similar complex litigation. Based on my experience and on my
12 discussions with attorneys at other firms who work in complex litigation, I believe the rates are
13 reasonable and in line with rates charged for similar work by professionals with similar levels of
14 experience and comparable reputations.

15 17. From Boucher LLP's inception in December 2014 until June 8, 2022 (nearly 7.5 years),
16 my standard hourly billing rate was \$1,100; Ms. Weitz's hourly billing rate was \$750; and the associate
17 hourly billing rate applicable to Mr. Gorelik was \$395. These prior rates have been approved by
18 several other state and federal courts in California, including: *Southern California Gas Leak Cases* [Class
19 Action Track], Los Angeles County Sup. Ct., JCCP No. 4861, *Coss v. Northgate Gonzalez Markets, et al.*,
20 Lead Case No. 37-2017-00030774-CU-OE-CTL; *Del Campo v. Hometown Buffet, Inc. et al.*, C.D. Cal.,
21 Case No. 2:14-cv-04378; *El Pollo Loco Wage and Hour Cases*, JCCP 4957; *Espinoza v. Vander-Bend*
22 *Manufacturing, LLC*, Santa Clara County Sup. Ct., Lead Case No. 1-15-CV-283929; *Hernandez v.*
23 *Sunshine Raisin Corporation*, Fresno County Sup. Ct., Case No. 16CECG00865; *Krikorian v. Central*
24 *Parking System, Inc.*, Los Angeles County Sup. Ct., Case No. BC582088; *Lopez v. Citrus Valley Health*
25 *Partners, Inc.*, Los Angeles County Sup. Ct., Case No. BC544139; *Moppin v. Los Robles Regional Medical*
26 *Center*, C.D. Cal. Case No. 5:15-CV-01551-JGB-DTB; *Moppin v. Fastaff, LLC*, Stanislaus County Sup.
27 Ct., Case No. 2020283; *Galeano v. American ETC, Inc.*, San Mateo County Sup. Ct., Case No.

1 CIV534888; *Torres v. J Motorcars, Inc. d/b/a Road Bear RV*, Los Angeles County Sup. Ct., Case No.
 2 BC655446; *Granciano v. Southwind Foods, LLC*, Los Angeles County Sup. Ct., Case No. BC538900, and
 3 *Olmos v. Teamcare, Case No.* Super. Ct., San Bernardino County, Case No. CIVDS1916969.

4 18. The billing rates provided in the above chart reflect a modest rate increase, set in the
 5 ordinary course of our firm's business and effective June 8, 2022. In my capacity as Co-Lead in the
 6 *Southern California Gas Leak Cases*, JCCP No. 4861, I was responsible for handling negotiations on
 7 behalf of plaintiffs in this year's landmark \$1.8 Billion settlement of approximately 36,000 civil
 8 lawsuits resulting from the 2015 blowout at the Aliso Canyon Natural Gas Storage Facility, the largest
 9 natural gas leak in U.S. history. I was also appointed by the Court to lead the common benefit fee
 10 committee. Following this historic result, effective June 8, 2022, Boucher LLP increased the billable
 11 rates of its partners and associate attorneys, commensurate with our experience and achievements and
 12 consistent with the rates charged by similarly experienced counsel in our geographic region. Our
 13 firm's current rates were recently approved in *Zavala, et al. v. PLS Check Cashers of California, Inc.*, Los
 14 Angeles Superior Court Case No. 20STCV42586, a wage and hour class and representative action.

15 LITIGATION COSTS INCURRED

16 19. Our firm incurred costs directly related to this litigation that were all necessary and
 17 reasonable to prosecute this litigation. The expenses charged are of the type that would be charged to
 18 clients under a non-contingent-fee relationship. The total litigation costs amount to \$21,900.10, as
 19 reflected in the contemporaneous records kept in the ordinary course of our firm's business, and
 20 summarized as follows:

Expense Category	Amount
Out-of-Town Travel	\$6,641.31
Printing and Copying	\$1,503.40
PACER Fees	\$10.70
Experts/Consultant Fees	\$13,744.69
TOTAL	\$21,900.10

THE RISK OF LITIGATING ON A CONTINGENT BASIS

20. Whereas Defendants' counsel are likely paid on a monthly or regular basis and promptly reimbursed for costs incurred, Plaintiffs' counsel are only paid if we favorably resolve a case. Our firm performed this work on a pure contingency basis, and we have not been paid for attorneys' fees or costs advanced in this matter. The work performed in this litigation also precluded work on other cases. Based on my experience, this case involved above-average risks given the number of novel and complex issues, the well-funded Defendants with every incentive to vigorously fight Plaintiffs' challenge to an industry-wide business practice, and top-notch defense counsel with extensive resources at their disposal. Plaintiffs' counsel, including Boucher LLP, risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of class members.

21. The reasonableness of the fees and costs requested are also supported by the results obtained for the Settlement Class. Based on my experience in other wage and hour litigation and the totality of circumstances in this case, I believe Plaintiffs obtained a tremendous result here. The Settlement Agreement provides meaningful backpay to class members and requires fundamental changes to Major League Baseball's employment policies regarding minor leaguers—results that favor class members and advance the goals enshrined in our labor laws. Plaintiffs also won an important appeal that will benefit other class action litigants in the future. The settlement is a reflection of the incredible work by Class Counsel, including assembling the team of experienced attorneys, consultants, and experts needed to prepare this case for trial.

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

Executed on November 18, 2022, at Woodland Hills, California.



Raymond P. Boucher

EXHIBIT 1

BOUCHER LLP

Founded by Raymond P. Boucher—Los Angeles Daily Journal’s Trial Lawyer of the Decade (2001-2010)—Boucher LLP focuses on the prosecution of high-impact, complex litigation, including class actions, mass actions, and representative actions on behalf of consumers and employees harmed by major corporations and insurance companies; civil rights and police misconduct cases; cases involving the sexual abuse of minors and disabled; and significant personal injury and wrongful death cases. Boucher and his colleagues are frequently appointed class counsel in major class actions and often serve among plaintiffs’ leadership in state and federal coordinated proceedings.

Boucher’s successes include a groundbreaking \$1 billion settlement on behalf of the victims of childhood sexual abuse by Catholic priests. He has long been a trusted resource for referring attorneys. His skill and tenacity also make him sought after as co-counsel.

Boucher built the firm from the ground up, handpicking dynamic, talented, and experienced attorneys who share his vision and values. Clients can expect meticulous preparation and tenacious, relentless representation, as well as highly individualized and compassionate service.

EXPERTISE AND RESOURCES

Boucher LLP has the expertise and resources to handle cases against major corporations from intake through trial. The firm is well-equipped to conduct discovery in a variety of cases, including large complex cases. Sophisticated technology and analytical protocols are employed to capture, evaluate, and present information gleaned from documents numbering in the multi-millions. In coordinated proceedings, the firm has the experience and leadership qualities needed to effectively manage resources to ensure efficiency of litigation.

Consumer Class Actions

The firm has extensive experience with consumer class action litigation and the relevant issues in evaluating and settling class action claims. Boucher LLP’s attorneys have litigated and certified consumer class actions in a range of areas—from automotive and other product defects, to privacy and data breach, to antitrust, breach of contract, and other business disputes.

Boucher LLP’s attorneys have served as lead class counsel and/or on the plaintiffs’ steering committee in numerous consumer class action cases including, *In Re Aetna UCR Litigation*, Dist. N.J., MDL No. 2020 (Class Counsel), *American Medical Association et al. v. Wellpoint, Inc.*, C.D. Cal, MDL No. 2074 (Interim Co-Lead Class Counsel), *Black v. Blue Cross of California*, Super. Ct. Los Angeles County, No. BC250339 (Class Counsel), *Chavez v. Nestlé USA, Inc.* C.D. Cal., No. CV09-9192 GW (CWx) (Lead Counsel), *In Re: Facebook, Inc. Internet Tracking Litig.*, N.D. Cal., MDL No. 2314 (Interim Liaison Counsel), *In Re Galvanized Steel Pipe Litigation*, Super. Ct. Los Angeles County, No. BC174649 (Lead Class Counsel), *In re: Pellicano Cases*, Super. Ct. Los Angeles County No. BC316318 (Co-Lead Class Counsel), *Sister Sledge et al. v. Warner Music Group Corp.*, N.D. Cal., No. 12-CV-0559-RS (Interim Co-Lead Class Counsel), and *Skeen, et al. v. BMW of North America LLC, et al.*, Dist. N.J., No. 2:13-cv-1531-WHW-CLW (Co-Lead Class Counsel).

Employment Class and Representative Actions

Boucher LLP is currently prosecuting numerous class and representative cases against corporations on behalf of thousands of workers alleging wage-and-hour violations, including claims for violations of meal and rest break laws, illegal rounding of time, and failure to pay all wages. The firm is committed to ensuring employees are properly compensated under state and federal laws, and to holding corporations accountable for failing to abide by the law.

Mass Tort Litigation

Boucher LLP's attorneys have obtained favorable recoveries for thousands of clients harmed by major pharmaceutical companies. Boucher presently serves in leadership for numerous coordinated proceedings in state and federal court, including *In Re Crestor Products Liability Cases*, Super. Ct. Los Angeles County, JCCP No. 4713 (Plaintiffs' Co-Liaison Counsel), *In Re Diet Drug Litigation*, Super. Ct. Los Angeles County, JCCP 4032 (Plaintiffs' Co-Liaison Counsel), *In re Wright Medical Technology, Inc., Conserve Hip Implant Products Liability Litigation*, MDL No. 2329 (Co-Lead Counsel for Plaintiffs and state Liaison Counsel), and *Zolofit Birth Defects Cases*, JCCP No. 4771 (Plaintiffs' Co-Lead Counsel).

Boucher LLP's attorneys have also successfully resolved mass tort cases involving toxic exposure, including, among others, *Bunker Hill Twrs Condo Ass'n, et al. v. W.R. Grace & Co.*, Super. Ct. Los Angeles County, No. B072642, and *Zachary et al. v. ARCO et al.*, Super. Ct. Los Angeles County, No. BC209944.

Complex, High-Impact Litigation

Boucher LLP is committed to advancing the rights of the people and to holding corporations accountable. Throughout his career, Mr. Boucher has brought worthy cases in furtherance of these goals. For example, in the *California Gubernatorial Recall Election Litigation*, Boucher represented former Governor Gray Davis in a challenge to the qualification of the 2003 California gubernatorial recall election. In *Madrid v. Perot Systems Corporation et al.*, Super. Ct. Sacramento County, No. 03AS04763, Boucher resolved an antitrust and unfair competition action to recover from Perot Systems Corporation for aiding and abetting the manipulation, distortion, and corruption of California's electricity market. More recently, in *Centinela Freeman Emergency Medical Associates, et al. v. Maxwell-Jolly, et al.*, Super. Ct. Los Angeles County, No. BC406372, Boucher and his partners obtained an order compelling California's Department of Health Care Services to comply—for the first time ever—with their obligation to annually review of Medi-Cal physician reimbursement rates to ensure access to quality healthcare in California. These are but a few of the many "impact" cases Boucher and his colleagues have pursued in the interest of positive social change.

Civil Rights and Police Misconduct Cases

Boucher LLP prosecutes individual, mass, and class actions against public entities for civil rights violations and police misconduct. The firm is committed to helping people obtain justice and to motivating significant policy changes.

Boucher is particularly proud of the published result in *Wallace v. City of Los Angeles* (1993) 12 Cal. App. 4th 1385, a case of first impression he brought against the City on behalf of Demetria Wallace, a teenaged honors student who was shot and killed while waiting for a bus, just five days before she was to testify against a man accused of fatally shooting a taxi driver. After non-suit was granted at trial, the appeals court held the police had a duty to warn the victim. The case affirmed the government's responsibility to protect citizens who place their lives in jeopardy by stepping forward as witnesses to crimes, and prompted changes in police procedures that have saved countless other witnesses' lives since.

Sexual Abuse Cases

Boucher LLP prosecutes individual and mass action cases against public and private entities that fail to protect minors and the disabled from sexual abuse. The firm's attorneys have extensive experience representing survivors of sexual abuse in such cases.

For example, in *The Clergy Cases*, Super. Ct. California, JCCP Nos. 4286, 4297, 4359, Boucher served as Plaintiffs' Liaison Counsel on behalf of almost 1,000 individuals and their families in significant personal injury claims involving molestation at the hands of Catholic priests. In *Jane Doe v. Garden Grove Unified School District*, Boucher prosecuted claims on behalf of a child victim of sexual abuse at school against a public school district. *Elena A. et al. v. Casa de Angeles Cal. Corp., d/b/a Healthy Start, et al.*, Super. Ct. Los Angeles County, No. BC457840, was brought on behalf of developmentally disabled adults who were subjected to serious verbal, physical, and sexual abuse and neglect while attending an adult day care center. And Boucher was a leader in *Los Angeles Unified School District Sexual Molestation Cases*, which were brought on behalf of the many children who were molested by a teacher at Miramonte Elementary School.

Significant Personal Injury and Wrongful Death

Boucher LLP represents individuals who have suffered serious personal injury or the death of loved ones.

The firm is committed to obtaining the justice that its clients deserve. For example, in *Young v. Johnny's Hot Dog Stand, et al.*, Super. Ct. Los Angeles County, No. BC102837, Boucher obtained a jury verdict in excess of \$1 million in compensatory damages on behalf of 57-year-old indigent person who was shot by a waitress outside of a hot dog stand. The firm is also passionate about seeking justice on behalf of children and adults who have suffered serious injuries from apparel fires.

BOUCHER LLP

RAYMOND P. BOUCHER

Raymond P. Boucher, a veteran trial lawyer specializing in complex consumer litigation, class actions, product liability, toxic tort litigation, employment discrimination and bad faith, is the Founder and Senior Partner of Boucher LLP.

During his professional career, which spans three decades, Boucher has tried more than 50 cases, and has helped obtain verdicts and settlements on behalf of clients in excess of \$3 billion. In two of his more notable cases, he served as lead attorney in the landmark \$660 million sexual abuse settlement with the Catholic Archdiocese of Los Angeles in which he represented over 250 abuse victims in the July 2007 settlement as well as obtaining nearly \$200 million for 144 survivors in a lawsuit against the Roman Catholic Diocese of San Diego. Boucher has briefed and argued more than 20 appeals before the Ninth Circuit Court of Appeals and California Courts of Appeal.

For his professional achievements, Boucher has received a diverse array of honors and awards, to include recognition as: “Top 100 Attorneys in California” (2002) by the Daily Journal; “Trial Lawyers of the Decade, “ (2001-2010) by the Daily Journal; “California Lawyer Attorney of the Year” (2008) by California Lawyer; “Consumer Attorney of the Year” (2007) by the Consumer Attorneys of California; and “Trial Lawyer of the Year” by the Consumer Attorneys Association of Los Angeles (additional awards listed below).

A noted author and lecturer, Boucher has lectured at numerous law schools (e.g. Stanford, Pepperdine, Loyola) and has delivered hundreds of presentations to bar associations and other legal organizations as well as legal media sponsored events and educational and government forums.

Prior to founding Boucher, LLP, Boucher served several other Los Angeles area law firms, including: Kiesel, Boucher & Larson LLP (Partner), Law Offices of Raymond P. Boucher (Founder/Senior Partner), Nordstrom, Steele, Nicolette & Jefferson (Of Counsel), Sayre, Moreno, Purcell & Boucher (Managing Partner), and Gould & Sayre.

A native of Massachusetts, Boucher received his undergraduate education at Fort Lewis College in Durango, CO where he received his Bachelor of Arts degree with a double major in Business Administration and Political Science.

He was Student Body President, on the Dean’s List and later was honored as its “Alumnus of the Year” (2007). He matriculated to Colorado State University where he received a Master of Science degree in Management. Boucher obtained his Juris Doctor degree from Pepperdine University School of Law While in law school, Boucher ranked in the top 15% of his class, was a member of the Phi Delta Phi honor society and later honored in 2002 with its Distinguished Alumnus Award. He received an Honorary Doctor of Law by Whittier College School of Law in 2005.

Boucher is admitted to the State Bar of California as well as the United States District Court for the Central, Northern, Southern and Eastern Districts of California. He is a member of, and has held leadership positions in, numerous legal professional entities, including:

- American Association for Justice, Member
- American Bar Association, Admitted as a Fellow of the American Bar
- Association of Trial Lawyers of America, State of California Delegate Member

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- Beverly Hills Bar Association, Member
- California Courts, Administrative Office of the Courts (2002 to 2007), Committees: Court Funding, Complex Courts System, Court Integration
- California State Bar Association, Member
- Civil Justice Foundation, Member
- Consumer Attorneys Association of Los Angeles (Formerly the Los Angeles Trial Lawyers Association) President (2005), Board of Governors, Emeritus Member (2005 to present), Board of Governors, Member (1996 to 2006)
- Consumer Attorneys of California (Formerly the California Trial Lawyers Association, President (2007), Board of Governors (1997 to present)
- Consumer Attorneys of San Diego (2001 to present), Consumer Advocate of the Year (2007)
- Diversity in Law Foundation, Board of Directors
- Los Angeles County Bar Association, Board of Trustees (2000 to 2002)
- Los Angeles Superior Court Bench and Bar Committee (2001 to 2008)
- National College of Advocacy, Fellow
- Orange County Trial Lawyers Association, Member
- Pepperdine School of Law, Board of Visitors (1997 to present)
- Public Citizen, Member
- Public Justice (Formerly Trial Lawyers for Public Justice), Board of Directors (1996 to present), Member (1984 to present)
- The Roscoe Pound Foundation, Member

Among the other honors, awards and other forms of recognition Boucher has received for his professional achievements and accomplishments from legal, community, educational, nonprofit and media entities, include:

- American Association for Justice Steven J. Sharp Public Service Award (2008)
- Consumer Attorneys Association of Los Angeles Ted Horn Memorial Award in recognition of service to the California State Bar (2002), Finalist, Trial Lawyer of the Year (1996) , Several Presidential Awards for Outstanding Contribution to the Trial Bar
- Consumer Attorneys of California Legislative Champion Award (2002), Several Presidential Awards of Merit
- Consumer Attorneys of San Diego David S. Casey, Jr. Consumer Advocate Award (2006)
- California League of Conservation Voters Environmental Leadership Award (2005) for dedication to the environment and for fostering the public health rights of individuals
- Fort Lewis College, Durango, Colorado Alumnus of the Year (2007)

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- Lawdragon Named one of 500 Leading Lawyers in America (2009-2014)
- Los Angeles Daily Journal Law Business Named one of the 100 Most Influential Attorneys in California several times
- Los Angeles Magazine Super Lawyer (2001 to present); named one of the Top 100 Super Lawyers in Southern California (2010 to present)
- Loyola Law School Champion of Justice Award (2008)
- Martindale-Hubbell, Peer Reviewed AV (highest rating)
- Orange County Trial Lawyers Association Top Gun Award (2008)
- Pepperdine University School of Law Distinguished Alumnus Award (2002)
- Project Sister Family Services Justice Armand Arabian Award (2006) for outstanding efforts to secure justice for victims of clergy abuse
- Trial Lawyers for Public Justice Trial Lawyer of the Year (1994)

Additionally, Boucher has been the recipient of presidential awards, awards of merit, recognition and commendation from federal, state and local government entities as well as a variety of bar associations.

Boucher, who resides in Tarzana, CA, is active in numerous business, civic, community and charitable organizations (e.g. Ambassador, Make a Wish Foundation). He is also active in fund raising for various local, state and national organizations for whom he has raised millions of dollars. He spends significant time doing pro bono work and frequently advises California Senate, Assembly and constitutional offices about legal and political issues.

BOUCHER LLP

SHEHNAZ M. BHUJWALA

Shehnaz M. Bhujwala, a strong advocate of consumer rights in civil courts and the California Legislature, is a partner of Boucher LLP.

Bhujwala helps consumers harmed by the bad practices of corporations, employers, and governmental entities, obtain justice through the courts. She prosecutes class actions, mass torts, and other complex civil cases in federal and California state courts.

Bhujwala has been recognized for her work as a consumer attorney as a “Southern California Rising Star” (2009-2011) and a “Super Lawyer” (2016-2017, 2019-2021) by both Los Angeles Magazine and Super Lawyers Magazine, as among the LawDragon 500 Leading Plaintiff Consumer Lawyers (2022), and was bestowed with a Martindale-Hubbell “AV Preeminent” rating for her professionalism and ethics. Over the course of her legal career, Bhujwala has helped bring resolution to numerous cases through settlement and trials, including:

- A historic settlement on behalf of hundreds of survivors of childhood sexual abuse against the Los Angeles and San Diego Catholic Archdioceses
- A favorable settlement on behalf of a news reporter who suffered severe electrical burns and related injuries when her transmission truck hit overhead power lines
- A favorable settlement on behalf of survivors of historic mass kidnapping against kidnappers
- A class action settlement against telephone company for privacy violations on behalf of wiretap victims
- A class action settlement against auto manufacturer on behalf of nationwide class of owners of vehicles with defective engine part
- Numerous class action settlements against major movie studio on behalf of nationwide classes of profit participants who challenged how the studios paid them distributions based on home video revenue.
- Numerous class action and representative action settlements on behalf of workers for wage theft

Prior to joining Boucher LLP, Bhujwala worked for top plaintiffs’ firms in the Los Angeles area, including Khorrami Boucher, LLP, Kiesel Boucher & Larson, LLP, and Greene, Broillet, Panish & Wheeler, LLP.

An active author and speaker on consumer law subjects, Bhujwala is a member of, and has held leadership positions in, numerous professional organizations, including:

- Consumer Attorneys of California: Board of Governors (2011-2022); Chair, Women’s Caucus (2015); and Executive Committee (2016)
- Consumer Attorneys Association of Los Angeles: Board of Governors (2013-2014); Member (2020-Present)
- Los Angeles County Bar Association: Litigation Section, Legislative Chair (2014-2016); Judicial Appointments Committee (2014-2017); Complex Courts Committee, Co-Chair

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(2016-2018); Programs (2018-2019); Federal Courts Committee (2019-2020); Court Funding (2020-2021); Adequate State Court Funding and Operations Committee (2020-Present); Litigation Section Officer (2020-2024).

- American Association for Justice
- Public Justice

Through her work with the Consumer Attorneys of California and the Los Angeles County Bar Association, Bhujwala also regularly speaks with California legislators regarding the need for sufficient court funding and other issues affecting the courts, consumers, and employees.

A California native and current resident of Los Angeles, Bhujwala received her undergraduate education at the University of California, Los Angeles where she obtained her Bachelor of Arts degree in Psychology in 1997. Thereafter, she attended the University of Southern California's Gould School of Law, where she obtained her Juris Doctor degree in 2002. During law school, she externed for the Honorable U.S. District Court Judge Robert M. Takasugi of the Central District of California, and counseled victims of domestic violence through the Los Angeles County Bar Association's Barrister's Project.

BOUCHER LLP

BRIAN BUSH

Brian Bush, a trial lawyer who concentrates his legal practice in the areas of civil rights, personal injury and mass tort litigation, presently serves as Of Counsel to Boucher LLP.

Bush is admitted to the State Bar of California as well as the United States District Courts for the Central, Eastern and Northern Districts of California. Among his professional affiliations, he is a member of the American Association for Justice, Los Angeles County Bar Association and the Consumer Attorneys Association of Los Angeles (CAALA).

Bush received his Juris Doctor degree from Loyola Law School in Los Angeles. Throughout law school, Bush volunteered at the Los Angeles County District Attorney's Office. In his capacity as a certified law student, he presided over numerous felony preliminary hearings, evidence suppression hearings and also served as second chair for the prosecution in a child molestation trial.

While in law school, Bush competed in trial advocacy tournaments in California and New York as a member of Loyola's nationally-ranked Byrne Trial Advocacy Team and served as speaker, co-chair and vice president of Loyola's student chapter of CAALA. Additionally, at Loyola, he earned First Honors awards in White Collar Crimes, Cross Examination and Advanced Trial Advocacy.

A native of Seattle, WA, Bush attended Washington State University where he obtained a Bachelor of Arts degree in Communications with an Advertising Emphasis. At the university, he was on the Dean's Honor Roll (2001-2004), was a graduate of the WSU Honors College, served as President and Vice President of the Ad Club and was a member of the student chapter of the American Advertising Federation.

BOUCHER LLP

KELSEY CAMPBELL

Kelsey Campbell is an Associate of Boucher LLP in the firm's San Francisco office. Kelsey's litigation practice is focused on representing individuals in complex civil litigation, including class actions, coordinated proceedings, and mass tort litigation in both state and federal court.

Kelsey represents survivors of child sexual abuse, seeking to hold the responsible institutions accountable. In addition to seeking justice on behalf of sexual assault and sexual abuse survivors, Kelsey represents individuals harmed by defective products and medical devices, including the Philips CPAP machines recalled in June 2021.

Before becoming an attorney, Kelsey served in national security positions in the federal government for over a decade, first on active duty in the U.S. Air Force and later as a civil servant in the Office of the Secretary of Defense. She served on engagements in the Asia Pacific, Central America, and South America, a deployment to Iraq, and a diplomatic tour at the U.S. Embassy in Islamabad, Pakistan.

Kelsey has a J.D. from the University of California, Hastings College of the Law, where she was a Patiño Fellow and the Editor-in-Chief of Hastings Constitutional Law Quarterly. During law school, she served as an appointed commissioner on the San Francisco Veterans Affairs Commission and as a refugee advocate with Human Rights First. Kelsey has a Master's in International Affairs from Columbia University's School of International and Public Affairs.

Kelsey serves on the Board of Directors of the Bay Area Lawyer Chapter of the American Constitution Society. She enjoys hiking, cycling, road trips, and rock and roll.

BOUCHER LLP

ALEXANDER GAMEZ

Alexander Gamez is an Associate of Boucher LLP. He represents survivors of sexual abuse, sexual harassment, and employment discrimination, and prosecutes class and PAGA actions against employers who violate California and federal wage and hour laws. Alex has successfully resolved cases on behalf of the firm's clients through settlements and trial. In 2022, Alex obtained an over \$24 million jury verdict in favor of two brothers against an adult cousin who sexually abused them during their childhood.

Alex graduated cum laude from California State University, Fullerton in 2012, earning a Bachelor of Arts degree in Political Science. Thereafter, in 2015, Alex earned his Juris Doctor degree from Southwestern Law School. During law school, Alex clerked for the U.S. Equal Employment Opportunity Commission and the Los Angeles District Attorney's Office, served as a Student Coordinator for the National Lawyers Guild Court Watch Program, and was a member of the Public Interest Law Committee. He also obtained numerous awards and distinctions during law school for his public interest and pro bono efforts.

Alex is a member of the State Bar of California, licensed to practice in all California state courts and the United States District Court for the Central District of California. He is also a member of the Consumer Attorneys Association of Los Angeles and the California Employment Lawyers Association.

BOUCHER LLP

MICHAEL GORELIK

Michael Gorelik is an Associate of Boucher LLP. Michael's litigation practice is focused on representing individuals in complex civil litigation, including class actions, coordinated proceedings, and mass tort litigation in both state and federal court.

Michael started his career at a boutique civil litigation firm in Phoenix, Arizona, where he worked on commercial, employment, class action, and other representative matters on behalf of both public and private entities, which included a secondment at one such company.

Michael is admitted to the State Bars of California and Arizona. He obtained his Juris Doctor degree from the Sandra Day O'Connor College of Law at Arizona State University, where he received the Dean's Recruitment and Willard H. Pedrick Awards, served as the Senior Articles Editor for the Arizona State Law Journal for Social Justice, and worked as a certified limited practice student with the College of Law's Post-Conviction Clinic investigating claims of wrongful conviction and manifest injustice for incarcerated individuals in Arizona.

While in law school Michael gained practical experience through externships with the Honorable David K. Duncan in the United States District Court for the District of Arizona and the American Civil Liberties Union. He also volunteered extensively with the Homeless Legal Assistance Project and served as its shelter director.

In his free time you can find Michael getting outside and enjoying nature, whether that be through rock climbing, riding his bike, surfing, or simply reading in his hammock.

BOUCHER LLP

CATHY KIM

Cathy Kim is an Associate of Boucher LLP. During her legal career, Cathy has focused her practice on representing individuals in mass tort litigation (e.g. products liability) against major pharmaceutical companies and medical device manufacturers in state and federal proceedings.

Cathy is admitted to the State Bar of California and the United States District Court, Central District of California. Among her professional affiliations, she is a member of Consumer Attorneys of California and the Korean American Bar Association.

Raised in Torrance, CA, Cathy attended the University of California, Los Angeles where she received a Bachelor of Arts degree in Business Economics with a minor in East Asian Languages and Cultures. Cathy graduated magna cum laude, was a member of Phi Beta Kappa Honor Society and the Golden Key International Honour Society, as well as being on the Provost's Honors List for six quarters.

Cathy matriculated to Loyola Law School in Los Angeles where she obtained her Juris Doctor degree while receiving numerous academic honors and recognition, including the First Honors Award in Advanced Legal Research. During law school, she served as a judicial extern to the Honorable Samuel L. Bufford in the United States Bankruptcy Court. Cathy also served as the Internal and External Vice President of the Asian Pacific American Law Students Association.

An accomplished musician (e.g. piano, violin) who has won many awards in competitions and performed in various orchestras, Cathy is active in community and cultural organizations. Among her involvements, she has served as a Korean-English translator for the Asian Pacific American Legal Center's Citizenship Workshops and Volunteer Income Tax Assistance.

BOUCHER LLP

MEGHAN MCCORMICK

Meghan McCormick is a Senior Associate of Boucher LLP. For nearly two decades, Meghan has passionately advocated for individuals harmed by the wrongful conduct of corporations, defective products, and more recently, institutions such as the Catholic Church. Her practice encompasses both complex mass tort matters and individual personal injury cases in both federal and state court.

Meghan represents survivors of child sexual abuse and adult victims of sexual assault, seeking to hold the responsible institutions accountable. In addition to seeking justice on behalf of sexual assault and sexual abuse survivors, Meghan represents individuals harmed by defective products and medical devices, including the Philips CPAP machines recalled in June 2021.

Prior to joining Boucher LLP, Meghan represented hundreds of women who were sexually assaulted by an Uber or Lyft driver. She was instrumental in the formation of the California Judicial Council Coordination Proceedings (JCCPs) *In re Lyft Assault Cases* and *In re Uber Sexual Assault Cases*. Meghan has also represented thousands of clients harmed by defective and or dangerous pharmaceutical products, including Zyprexa, Ortho Evra, Bextra, Celebrex, Accutane, Yaz/Yasmin, Byetta, Reglan, SSRI antidepressants, Actonel, Fosamax, Polident and Fixodent Denture Cream, AMS, Bard, Ethicon and Boston Scientific transvaginal mesh products. Meghan actively worked with the plaintiffs' steering committee for several multidistrict litigations (MDLs), including the Zyprexa MDL (E.D.N.Y.), the Ortho Evra MDL (N.D. Ohio), the Yaz/Yasmin MDL (S.D. Ill.), the Fosamax MDL (S.D.N.Y.), and the Bard, Ethicon, Boston Scientific and AMS Transvaginal Mesh MDLs (S.D.W. Va.).

Meghan was on the trial team for several trials against Pharmaceutical giant Merck in relation to its osteoporosis drug Fosamax, including one of the first *Fosamax* MDL trials, the only one of which that resulted in a plaintiff's verdict— *Boles v. Merck*. After a hung jury with the first trial, the second trial resulted in the jury awarding the 72-year-old plaintiff, Shirley Boles, \$8 million in compensatory damages.

Over the course of her career, Meghan has spoken at several seminars and conferences regarding the scientific and discovery issues involved in the various pharmaceutical cases she has worked on.

Meghan earned her law degree at the University of Wisconsin and her bachelor's degree from Northwestern University where she graduated cum laude. While at Northwestern, Ms. McCormick played on the Northwestern Women's Golf Team, earning Academic All Big Ten and Academic All American honors. Upon graduating from law school, Meghan clerked for the Honorable Justice James Gilbert of the Minnesota Supreme Court. Past law firms include Fredrikson & Byron P.A., Levin Papantonio Rafferty, P.A., The Sizemore Law Firm, and Levin Simes Abrams LLP.

Meghan is licensed to practice in Wisconsin (inactive), Minnesota (inactive), Florida and California. She is an active member of the American Association for Justice and the San Francisco Trial Lawyers Association.

BOUCHER LLP

HERMEZ MORENO

Hermez Moreno, a veteran trial lawyer who specializes in complex police misconduct litigation and catastrophic person injury and trial work, serves as Of Counsel to Boucher LLP.

During his professional career, which spans nearly four decades, Moreno has a diverse array of litigation experience and has attained verdicts and settlements for his clients up to eight figures. Some of the legal areas he has litigated include:

- Civil Rights
- Medical/Legal Malpractice
- Mass Torts
- Insurance Bad Faith
- Police Misconduct
- Excessive Use of Force
- False Arrest/Imprisonment
- Asbestos Personal Injury
- Mishandling of Human Remains
- Traumatic Brain Injury
- Asbestos Commercial Property Damage
- Asbestos Personal Injury
- Jail Abuse

Moreno also has extensive experience in transactional work and has been involved in the negotiating and drafting of contracts and other documents for entertainers in the fields of film, music recordings and film and recording financing. He has also negotiated and drafted contracts for the sale and purchase of businesses and landmark real estate in the Los Angeles area.

Moreno, who began his career handling civil rights cases throughout California, served as Special Counsel to Cesar Chavez (1984-1993) and as Trial Counsel for the United Farm Workers Union (1984-1990) in areas involving labor disputes and cases brought by growers' efforts to break the union. He also represented indigent clients in pro bono cases and continues to do so.

In addition to his legal practice, Moreno is actively serving as a professor of trial advocacy. He has served as a Clinical Professor at the UCLA School of Law in its Trial Advocacy Program and has been both a Visiting Associate Professor of Law, Clinical Instructor in the Trial Advocacy Program of Southwestern Law School and currently serves as an Adjunct Professor of Law in the school's Trial Advocacy and Civil Rights Program.

Moreno is admitted to the State Bar of California as well as the United States Supreme Court, United States Court of Appeal Ninth Circuit, United States Court of Appeal, Federal Circuit and the United States District Court for the Central, Northern, and Eastern

Districts of California. Among his professional affiliations, he is or has been a member of:

BOUCHER LLP

- Consumer Attorneys of California
- Consumer Attorneys Association of Los Angeles
- Trial Lawyers for Public Justice
- Mexican American Bar Association (Board of Trustees)
- Mexican American Bar Foundation (Board of Directors)
- Santa Monica Third Street Development Corporation (Board of Directors)

A native of Mexico, Moreno attended the University of California, Santa Barbara where he received a Bachelor of Arts degree in Political Science. He obtained his Juris Doctor degree from the UCLA School of Law. While in law school, he co-founded Centro Legal de Santa Monica, Inc., a non-profit legal aid office operated by UCLA Chicano law students. The organization, which subsequently merged with Westside Legal Services, provided legal services to underprivileged residents in Santa Monica and Moreno served as a Board of Trustees member and supervising attorney.

Moreno lives with his wife in Moorpark, CA on a 15-acre horse ranch. Among his personal interests, he is an art collector, an artist, and has written his first novel.

BOUCHER LLP

MARIA L. WEITZ

Maria L. Weitz, an attorney with broad experience in numerous areas of consumer law, is a partner of Boucher LLP.

Throughout her legal career, Weitz has focused her practice on unfair, deceptive, and fraudulent business practices, and seeking legal accountability on behalf of injured plaintiffs. As a result, her diverse range of litigation experience spans a wide array of legal issues, including complex class actions, product liability and other personal injury cases, employment litigation, and appellate practice.

Weitz received her undergraduate education at the University of California, Los Angeles, where she earned a Bachelor of Arts degree in Sociology and Communications. Her interest in civil justice developed while attending the University of California, Davis School of Law, where she earned her Juris Doctor degree. She received a Public Service Law Certificate recognizing her legal work in public interest organizations and government agencies. This work included serving as co-counsel in a federal jury trial on behalf of an inmate alleging civil rights violations, and working within the California Attorney General's Office to prosecute civil cases for violations of California's Air Pollution Control Laws. She also received a Witkin Award for Academic Excellence in Legal Writing and the Sacramento County Bar Association Diversity Fellowship.

Over ten years of practice, Weitz has secured major appellate victories and significant client compensation by leveraging the creative, strategic approach that is Boucher LLP's hallmark. Weitz's work has helped recover millions of dollars for the firm's clients, including a recent 8-figure recovery on behalf of a construction worker who was injured on the job. Her appellate work has led to two published pro-consumer cases on significant issues of first impression: *Quezada v. Herb Thyme Farms, Inc.* (2015) 62 Cal.4th 298 (unanimously vindicating the rights of consumers who paid a premium "organic" price for conventionally grown produce that was deliberately mislabeled), and *Barriga v. 99 Cents Only* (2020) 51 Cal.App.5th 299 (recognizing that employer-employee relationships carry a heightened potential for coercion, and imposing a duty on trial courts to closely scrutinize declarations filed by an employer in opposition to class certification).

In recognition of her career accomplishments, Weitz has been selected as a Southern California Rising Star by Super Lawyers Magazine 2013-2021, and included among the National Trial Lawyers' Top 40 Under 40 Civil Plaintiff Attorneys in California.

Weitz is admitted to the State Bar of California, the United States Court of Appeals for the Ninth Circuit, and the United States District Courts in the Northern, Southern, Central, and Eastern Districts of California.

BOUCHER LLP

MALLORY WHITELAW

Mallory Whitelaw, an Associate of Boucher LLP, has focused her litigation practice on the representation of clients in employment, civil rights, and business litigation in both state and federal court proceedings.

Prior to joining Boucher LLP, Whitelaw was an Associate at Los Angeles-based firm, Geragos & Geragos, APC. Whitelaw received her Juris Doctor from Loyola Law School, Los Angeles. During law school, she served as Senior Technical Editor for Loyola of Los Angeles International and Comparative Law Review (ILR). Whitelaw also served as a clerk at Public Counsel as part of Loyola's Civil Rights Litigation Practicum. Additionally, Whitelaw was awarded a Peggy Browning Fellowship to work at National Day Laborer Organizing Network, where she helped to bring a federal case challenging state laws on equal protection grounds.

Prior to law school, Whitelaw worked as an Interaction Designer for creative agencies focused on websites, games and software. Whitelaw attended San Francisco State University where she received her bachelor's degree, and New York University where she received her master's degree. Outside of work, Whitelaw enjoys ambitious baking projects, with varying degrees of success.

Whitelaw is admitted to the State Bar of California and the United States District Court, Central District of California.

BOUCHER LLP

AMANDA J. G. WALBRUN

Amanda J. G. Walbrun, a fierce advocate for survivors of abuse and other injuries, serves as Of Counsel to Boucher LLP.

Amanda's trauma-informed practice focuses on representing clients who were harmed by individuals, institutions, and corporations with power over them. In particular, Amanda advocates for survivors of childhood sexual abuse suffered in religious centers, schools, foster care, and medical facilities. She also works tirelessly to hold businesses accountable for the sexual exploitation and labor trafficking that occurs on their premises. She prosecutes complex civil cases, class actions, and coordinated proceedings in both California state and federal court. Amanda is passionate about empowering her clients to reclaim their voice and seek justice in the courtroom.

Amanda received her juris doctorate from the University of Michigan Law School where she served as a legal writing teaching assistant and on the Michigan Journal of Race & Law. In the Child Advocacy Law Clinic, Amanda also worked as a guardian ad litem and conducted two successful trials prior to graduating. Amanda went on to become the inaugural Fiza Quraishi Fellow at the National Center for Youth Law in Oakland, California where she litigated class action cases to drive systemic reform in child welfare agencies. She then clerked for Chief Magistrate Judge Joseph C. Spero of the Northern District of California and represented plaintiffs in sexual abuse, civil rights, and employment actions at Bay Area law firms.

Amanda is a member of the State Bar of California, licensed to practice in all California state courts and the United States District Courts for the Northern, Eastern, and Central Districts of California, as well as North Dakota and the Eastern District of Michigan.

Prior to her legal career, Amanda graduated from the University of California San Diego with a degree in Human Development and dual minors in Human Rights and Public Service. She then served two years with Teach for America as a high school mathematics instructor in Jacksonville, Florida..

EXHIBIT 2

CURRICULUM VITAE

RAYMOND PAUL BOUCHER, ESQ.

BOUCHER LLP

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Woodland Hills, California 91367
Tel. (818) 340-5400 | Fax (818) 340-5401
ray@boucher.la | www.boucher.la

EDUCATION

Pepperdine University School of Law, Malibu, California

Distinguished Alumnus Award (2002). Juris Doctorate (1984).
Ranked in top fifteen percent of class. Moot Court (first place petitioner brief).
Phi Delta Phi honor society.

Whittier College School of Law, Costa Mesa, California

Honorary Doctor of Law (2005).

Colorado State University, Fort Collins, Colorado

Master of Science in Management (1981). Graduate assistant.
Sigma Iota Epsilon honor society.

Fort Lewis College, Durango, Colorado

Alumnus of the Year (2007). Bachelor of Arts (1979). Double Major, Business
Administration and Political Science. Student Body President. Dean's List.

ADMISSIONS

State Courts of California; United States District Courts for the Central, Northern,
Southern, and Eastern Districts of California

PROFESSIONAL EXPERIENCE

Boucher LLP, Woodland Hills, California

Partner (Present)

Kiesel, Boucher & Larson LLP, Beverly Hills, California

Partner (1999 to 2013)

Law Offices of Raymond P. Boucher, Tarzana, California

Partner (1990 to present)

Nordstrom, Steele, Nicolette & Jefferson, Los Angeles, California

Attorney of Counsel (1993 to 1996)

Sayre, Moreno, Purcell & Boucher, Los Angeles, California

Managing Partner (1985 to 1990)

Gould & Sayre, Santa Monica, California

Attorney at Law (1984 to 1985)

AFFILIATIONS AND SELECTED LEGAL INVOLVEMENT

American Association for Justice, Member

American Bar Association, Admitted as a Fellow of the American Bar

Association of Trial Lawyers of America

State of California Delegate

Member

Beverly Hills Bar Association, Member

California Courts, Administrative Office of the Courts (2002 to 2007)

Committees: Court Funding, Complex Courts System, Court Integration

California State Bar Association, Member

Civil Justice Foundation, Member

Consumer Attorneys Association of Los Angeles

Formerly the Los Angeles Trial Lawyers Association

President (2005)

Board of Governors, Emeritus Member (2005 to present)

Board of Governors, Member (1996 to 2006)

Consumer Attorneys of California

Formerly the California Trial Lawyers Association

President (2007)

Board of Governors (1997 to present)

Consumer Attorneys of San Diego (2001 to present)

Consumer Advocate of the Year (2007)

Diversity in Law Foundation, Board of Directors

Los Angeles County Bar Association

Board of Trustees (2000 to 2002)

Los Angeles Superior Court Bench and Bar Committee (2001 to 2008)

Make a Wish Foundation, Ambassador

National College of Advocacy, Fellow

Orange County Bar Association, Member

Orange County Trial Lawyers Association, Member

Pepperdine School of Law

Board of Visitors (1997 to present)

Public Citizen, Member

Public Justice, Board of Directors

Formerly Trial Lawyers for Public Justice

Board of Directors (1996 to present)

Member (1984 to present)

The Roscoe Pound Foundation, Member

SELECTED AWARDS AND HONORS

Trial Lawyer of the Decade (2001-2010)

Los Angeles Daily Journal

American Association for Justice

Steven J. Sharp Public Service Award (2008)

California Lawyer Magazine

California Lawyer Attorney of the Year (CLAY) Award (2008)

California Lawyer Attorney of the Year (CLAY) Award (2022)

Consumer Attorneys of Los Angeles

Trial Lawyer of the Year (2007)

Ted Horn Memorial Award in recognition of service to the
California State Bar (2002)

Finalist, Trial Lawyer of the Year (1996)

Several Presidential Awards for Outstanding Contribution
to the Trial Bar

Consumer Attorneys of California

Consumer Attorney of the Year (2007)

Legislative Champion Award (2002)

Several Presidential Awards of Merit

Consumer Attorneys of San Diego

David S. Casey, Jr. Consumer Advocate Award (2006)

California League of Conservation Voters

Environmental Leadership Award (2005) for dedication to the environment and
for fostering the public health rights of individuals

Fort Lewis College, Durango, Colorado

Alumnus of the Year (2007)

Lawdragon

Named one of 500 Leading Lawyers in America (2009-2022)

Named one of 20 Lawdragon Legends (2022)

Los Angeles Daily Journal Law Business

Named one of the 100 Most Influential Attorneys in California several times

Los Angeles Magazine

Super Lawyer (2001 to present); named one of the Top 100 Super Lawyers in
Southern California (2010 to present)

Loyola Law School

Champion of Justice Award (2008)

Martindale-Hubbell, Peer Reviewed AV (highest rating)

Orange County Trial Lawyers Association

Top Gun Award (2008)

Pepperdine University School of Law

Distinguished Alumnus Award (2002)

Project Sister Family Services

Justice Armand Arabian Award (2006) for outstanding efforts to secure justice for victims of clergy abuse

Trial Lawyers for Public Justice

Finalist, Trial Lawyer of the Year (2000, 2008)

Trial Lawyer of the Year (1994)

Recipient of presidential awards, awards of merit, recognition, and commendations from federal, state, and local governmental entities and a variety of bar organizations.

LITIGATION

Tried more than sixty cases to verdict, recovering in excess of three billion dollars in verdicts and settlements for clients. Briefed and argued more than twenty appeals before the Ninth Circuit Court of Appeals and California Courts of Appeal.

Selected class actions and complex litigation:

Southern California Gas Leak Cases

Super. Ct. Los Angeles County, pending, California JCCP No. 4861

Serving as court-appointed Co-Chair of the Plaintiffs' Steering Committee for the Class Action Track, and Co-Lead counsel in historic \$1.84 Billion settlement of claims arising from natural gas leak at Aliso Canyon.

Southern California Clergy Cases

Super. Ct. Los Angeles County, pending, California JCCP No. 5101

Court-appointed member of Plaintiffs' Liaison Counsel committee in coordinated proceeding against Archdioceses of Los Angeles and Orange, and other Catholic institutional entities.

Adderton v. Nextel Commc'n, Inc., et al. ("Boost Mobile")

Super. Ct. Los Angeles County, 2006, No. BC344300

Owners of Pipeline asserted Nextel unlawfully used its power as majority interest holder to force Pipeline's owners to sell shares in Boost Mobile for below market value. Nextel withheld financial and marketing support until the Pipeline owners sold their interests, gave false valuations and withheld financial information so that Pipeline could not know Boost Mobile's true value. Resolved.

Adlouni v. UCLA Health Systems Auxiliary, et al.

Super. Ct. Los Angeles County, Lead Case No. BC589243

Court-appointed Liaison Counsel in consolidated class action cases arising from data breach of medical patient information. Resolved.

In Re Aetna UCR Litigation

Dist. N.J., Pending, MDL No. 2020, No.: 2:07-cv-3541 (FSH)(PS)

Appointed Class Counsel for class of subscribers to Aetna's healthcare insurance plan in class action alleging Aetna knowingly used inherently flawed databases licensed from Ingenix to set usual, customary, and reasonable ("UCR") rates for out-of-network services, resulting in artificially reduced reimbursements to plaintiffs. Plaintiffs allege the existence of a secret and illegal agreement by Aetna, UnitedHealth Group, Ingenix, and most of the country's largest health insurers to systemically under-reimburse consumers for out-of-network services in violation of ERISA, RICO, and the Sherman Act, as well as state law.

American Medical Association et al. v. Wellpoint, Inc.

C.D. Cal, Pending, MDL No. 09-2074 PSG (FFMx).

Appointed Co-Lead Counsel in action on behalf of physicians and physician groups to recover payment from insurers who violated federal antitrust laws by fixing artificially low reimbursement rates for treatment provided to out-of-network patients.

Balasubramaniam v. Cty of Los Angeles, et al.

Super. Ct. Los Angeles County, 2004, Case No. BC158506.

Represented plaintiff medical doctor in case of employment discrimination based upon color. Resolved after trial, on appeal.

Bartley v. Camarillo Miramonte Homeowners Ass'n

Super. Ct. Ventura County, 2002, No. SC020953.

Class action against real estate developers on behalf of individual condominium owners for faulty construction and repairs. The units were constructed over a high water table and on poor soils which expanded and contracted, causing the units to sink, and causing floor slabs, foundations, and walls to crack. The defendants knew about the defects but did not disclose them. After receiving complaints, developers failed to repair as promised. Resolved on eve of trial.

Bianchi v. Schneiderman, et al.

Super. Ct. Los Angeles County, 2003, No. EC033688.

Represented plaintiff in suit for breach of an agreement and for fraud after Schneiderman fraudulently obtained control of L.A. Digital Post and then transferred it to his wife in order to hide assets from creditors. Resolved.

Black v. Blue Cross of California

Super. Ct. Los Angeles County, 2007, No. BC250339.

A certified class action against a health insurer for improper mid-year contract modifications. Settled for an eight-figure amount after a liability trial.

Berger v. The Berger Foundation, et al.

Super. Ct. Riverside County, 2011, Case No. INC 10010664.

H. N. and Frances Berger founded a charitable organization to promote and support education and alleviate human suffering. Defendants diverted millions from this foundation to engage in self-dealing transactions and to pay themselves excessive compensation, and to fund ventures to employ their relatives. Represented the Berger Foundation to remedy these wrongs and safeguard a family legacy. Resolved.

Bunker Hill Twrs Condo Ass'n, et al. v. W.R. Grace & Co.

Super. Ct. Los Angeles County, No. B072642.

Represented 250 resident unit owners in a 32-story, luxury downtown high-rise in an action against the nation's leading asbestos products manufacturer. The building's steel girders were coated with asbestos, which contaminated the building with hazardous amounts of emitted asbestos fibers in breathable dust. A jury awarded over \$6 million to compensate for the cost of the abatement.

Bustamante v. Southern California Gas Company, et al.

Super. Ct. Los Angeles County, No. BC285598.

Class action against energy companies on behalf of California citizens for manipulation of natural gas market by reporting false price and volume information to the price indices and industry publications that were used to establish the cost of natural gas to end users, and the value of natural gas in the commodities markets.

California Gubernatorial Recall Election Litigation

Represented former Governor Gray Davis in a challenge to the qualification of the 2003 California gubernatorial recall election.

Castaneda, et al. v. State of California et al.

Super. Ct. Los Angeles County, 2004, No. BC299062.

The California Legislature passed a bill to allow victims of wrongful deportation or coerced emigration between 1929 and 1944 to bring civil actions. *Castaneda* was a class action on behalf of approximately 400,000 U.S. citizens and resident aliens who were wrongfully expelled from California because of their Mexican heritage. Complaint withdrawn after governor's veto of the bill.

Catalina Toys v. Forward Winsome

Super. Ct. Orange County, No. 68-59-34.

Defended Forward Winsome, one of the largest toy manufacturers in the world, and represented it on a cross complaint. Plaintiffs alleged that Forward Winsome intentionally delayed shipments of goods and breached an agreement in order to place the plaintiffs in financial duress and to foreclose upon their assets. After a fifteen-day trial, the jury entered a unanimous verdict awarding Forward Winsome more than \$6 million; settled before punitive damages phase.

Centinela Freeman Emergency Medical Associates, et al. v. Maxwell-Jolly et al.

Super. Ct. Los Angeles County, No. BC406372.

Action on behalf of emergency room doctors who received medical reimbursements in amounts that were significantly below the costs that they incurred to treat their patients. Writ of mandate issued; judgment entered.

Chavez v. Nestlé USA, Inc.

C.D. Cal., 2013, No. CV09-9192 GW (CWx).

Appointed lead counsel in class action for false advertising in the marketing of a beverage for infants. Resolved following successful appeal to Ninth Circuit.

CIGNA Litigation

Class action against medical insurers who under-reimbursed hundreds of thousands of medical patients for out-of-network care they received. The plaintiffs allege the health insurers manipulated data to artificially depress reimbursements for medical care.

The Clergy Cases

Super. Ct. California, JCCP Nos. 4286, 4297, 4359.

Served as Plaintiffs' Liaison Counsel representing almost 1,000 individuals and their families in significant personal injury claims involving molestation at the hands of Catholic priests.

The Clergy Cases I, California JCCP 4286 (Diocese of Orange).

Ninety survivors of Clergy sexual abuse filed lawsuits against the Roman Catholic Diocese of Orange. In December 2004, after nearly two years of intense negotiations, lead negotiations to successfully settle all claims against the Diocese for \$100 million on the condition that the secret files of the Diocese of Orange would be made public.

The Clergy Cases I, California JCCP 4286 (Archdiocese of Los Angeles).

Five-hundred and eight survivors of clergy sexual abuse filed lawsuits against the Roman Catholic Archbishop of Los Angeles. On the eve of the first of more than a dozen scheduled trials, successfully negotiated an agreement with the Archbishop to resolve all remaining cases against it, resulting in the largest resolution with any diocese in the United States.

The Clergy Cases II, California JCCP 4297 (Archdiocese of San Diego).

One-hundred and forty-four survivors were sexually abused by Clergy members in the Roman Catholic Diocese of San Diego. In the second-largest settlement by a Roman Catholic diocese nationwide since claims of sexual abuse by clergy members came to light in 2002, the Diocese agreed to pay nearly \$200 million to these 144 survivors.

Colin Higgins Productions, LTD. v. Universal City Studios, LLC

Super. Ct. Los Angeles County, Case No. BC499180.

Co-Class Counsel in action against movie studio arising from studio's calculation of profit participation from home video distribution of films. Final approval of class action settlement granted.

Colin Higgins Productions, LTD. v. Paramount Pictures Corporation

Super. Ct. Los Angeles County, Case No. BC499179.

Co-Class Counsel in action against movie studio arising from studio's calculation of profit participation from home video distribution of films. Final approval of class action settlement granted.

In Re Crestor Products Liability Cases

Super. Ct. Los Angeles County, California JCCP No. 4713.

Appointed Plaintiffs' Co-Lead and Co-Liaison Counsel in Judicial Council coordinated proceeding pending before the Los Angeles Superior Court involving personal injury claims arising from use of Crestor pharmaceutical drug. Settled.

Del Campo v. Hometown Buffet, Inc. et al.

C.D. Cal. Case No. 2:14-cv-04378-RGK-SH.

Court-appointed as Class Counsel in "wage and hour" class action against major restaurant chain. Final approval of settlement granted.

DePUY ASR Artificial Hip Implants Litigation

Super. Ct., San Francisco County, Pending, California JCCP No. 4649.

Nationwide personal injury actions on behalf of patients who received the recalled, defective, surgically implanted, metal-on-metal ASR XL Acetabular and ASR Hip Resurfacing systems manufactured by DePuy Orthopedics, a unit of Johnson & Johnson. The complaints allege DePuy Orthopedics was aware its ASR hip implants were failing at a high rate, yet continued to manufacture and sell the product to unsuspecting physicians and patients.

In Re Diet Drug Litigation

Super. Ct. Los Angeles County, California JCCP 4032.

Appointed Co-Plaintiffs' Liaison Counsel. Claims arose from injuries resulting from the use of the diet drug Phen-Fen. Resolved.

Jane Doe v. Garden Grove Unified School District

Represented a child victim of sexual abuse at school. Resolved.

Elena A. et al. v. Casa de Angeles Cal. Corp., d/b/a Healthy Start, et al.

Super. Ct. Los Angeles County, No. BC457840.

Case on behalf of developmentally disabled adults who were subjected to serious physical and verbal abuse and neglect while attending an adult day care center. The abuse included sexual molestation which caused rashes, bruises, scratches, abrasions, scarring, and cuts and the contraction of venereal disease.

Espinoza, et al. v. Vander-Bend Manufacturing, LLC

Super. Ct. Santa Clara County, Case No. 1-15-CV-283929.

Court-appointed as Class Counsel in wage and hour class and representative action on behalf of employees of Defendant. Final approval of settlement granted.

In Re: Facebook, Inc. Internet Tracking Litig.

N.D. Cal., MDL No. 2314, No. 5:12-md-02314-EJD.

Appointed Interim Liaison Counsel in this class action lawsuit seeking damages and injunctive relief for the knowing interception of users' Internet communications and activity after logging out of their Facebook accounts, in violation of state and federal laws including the Federal Wiretap Act, the Stored Communications Act, and the Computer Fraud and Abuse Act.

In Re Galvanized Steel Pipe Litigation

Super. Ct. Los Angeles County, 2010, No. BC174649.

Appointed Lead Counsel (2001). Class action involving construction defects. Settled for an amount in the high eight figures.

Gillis et al. v. Ralph Wyatt Plastering Company, et al.

Super. Ct. Los Angeles County, 1999, No. SC034918.

Case to recover for negligent construction leading to water intrusion and an infestation of highly toxigenic mold, resulting in the total loss of the plaintiff's home and all of its contents. Eight-figure settlement.

Grossman v. Unger Fabrik, LLC

Super. Ct. Los Angeles County, 2013, No. BC480626.

Breach of contract action on behalf of an executive who made \$55 million in sales for a company that then failed to pay her commissions. Resolved.

Hablian et al. v. Zurich U.S. et al.

Cal. Comp. Bd. of Appeals

Class action to recover workers' compensation benefits that were due to injured employees, but that employers and their insurers instead kept for themselves. The California Workers Compensation Appeals Board has ruled that a class action may be brought. Resolved.

Juarez v. Dignity Health

Super. Ct. Los Angeles County, Case No. BC550950.

Class Counsel in certified class action against hospital chain on behalf of security guards involving donning and doffing and other wage and hour claims. Settled.

Leslie v. Hochman, Salkin & Deroy

Super. Ct. Los Angeles County, 1997, No. BC127454.

In this legal malpractice case, attorneys arranged to provide the plaintiffs with a tax shelter plan under which a commodities broker would reduce their income tax burden through trades in gold futures, and the attorneys would take \$20 for each of the broker's transactions in return for legal representation about the tax consequences of the trades. The Ninth Circuit then ruled that the types of deductions the attorneys advised the plaintiffs to take on their tax returns were not based on genuine losses, such that the plaintiffs were now responsible for unpaid taxes, interest, and penalties. Litigation ensued in which the attorneys represented the plaintiffs before the U.S. Tax Court, promising that they would prevail when all the while they had no reasonable possibility of doing so. Resolved.

Lopez, et al. v. Citrus Valley Health Partners, Inc.

Super. Ct. of Los Angeles County, Case Nos. BC544139 and BC545110.

Court-appointed as Class Counsel in "wage and hour" class actions against large California hospital entity. Final approval of settlement granted.

Los Angeles Unified School District Sexual Molestation Cases

Represented numerous children who were molested at Miramonte Elementary School in the Los Angeles Unified School District.

Madrid v. Perot Systems Corporation et al.

Super. Ct. Sacramento County, No. 03AS04763.

Antitrust and unfair competition action to recover from Perot Systems Corporation for aiding and abetting the manipulation, distortion, and corruption of California's electricity market, including the design and sale of derivative securities, in the wake of the deregulation of California's energy sector. Resolved.

Martinez et al. v. EMI Music Distribution et al.

("Compact Disc Minimum-Advertised Price Antitrust Litigation")

C.D. Cal, No. CV-00-05730 RAP (RNBx).

Suit to recover from recorded-music distributors and retailers for price fixing. Resolved.

Micheli, et al. v. The City of Fresno,

Super. Ct. of Fresno County, Lead Case No. 16CECG02937.

Court-appointed Co-Class Counsel in consolidated, certified class action by residential water customers of Northeast Fresno, California against a municipality whose water supply to Northeast Fresno is alleged to have destroyed residents' galvanized plumbing, resulting in the leaching of lead and other heavy metals and receipt of discolored, "rusty" water at their taps. Pending.

Moppin v. Los Robles Regional Medical Center, et al.,

U.S. Dist. Ct., Central District of Cal., Case No. 5:15-CV-01551-JGB-DTB.

Court-appointed Class Counsel in wage and hour class action against hospital entity and travel nurse staffing agency on behalf of temporary nurse employees. Settled.

Murray v. Belka (“First Pension”)

Super. Ct. Orange County, California JCCP No. 3131.

Suit against a pension plan administrator, one of the nation’s largest law firms, and one of the world’s largest accounting firms to recover damages and for restitution to hundreds of investors who had lost their life savings to a Ponzi scheme. Co-tried a four month trial with Michael Aguirre, resulting in a liability and punitive damages verdict. The Orange County, California jury in the case found that Pricewaterhouse Coopers helped defraud the investors by creating fraudulent audits and reviews that First Pension Corporation used in its filings with government agencies over nine years. Resolved on the eve of the punitive damage phase for nearly nine figures.

In re: National Association of Music Merchants, Musical Instruments and Equipment Antitrust Litigation, S.D. Cal. MDL No. 2121.

Class action in antitrust to recover for anticompetitive price fixing.

Northridge Homeowners v. The Newhall Land and Farming Co., et al.

Super. Ct. Los Angeles County, 2010, No. BC174649.

Recovered \$41 million on behalf of 5,000 Santa Clarita Valley residents in a suit against real estate developers for the installation of defective galvanized steel pipes which rusted and leaked inside their new homes.

In Re Northridge Earthquake Litigation

Appointed Plaintiffs’ Liaison Counsel (2002). Numerous coverage lawsuits against State Farm Insurance, 21st Century Insurance, Farmers Insurance, and USAA Insurance Company for fraudulent insurance practices arising out of the Northridge Earthquake. Resolved.

In re: Pellicano Cases

Super. Ct. Los Angeles County, 2014, No. BC316318.

Appointed as Co-Lead Counsel in class action against AT&T. Cases involved wiretapping in violation of the California Penal Code. Settled.

Quesada v. Herb Thyme Farms, Inc.

Super. Ct. Los Angeles County, No. BC436557.

Action against California’s largest grower and marketer of herbs for falsely labeling conventionally grown food as “fresh organic” so consumers would pay higher organic prices for cheaper non-organic food. On December 3, 2015, the Supreme Court of California issued a landmark decision, unanimously vindicating the rights of consumers who paid a premium “organic” price for conventionally grown produce that was deliberately mislabeled as organic. *Quesada v. Herb Thyme Farms, Inc.* (2015) 62 Cal.4th 298.

Residents of Tucson, Arizona v. Tucson Airport Authority et al.,

AZ Court of Appeals, No. 2 CA-CV 93-0204.

Actions on behalf of over 1,600 residents of the Sunnyside community of Tucson against the Tucson Airport Authority and other defendants for dumping a carcinogen, trichloroethylene (TCE), into disposal pools and allowing it to seep into the city's ground water. After an EPA-sponsored researcher found high levels of TCE and other carcinogens in drinking water, experts discovered that several unusual forms of cancer, particularly among children in the area, were at almost epidemic levels. The actions settled for \$84.5 million.

Securitas Wage and Hour Cases,

Super. Ct. Los Angeles County, California JCCP No. 4837.

Appointed Lead and Co-Liaison Counsel in coordinated class action proceedings against security company on behalf of security guards. Resolved.

Silver et al. v. Aetna Health Inc., PA, et al.

N.D. Cal., No. C10-00143.

Class action against medical insurers who under-reimbursed hundreds of thousands of medical patients for out-of-network care they received. The plaintiffs allege the health insurers manipulated data to artificially depress reimbursements for medical care.

Silver v. Del Webb

Super. Ct. Nevada. No. A437325.

Appointed Lead Counsel (2001). Certified class construction defect suit involving installation of faulty plumbing systems in new homes. Resolved.

Sinskey, et al. v. Ernst & Young et al.

Super. Ct. Los Angeles County, No. BC247851.

Represented plaintiffs in action for fraud in the sale of securities. Resolved.

Sister Sledge et al. v. Warner Music Group Corp.

N.D. Cal., No. 12-CV-0559-RS.

Appointed Interim Co-Lead Counsel in this suit to recover for the shortchanging of artists in the licensing of their works to third parties for subsequent retail sale as digital downloads and ringtones. Settled for \$11.5 Million.

Skeen, et al. v. BMW of North America LLC, et al.

Dist. N.J., No. 2:13-cv-1531-WHW-CLW.

Appointed Co-Lead Class Counsel in nationwide class action on behalf of owners and lessees of MINI Cooper vehicles manufactured with defective "timing chain tensioner" parts that cause premature engine damage and failure. Settled.

The Temptations et al. v. UMG Recordings, Inc.

N.D. Cal., No. 12-CV-1289-JCS.

Suit to recover for shortchanging of artists in the licensing of their works to third parties for subsequent retail sale as digital downloads and ringtones.

Terry W. et al. v. Kaiser Foundation Health Plan, Inc. et al.

Super. Ct., Los Angeles County, No. BC187451.

Case against Kaiser for failing to take action to protect patients after receiving complaints that one of their doctors was molesting minors. The doctor was later arrested, convicted, and incarcerated for his crimes. Resolved.

In re Transient Occupancy Tax Cases

Super. Ct. Los Angeles County, California JCCP 4472.

Action on behalf of thirty-nine separate California cities to recover unremitted occupancy taxes from online travel companies.

In re Trasylol Drug Cases

Super. Ct. Los Angeles County, California JCCP 4593.

Action on behalf of the people of the State of California against a pharmaceutical company that continued to aggressively market a drug after becoming aware that it significantly increased the risk of renal failure, stroke, and death, and which was ultimately removed from the market. Resolved.

Welch v. Orkin Exterminating Co.

Super. Ct. Los Angeles County, No. 516323.

Orkin's negligent treatment of the plaintiffs' San Diego home for termites caused plaintiffs to develop chemical sensitivities. Orkin argued the plaintiffs were only imagining their injuries, or that the injuries preexisted. Orkin denied that it misapplied the chemicals, and denied that the chemicals could cause any injury. After an eighteen-day trial, a jury awarded plaintiffs approximately \$1 Million.

In re Wright Medical Technology, Inc., Conserve Hip Implant Products Liability Litigation, MDL No. 2329.

Appointed Co-Lead Counsel and state Liaison Counsel in this national MDL involving actions against a manufacturer of defective surgically implanted metal-on-metal hip replacement systems.

Yaz, Yasmin and Ocella Contraceptive Cases

Super. Ct. Los Angeles County, California JCCP 4608.

Appointed and served as Plaintiffs' Co-Liaison Counsel in cases on behalf of women who were prescribed Yasmin and Yaz oral contraceptives and suffered blood clots, deep vein thrombosis, strokes, or heart attacks. Case involved allegations that Bayer failed to warn.

Zachary et al. v. ARCO et al.

Super. Ct. Los Angeles County, No. BC209944.

Appointed Lead Counsel. Mass tort toxic refinery fire resulting in injury to plaintiffs and their property. Resolved.

Young v. Johnny's Hot Dog Stand et al.

Super. Ct. Los Angeles County, 1997, No. BC102837.

Ronald Young, a 57 year-old homeless man who had been a hospital orderly before going on disability, had been frequenting Johnny's Hot Dog Stand for more than twenty years. After Young approached the window of Johnny's with money in his pocket to purchase a cup of coffee, the waitress shouted insults at him. Minutes later, the waitress walked out of the stand, approached Young, and shot him six times, leaving him permanently disfigured and almost \$70,000 in debt to the hospital. The police never recovered the gun and the district attorney declined to prosecute. At trial, the jury found the restaurant negligent and ordered Johnny's to pay nearly \$1 million in compensatory damages.

Among cases involving published decisions:

Barriga v. 99 Cents Only (2020) 51 Cal. App. 5th 299.

Reversal of trial court order denying class certification of certain wage and hour claims, holding in a case of first impression for California state courts that the trial court have a duty to closely scrutinize the declarations of employees obtained by the defendant employer for abuse or coercion, and the authority to strike or discount the weight to be given those declarations.

Bains v. Moores (2009) 172 Cal. App. 4th 445.

Action on behalf of investors to recover for fraud in the sale of certain securities.

Callahan v. Gibson, Dunn & Crutcher LLP (2011) 194 Cal. App. 4th 557.

Represented family members in suit against law firm that drafted a partnership agreement which damaged the family business. Resolved.

Harrell v. 20th Century Ins. Co. (9th Cir. 1991) 934 F.2d 203.

Suit to recover for fraud in the sale of a small business. Resolved.

Ileto v. Glock, Inc. (C.D. Cal. 2006) 421 F. Supp. 2d 127.

Action against weapons manufacturers Glock and China North, whose firearms were used by a member of the Aryan Nation to shoot several children and kill a postal worker.

Quesada v. Herb Thyme Farms, Inc. (2015) 62 Cal.4th 298.

The Supreme Court of California issued a landmark decision, unanimously vindicating the rights of consumers who paid a premium "organic" price for conventionally grown produce that was deliberately mislabeled as organic.

Ramirez v. Fox Television Station (9th Cir. 1993) 998 F.2d 743.

Suit for unconstitutional employment discrimination based on national origin.

Shirk v. Vista Unified School District (2007) 42 Cal. 4th 201.

Case to recover for sexual molestation by a public school teacher.

Regents of University of California v. Superior Court (2010) 183 Cal. App. 4th 755.

Represented relatives of decedents who willed their bodies to a medical school for research and teaching purposes, only to learn the remains had been improperly disposed in a grotesque and undignified manner. Human remains were commingled with other remains and incompletely incinerated, leaving hair and flesh intact. Remains were placed in a mixture of incinerated human bodies, laboratory animal carcasses, and medical waste into garbage dumpsters and then transported to a landfill where they were disposed of with common refuse.

Rippon v. Bowen (2008) 160 Cal. App. 4th 1308.

California citizens challenged the constitutionality of Proposition 140, which imposed lifetime term limits upon state legislators and other state officers.

Santillan v. Roman Catholic Bishop of Fresno (2008) 163 Cal. App. 4th 4.

Case on behalf of a victim of childhood sexual abuse.

Wallace v. City of Los Angeles (1993) 12 Cal. App. 4th 1385.

Demetria Wallace, a teenaged honors student, was shot and killed as she sat on a bench waiting for a bus five days before she was to testify against a man accused of fatally shooting a taxi driver. Reversing the trial court's granting of non-suit, the Court held the police had a duty to warn the victim and affirmed the government's responsibility to protect citizens who put their lives at risk by stepping forward to testify as witnesses to crimes. Prompted changes in police procedures that have saved other witnesses' lives since.

Wholesale Electricity Antitrust Cases I & II (2007) 147 Cal. App. 4th 1293.

Co-lead counsel in suit to recover from energy traders for antitrust and unfair business practices in the wake of the deregulation of California's energy sector. Resolved in conjunction with the Attorney General's office for over \$1.1 billion.

PRESENTATIONS

Guest Lecturer

Stanford Law School, Stanford, California

Pepperdine University School of Law, Malibu, California

Loyola Law School, Los Angeles, California

Colorado State University, College of Business, Fort Collins, Colorado

Continuing Legal Education

Delivered hundreds of CLE presentations, including to the Los Angeles County Bar Association, Consumer Attorneys of California, Consumer Attorneys Association of Los Angeles, Association of Southern California Defense Counsel, American Association for Justice, Orange County Bar Association, California League of Cities, Pepperdine Law School, Mealey's, the Los Angeles Daily Journal, Glasser Legal Works, and National College of Advocacy.

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Plaintiffs' Co-Lead Class Counsel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

AARON SENNE, et al., Individually and on
Behalf of All Those Similarly Situated,

Plaintiffs,

vs.

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as MAJOR LEAGUE
BASEBALL, et al.,

Defendants.

CASE NO. 3:14-cv-00608-JCS (consolidated with
3:14-cv-03289-JCS)

CLASS ACTION

**DECLARATION OF VITO BOCHICCHIO IN
SUPPORT OF MOTION FOR AWARD OF
ATTORNEYS' FEES, LITIGATION COSTS, AND
INCENTIVE AWARDS**

Hearing Date and Time: Feb. 17, 2023, 9:30 a.m.
Courtroom: F, 15th Floor
Judge: Honorable Joseph C. Spero

1 I, Vito Bochicchio, hereby declare as follows:

2 1. I am the principle partner/owner at the law firm Rulis & Bochicchio. LLC.

3 I submit this Declaration in support of Plaintiffs' Motion for Award of Attorneys' Fees, Litigation
4 Costs, and Incentive Awards.

5 2. I am personally familiar with the facts set forth in this Declaration. If called as a
6 witness, I could and would competently testify to the matters stated herein.

7 3. This Firm has been in business since on or about September, 1994. We are a civil
8 litigation firm and regularly defend worker claims for workers compensation purposes and an array of
9 other general civil litigation matters. This firm has contracted and relied on the expertise and
10 experiences of Frank C. Botta, Esq. who has an extensive understanding of the claims raised on
11 behalf of minor league baseball players and has served as a player agent in baseball for 13 years, and
12 has represented clients in other FLSA actions.

13 **SUMMARY OF WORK PERFORMED**

14 4. This firm has served to assist and participate since on or about March, 2014. We have
15 referred clients who served as Named Plaintiffs and also represented members of the classes and
16 FLSA collective in the case. The firm has assisted Plaintiff's counsel through the entire litigation by
17 regularly discussing strategies involved with discovery, depositions preparation and other player
18 assistance related throughout the action.

19 5. In total, our firm worked approximately 1,274.8 hours on this case. In Exhibit A, I
20 have attached a chart summarizing the estimated number of hours worked by each attorney and staff
21 member, along with the with the billing rates. The chart reflects the estimated time spent on the items
22 listed in the ordinary course of litigation. Due to a loss of information contained within our computer
23 system, we are unable to provide exact information for 2015-2016 but we have relied on other
24 contemporaneous information to reasonably capture as much time spent during this time period.

25 6. The billing rates provided in Exhibit A are the usual rates charged by our firm in
26 similar complex litigation matters. Based on each attorney who has practiced in excess of 30 years and
27 on my discussions with attorneys at other firms who work on complex litigation, this firm's rates are

1 below those rates charged by attorneys with similar experience and years as litigation attorneys. The
2 rates were determined in the ordinary course of business and area reflection of rates used by the firm
3 in other complex matter.

4 7. Using those rates, our firm's current lodestar for the legal services is \$824,836.00.
5 Class Counsel has reviewed the work performed (and the resulting lodestar) and found it to be
6 reasonable and helpful to the successful prosecution of the action.

7 **LITIGATION COSTS INCURRED**

8 8. Our firm incurred litigation costs directly related to this litigation that were all
9 necessary and reasonable to prosecute this litigation. They are of the type that would be charged to
10 clients under a non-contingent-fee relationship. The total litigation costs amount to \$11,839.55.
11 A breakdown by each cost category follows: Attached hereto as Exhibit B.

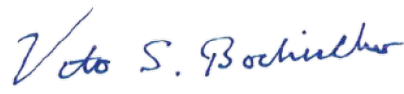
12 **THE RISK OF LITIGATING ON A CONTINGENT BASIS**

13 9. Our firm performed this work on a pure contingency basis, and we have not been paid
14 for attorneys' fees or costs in this matter. Based on my experience, this case involved above-average
15 risks given the number of novel, complex issues, and given the well-resourced defendants. Plaintiffs
16 faced well-funded defendants, who were represented by experienced attorneys with extensive
17 resources at their disposal.

18 10. I believe that Plaintiffs obtained a tremendous result in this case despite the risks and
19 obstacles. The Settlement Agreement provides meaningful backpay to class members and results in
20 important changes to Major League Baseball's employment policies regarding minor leaguers.
21 Plaintiffs also won an important appeal that will benefit other class action litigants in the future.

22 I declare under penalty of perjury that the foregoing is true and correct.

23
24 Executed on November 22, 2022, in Pittsburgh, PA

25
26 
27

EXHIBIT

A

SUMMARY OF ATTORNEYS FEES FOR RULIS & BOCHICCHIO, LLC

Attorney Name	Total Hours	Hourly Rate	Total Fees
Vito Bochicchio - Partner	344.2	\$650.00	\$223,730.00
Frank Botta - Senior Attorney	616.6	\$650.00	\$400,790.00
Nicholas Cerimele - Attorney	3.7	\$650.00	\$2,405.00
Timothy Coffey - Attorney	0.2	\$650.00	\$130.00
Christopher Rulis - Partner	301.5	\$650.00	\$195,975.00
Kelly Vinay - Paralegal	7.6	\$210.00	\$1,596.00
Sara Yates - Paralegal	1	\$210.00	\$210.00
Grand Total:	1274.8		\$824,836.00

EXHIBIT

B

SUMMARY OF LITIGATION COSTS FOR RULIS & BOCHICCHIO, LLC

Item Number	Description of Costs	Amount
1.	Court Fees	\$40.00
2.	Fed/Ex/ UPS/Postage/Copies	\$1,352.26
3.	Travel/Meals, & Lodging	\$7,914.51
4.	Translation Services	\$1,621.60
5.	Surveillance/Investigation	\$911.18
TOTAL		\$11,839.55