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

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

MDL No. 2843
Case No. 18-md-02843-VC

This document relates to:

ALL ACTIONS

**DECLARATION OF DEREK W. LOESER
AND LESLEY E. WEAVER IN SUPPORT
OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

Judge: Hon. Vince Chhabria
Courtroom: 4, 17th Floor
Hearing Date: September 7, 2023
Hearing Time: 1:00 p.m.

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I, Derek W. Loeser, and I, Lesley E. Weaver, declare and state as follows:

1. Derek W. Loeser is a partner at the law firm of Keller Rohrback L.L.P. (“Keller Rohrback”) and Lesley E. Weaver is a partner at the law firm of Bleichmar Fonti & Auld LLP (“Bleichmar Fonti & Auld”). We are Co-Lead Counsel for Plaintiffs in the above-captioned matter. We submit this declaration in support of Plaintiffs’ Notice of Motion and Motion for Attorneys’ Fees, Expenses, and Service Awards (the “Motion”). Specifically, we submit this declaration in support of Class Counsel’s request for attorneys’ fees and expenses. The Motion also seeks incentive awards for each of the Named Plaintiffs, who have already provided declarations that provide information supporting this request. *See* Dkt. 1096-8.

2. We have personal knowledge of the information contained herein, and, if either of us is called as a witness, we each could and would testify competently thereto.¹

I. SUMMARY

A. Overview of Litigation Process

3. The Settlement achieved in this case—a common fund of \$725 million, the most ever paid to settle a U.S. privacy class action and the most ever paid by Facebook to resolve any private litigation—is a direct result of Class Counsel’s relentless efforts and refusal to settle for less before those efforts bore full fruit. The litigation involved novel issues from the start, including whether Facebook users had been harmed at all by Facebook’s disclosure of their information. The litigation was also novel because the proposed class was uncommonly large, numbering in the hundreds of millions, and the class period was uncommonly long, more than a decade.

4. To achieve this extraordinary result, counsel dedicated 149,928.65 hours of time, and many hundreds of hours in hearings, depositions, negotiations and meet and confer sessions.

¹ “Class Counsel” means Co-Lead Counsel (Derek W. Loeser and Lesley E. Weaver) and their law firms, Keller Rohrback L.L.P. and Bleichmar Fonti & Auld LLP. The hours, lodestar, and multiplier presented herein include Class Counsel (who are responsible for 99.5% of all hours billed in the case) as well as Bankruptcy and Participating Counsel, who performed limited work under Co-Lead Counsel’s oversight (*see* Dkts. 119, 121, 433) and are collectively responsible for 0.5% of all hours billed in the case.

Class Counsel brought more than 50 motions that were overwhelmingly successful before a series of neutrals—this Court, Judge Corley, Court-appointed Discovery Mediators, and a Special Master.

5. The Settlement is built on the evidence Class Counsel received through these efforts. While we cannot divulge the course of the parties’ negotiations, we can state that they were worlds apart when settlement mediation commenced in Autumn 2021. Class Counsel’s determination ultimately led to a far better Settlement that will return meaningful economic value to Facebook’s users, and will deter Facebook and other similarly-situated companies from disclosing users’ information against their users’ wishes.

6. We dedicated tremendous resources to litigating against one of the world’s richest companies, represented by one of world’s largest and best-resourced law firms. We are immensely proud of our team’s joint efforts in achieving this Settlement, and the many people who worked very hard to accomplish it, especially the core team.

B. Class Counsel’s Hours and Lodestar

7. From the inception of Class Counsel’s investigation in March 2018 through December 22, 2022, Class Counsel spent 149,179.4 hours litigating this action, with a combined lodestar of \$90,522,944.00 at current rates.² Counsel’s total hours, which include the participation of Participating and Bankruptcy counsel whom the Court approved to assist Co-Lead Counsel in this matter (Dkts. 119, 121, 433), increases the total slightly to 149,928.65 hours, with a total lodestar of \$91,234,005.50. Applied to the requested 25% fee request (\$181.25 million), this yields a multiplier of 1.99.

8. The chart below summarizes the hours and lodestar for the following time periods. We have selected these time periods because they align with transition points in the litigation. Class Counsel’s efforts during each of these time periods are detailed below in § II.

² Unless otherwise specifically mentioned, all hours and lodestar in this declaration reflect Co-Lead Counsel’s time, and are rounded estimates using current billing rates (as is conventional).

The list of each biller whose time is counted as part of Class Counsel's hours and lodestar in this case, along with the biller's experience level and billing rate, is at Exhibit A.³

- March 2018 through September 9, 2019: Case Commencement Through the Motion to Dismiss Order
- September 10, 2019 through March 10, 2020: Initial Case Management and Discovery After the Motion-to-Dismiss Order Through the Appointment of Judge Corley
- March 11, 2020 through March 22, 2021: Escalation of Unresolved Discovery Disputes Culminating in the Appointment of the Discovery Mediators
- March 23, 2021 through July 20, 2021: Appointment of the Discovery Mediators Through the Appointment of Special Master Garrie
- July 21, 2021 through December 15, 2021: Adjudication of Discovery Motions By the Special Master and Commencement of Settlement Discussions
- December 16, 2021 through August 26, 2022: Commencement of Depositions of Facebook's Fact and Corporate Witnesses, Discovery Disputes Continue, and the Parties Reach Agreement in Principle to Settle
- August 27, 2022 through December 22, 2022: Confirmatory Discovery and Finalizing the Settlement
- December 23, 2022 through May 31, 2022: Settlement Administration and Communications with Class Members

9. We also provide an accounting of the approved work of other counsel who were authorized by the Court to perform specific tasks in the litigation below in § VII. Four firms billed a total of 47.45 hours, with a total lodestar of \$32,567.00, pursuant to the Court's orders on common benefit work. Dkts. 121, 433. An additional firm, appointed to oversee the bankruptcy of Cambridge Analytica, billed a total of 701.8 hours, with a lodestar of \$678,494.50. Dkt. 119.

³ Class Counsel has written off some of the time it reasonably expended litigating this case. That time includes time spent on tasks related to case administration (such as regular collection and review of time records), and time from individuals who billed fewer than 50 hours to this litigation. Class Counsel has also written off time as proposed by Jill Dessalines, the independent expert Class Counsel retained to review their time.

Together, those five firms' time comprises 0.50% of the total hours billed by counsel and 0.78% of the total lodestar. The remaining time and lodestar was incurred solely by Class Counsel.

10. Finally, we anticipate approximately 10,000 additional hours of time before this litigation is completed. As discussed in more detail below, this would increase Class Counsel's total hours to 159,928.65 and lodestar to \$97,274,005.50 (using a blended rate of \$604), yielding a multiplier of 1.86.

C. Summary Case Statistics

11. The scale of this litigation was massive. Co-Lead Counsel filed over 1,000 pages of pleadings and other briefing; participated in more than 22 hours of hearings before Judge Chhabria, more than 12 hours of hearings before Judge Corley, and more than 50 hours of hearings before the Special Master; prepared for and participated in more than 100 meet and confers with opposing counsel; participated in 31 discovery mediation sessions; and filed 37 motions to compel discovery.

12. These efforts yielded 88 separate discovery orders from this Court, Judge Corley, and Special Master Garrie, and ultimately resulted in more than 1,828,263 documents—totaling more than 6,954,738 pages—produced by Facebook and third parties. Co-Lead Counsel deposed 34 fact witnesses and took more than 110 hours of testimony from corporate designees under Rule 30(b)(6). The documents and depositions yielded evidence that Co-Lead Counsel used to advance Plaintiffs' claims and secure the proposed \$725 million settlement.

13. Below are some summary statistics about the litigation.

a. Complaints and Motion to Dismiss Briefing

- Three Consolidated Complaints
- Two Rounds of Motions to Dismiss Briefing

b. Court Appearances

- District Court
 - 22:42 hours of hearings (18 hearings) before this Court

- 12:02 hours of hearings (22 hearings) before Judge Corley
- Special Master Garrie
 - More than 50 hours of hearings (18 hearings) before Special Master Garrie

c. Discovery

- Meet and Confers
 - More than 100 meet and confers, spanning more than 200 hours
- Discovery Mediation
 - 112.8 hours of mediation, spanning 31 sessions
- Motions to Compel and For Sanctions
 - 37 affirmative motions, comprising 368 pages (10,520 pages of exhibits)
 - 11 oppositions to Facebook's motions, comprising 82 pages (425 pages of exhibits)
- Discovery Issues Mediated
 - More than 60 discrete issues.
- Total Number and Page Count of Discovery Orders Issued By This Court, Judge Corley, and Special Master Garrie
 - 15 orders by this Court (43 pages)
 - 26 orders by Judge Corley (77 pages)
 - 47 orders by Special Master Garrie (207 pages)
- Documents Produced By Facebook and Third Parties
 - Facebook: 1,322,549 documents (5,106,352 pages)
 - 2.538 gigabytes of structured data
 - Former Facebook employees: 70,267 documents (173,966 Pages)

- Third parties: 435,537 documents (1,674,420 pages)
- Fact and 30(b)(6) Depositions Taken By Class Counsel
 - 34 fact depositions
 - 21 days of highly technical Rule 30(b)(6) depositions
 - 312:21 hours of testimony
 - 13,251 pages of transcription generated
 - 721 exhibits marked
- Fact Depositions Defended By Class Counsel
 - 8 days of depositions of Named Plaintiffs
 - 49:06 hours of testimony
 - 2,203 pages of transcription generated
 - 119 exhibits marked

II. CLASS COUNSEL'S WORK ON THE CASE

A. March 2018 through September 9, 2019: Case Commencement through the Motion to Dismiss Order

14. Class Counsel's primary activities during this period were the initial investigation, the drafting of a consolidated complaint and an amended consolidated complaint, and briefing of and hearings on defendants' motions to dismiss those complaints.

1. Investigation, Filing, and Consolidation

15. Class Counsel began investigating Facebook's unauthorized sharing of user data with third-party apps in March 2018, when newspapers revealed Cambridge Analytica's purchase and ongoing use of Facebook user data in political consulting activities.⁴

⁴ Carole Cadwalladr and Emma Graham-Harrison, *Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach*, The Guardian (Mar. 17, 2018), <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>; Matthew Rosenberg et al., *How Trump Consultants Exploited the Facebook Data of Millions*, The New York Times (Mar. 17, 2018), <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>.

16. In connection with their investigations, Class Counsel communicated with over five hundred current and former Facebook users about the personal information they had posted and shared on Facebook, as well as about their expectations of privacy on the platform. They also scoured public reports and dockets for information about Facebook's data-sharing practices.

17. On June 6, 2018, the Judicial Panel on Multidistrict Litigation consolidated eight cases related to the Cambridge Analytica scandal in this Court. Dkt. 1. (Forty-two cases were ultimately consolidated by the JPML in total.) The next day, the Court ordered those seeking appointment as lead counsel to file applications by June 21, 2018. Dkt. 2. Lesley Weaver and Derek Loeser were among 33 attorneys who submitted applications. Dkts. 31 and 41.

18. On July 27, 2018, the Court issued an order appointing Lesley Weaver and Derek Loeser as co-lead counsel. Dkt. 102. No other firms were appointed to serve, either on an executive committee or in any other role.

19. In August 2018, Class Counsel filed briefs proposing a protocol for common benefit work and expenses, Dkt. 114, and defining the contours of Class Counsel's duties and authority, Dkt. 115. They also filed a letter brief seeking authorization to retain bankruptcy counsel to represent the class's interests in the Cambridge Analytica and SCL USA Inc. bankruptcy proceedings. Dkt. 117.

20. In response, the Court issued orders approving Plaintiffs' request to hire bankruptcy counsel, setting forth the duties and authority of Class Counsel, and establishing a protocol for common benefit work and expenses, which required that all common benefit work be performed solely by Co-Lead Counsel and their firms, with extremely limited exceptions. Dkts. 119, 120, 121, 433.

2. Limited Discovery and the Consolidated Complaint

21. Plaintiffs sought narrow discovery prior to Facebook's initial motion to dismiss. They received permission in August 2018 to seek discovery on Facebook's relationship and interactions with Aleksandr Kogan and the ThisIsYourDigitalLife app. Dkt. 130. Plaintiffs then

served Facebook with five requests for production (“RFPs”) and five interrogatories. Facebook served its responses on Plaintiffs in early September 2018.

22. After evaluating those responses and the existing complaints, Plaintiffs filed a Consolidated Complaint later that month. Dkts. 148, 152-2. The 257-page Consolidated Complaint incorporated every claim asserted by each of the 42 consolidated actions. The fifty claims comprised three categories: 12 prioritized claims, 9 prioritized consumer protection act claims alleged in the alternative, and 29 non-prioritized claims. Dkt. 152-2.

23. In October 2018, Plaintiffs asked the Court to treat the Consolidated Complaint as a superseding, master consolidated complaint, and to stay all non-prioritized claims and all claims against non-prioritized defendants. Dkt. 156. This was an effective procedural tool for managing a high-profile and complex litigation such as this one. The Court granted Plaintiffs’ request to stay the non-prioritized claims pending resolution of the motions to dismiss but directed Plaintiffs to litigate the non-prioritized Defendants’ motions to dismiss. Dkt. 190. The Consolidated Complaint became the superseding and controlling complaint for the MDL.

3. Motions to Dismiss

24. Facebook and the non-prioritized Defendants moved to dismiss Plaintiffs’ Consolidated Complaint in November 2018, Plaintiffs opposed, and the parties fully briefed the motion. *See* Dkts. 183, 184, 188, 208, 211, 233, 234.

25. The Court granted Defendant Mercer’s motion to dismiss for lack of personal jurisdiction on January 28, 2019. Dkt. 240. Plaintiffs voluntarily dismissed two of the other non-prioritized defendants without prejudice. Dkt. 263.

26. The Court heard argument on the remaining motions to dismiss in early February 2019. Dkt. 247. The hearing lasted more than four and a half hours. During the hearing, the parties addressed numerous issues, including standing and Plaintiffs’ allegations about whether they switched from “public” to “friends only” privacy settings. The Court indicated that it would allow Plaintiffs to re-plead to address concerns it expressed in the hearing. Plaintiffs agreed to amend the complaint to do so, and the Court terminated Facebook’s motion to dismiss as moot.

27. Plaintiffs filed their First Amended Consolidated Complaint two weeks later. Dkt. 257. The First Amended Complaint was 412 pages and comprised 49 claims—12 prioritized claims, 9 priority consumer protection act claims alleged in the alternative, and 28 non-prioritized claims.

28. Facebook filed another motion to dismiss. The parties presented full briefing and extensive oral argument on the motion. Dkts. 261, 266, 267, 274.

29. On September 9, 2019, the Court denied in part and granted in part Facebook's motion to dismiss. Dkt. 298. The Court also summarized four categories of alleged wrongdoing by Facebook that underlay Plaintiffs' claims: (1) giving app developers access to sensitive user information; (2) continued disclosure to whitelisted apps; (3) sharing sensitive user information with business partners; and (4) failing to restrict the use of sensitive information. *Id.* at 6–9.

30. Facebook moved for certification under 28 U.S.C. § 1292(b), seeking an immediate appeal of the Court's ruling on injury-in-fact. Dkt. 318. Plaintiffs opposed, and the Court denied Facebook's motion in late October 2019. Dkts. 324, 330.

31. Facebook served its Answer to the First Amended Complaint in February 2020. Dkt. 373.

B. September 19, 2019 through March 10, 2020: Initial Case Management and Discovery After the Motion-to-Dismiss Order through the Appointment of Judge Corley

1. Competing Proposals on Case Schedules and Bifurcation

32. On October 28, 2019, the parties filed a joint case management statement. Dkt. 326. Facebook sought to bifurcate discovery, with a first phase focused solely on the issue of standing (including through summary judgment), with other merits discovery, class certification, and potentially a second summary judgment motion to follow. Facebook proposed litigating the standing question without providing any discovery as to what information it collected about users and what third parties had access to. Plaintiffs opposed Facebook's bifurcation proposal, arguing that merits and class discovery should proceed together.

33. On November 4, 2019, the Court held a case management conference. Dkt. 333. On November 13, 2019, the Court requested supplemental briefs regarding how to proceed with discovery. Dkt. 338. Plaintiffs argued that if Facebook sought to litigate merits questions first, it would have to waive one-way intervention. *See* Dkt. 340.

34. On December 4, 2019, the Court entered an order denying Facebook's request to phase discovery. Dkt. 347.

35. On December 9, 2019, the Court requested letter briefs regarding the parties' proposed discovery deadlines, including whether merits and class-certification discovery should proceed at the same time. Dkt. 349; *see* Dkt. 353 (Plaintiffs' letter brief).

36. On December 13, 2019, the Court entered a case management schedule with the close of fact discovery set for January 22, 2021. Dkt. 356.

2. Early Discovery Disputes

37. Despite numerous meet-and-confers, the parties reached impasse on many issues, including Facebook's failure to produce organizational charts or other information sufficient to identify potential custodians, selection of custodians, search of electronically stored information, production of Facebook's correspondence with the U.S. Federal Trade Commission ("FTC"), production of documents produced to the FTC in connection with the 2012 and 2018 investigations, production of financial information, production of documents related to PricewaterhouseCoopers ("PwC") audits of Facebook's Privacy Program, and the protocol governing discovery of electronically stored information.

38. Early in discovery, Plaintiffs sought production of materials related to an FTC investigation and subsequent enforcement actions against Facebook that resulted in the payment of \$5 billion to the FTC. The FTC actions arose from allegations that Facebook deceived users about their ability to control the privacy of their personal information—allegations closely related to those here. Plaintiffs requested discovery and information Facebook had disclosed to the FTC. Facebook opposed these requests.

39. The parties met and conferred extensively on the FTC-documents issue and raised it with the Court by the end of 2019. *See* Dkt. 358. The parties were unable to resolve Plaintiffs' requests. After a hearing on January 8, 2020, the Court ordered Facebook to produce these materials dating from before 2012. Dkt. 366. Facebook finished producing these documents at the end of April 2020. *See* Dkt. 400.

40. The parties also disputed the relevant time period for responsive materials. The Complaint defined the class period as starting on January 1, 2007, but Facebook proposed defining the relevant period as beginning March 20, 2012. Following the January 2020 case management conference, Facebook revised its position to propose a relevant period beginning January 1, 2009. *See* Dkt. 374. In early March 2020, the Court granted Plaintiffs' motion to compel discovery dating back to 2007. Dkt. 381.

3. Discovery Served, Responses, and Production

41. Between September 10, 2019 and March 10, 2020, Plaintiffs propounded 31 requests for production and one interrogatory. Among other things, the discovery sought documents relating to each of the Named Plaintiffs, including which third parties Facebook had permitted to access their information; documents sufficient to show the monetary value of providing third parties access to each Named Plaintiff's content and information; documents related to the App Developer Investigation; and documents related to the privacy controls and app settings Facebook made available to users. Facebook served 43 pages of responses and objections.

42. Between September 10, 2019 and March 10, 2020, Facebook served one interrogatory on each of the then-Named Plaintiffs. In response, Plaintiffs provided an aggregate 159 pages of responses and objections.

43. On March 10, 2020, the Court referred the case for all discovery purposes to Judge Corley. Dkt. 390.

C. March 11, 2020 through March 22, 2021: Escalation of Unresolved Discovery Disputes Culminating in the Appointment of the Discovery Mediators

44. For months after discovery disputes were referred to her, Judge Corley held discovery conferences approximately every two weeks.⁵ Before each hearing, the parties submitted joint status reports on discovery disputes and issues. *See* Discovery Hearing Transcript, 5:6–16 (Apr. 17, 2020).

45. Class Counsel’s work during this period required is best understood in the context of two orders that established the course of discovery for the next year.

1. Plaintiffs Are Required to Review Everything Produced to Date Before Seeking Additional Documents

46. At the time of the first hearing in front of Judge Corley, Facebook’s production was primarily comprised of: (i) tens of thousands of pages of atomized information from each of the then-Named Plaintiffs’ Facebook accounts, which Co-Lead Counsel was required to review to identify what was missing; and (ii) the FTC documents discussed above. Review of these documents was time-consuming.

2. The Parties Are Ordered to Meet and Confer Thrice Weekly

47. In the face of the parties’ inability to make progress on discovery negotiations, Judge Corley entered an order in May 2020 requiring the parties to meet and confer at least three times weekly by video conference. Dkt. 420 at 2. (The parties later agreed, with Judge Corley’s permission, to reduce the meet and confers to twice weekly.) This resulted in an extensive investment of partner and associate time.

48. The parties’ mandatory thrice-weekly meet and confer sessions typically addressed multiple discovery issues, and averaged over an hour each. Although over the course of discovery the parties met and conferred substantially more than 100 times for more than 200 hours, most of these meetings occurred from March 11, 2020 through March 22, 2021. The

⁵ The discovery conferences occurred on April 17, 2020; May 1, 2020; May 15, 2020; May 29, 2020; June 19, 2020; July 13, 2020; July 31, 2020; August 14, 2020; September 4, 2020; September 25, 2020; November 5, 2020; December 9, 2020; January 15, 2021; and March 4, 2021.

meetings during this period covered a broad range of issues and required the participation of a number of partners and associates with knowledge of different parts of this multifaceted case. The requirement to meet and confer multiple times per week continued until the end of the discovery mediation process in the summer of 2021, and then restarted in the winter of 2022 pursuant to the discovery mediators' guidance.

3. Disputes Over Custodians and Search Terms

49. The parties disputed which search terms the Defendant would use to search its electronic databases and whose custodial files would be searched using those terms. The dispute over search terms and custodians lasted more than a year. Plaintiffs were required to develop search-term-by-search-term, and custodian-by-custodian negotiation and briefing.

50. Plaintiffs sought to accelerate the determination of search methodology by asking Facebook to produce the custodians and search terms that Facebook employed when producing documents to the FTC. Facebook took the position that this information was privileged. *See* Dkts. 377, 388.

51. Plaintiffs asked the Court to compel production of the search terms used for both the 2012 and 2018-2019 FTC proceedings. *See* Dkt. 388. Judge Corley then ordered Facebook to identify the custodians and search terms that it utilized in response to the FTC's 2018-2019 investigation and to endeavor to identify terms used and custodians searched in connection with the 2012 investigation. Dkt. 394.

52. Because the parties could not agree, in early May 2020, Judge Corley established a schedule for negotiations related to custodians. Facebook ultimately agreed to a list of 72 custodians, but the parties continued to disagree about 9 other custodians. Dkt. 428. The parties filed a joint discovery letter concerning the dispute. Dkt. 431. At a May 15, 2020 status conference, Judge Corley ordered that all 9 disputed custodians should be included, ordering Facebook to search the custodial files of 81 custodians. Dkt. 436. She then ordered the Plaintiffs to provide an initial list of 10 of these custodians for purposes of negotiating search terms. *Id.*; Dkt. 449.

53. The parties continued to meet and confer via videoconference, email, and letter regarding search terms to be used. They agreed that Facebook would interview individual custodians in order to develop tailored search terms and answer questions related to electronically stored information (“ESI”). *See* Dkt. 449. By time of the July 2020 case management conference, the parties had agreed on a protocol for selecting and negotiating search terms and were about to begin negotiations over the terms themselves. *See* Dkt. 469.

54. Throughout the summer and into the fall of 2020, the parties continued to negotiate search terms. *See, e.g.*, Dkt. 504. For each search term, Plaintiffs were required to explain why it was appropriate, but also why it should apply to each particular custodian. The negotiations ended up necessitating multiple spreadsheets with dozens of columns. In September 2020, Plaintiffs sought Judge Corley’s guidance. *See* Dkt. 522.

55. In the end, the process for selecting custodians and search terms, which spanned February 2020 to April 2021, resulted in 138 search terms that were applied to 85 unique groupings of the 81 initial custodians. Many of the custodians that Plaintiffs fought to include became key witnesses whom Plaintiffs deposed or whose depositions were being scheduled when the Court stayed proceedings. This success was built on a year’s worth of toil.

4. Discovery Served, Responses, and Production

56. Between March 11, 2020 and March 22, 2021, Plaintiffs served on Facebook 27 requests for production and 28 interrogatories, which sought evidence that went to the core of Plaintiffs’ claims, such as documents and information related to Facebook’s APIs (the way it permitted third parties to access data), the privacy settings it made available, schematics of databases that contained user information, information about policies for whitelisting third parties and the identities of all whitelisted entities, payments received from third parties for access to friends’ data, and the financial impact of eliminating access to friends’ data. Facebook served more than 1150 pages of written responses and objections to this discovery. Facebook produced 301,859 documents to Plaintiffs during this period.

57. Between February 2020 and March 2021, Plaintiffs served subpoenas on 45 non-parties, including the independent auditor of Facebook’s Privacy Program (PricewaterhouseCoopers LLP (“PwC”)), the consultants hired to conduct the ADI, data brokers, application developers and business partners. They met and conferred with the subpoenas’ recipients, most more than once. Many of these third parties were represented by outside counsel who resisted discovery. Efforts to obtain discovery from third parties, including through service of 16 additional document subpoenas and three subpoenas for 30(b)(6) deposition testimony, continued up to settlement.

58. Third parties ultimately produced more than 435,537 documents, comprising more than 1.6 million pages. This discovery was important to understanding Facebook’s processes and controls for monitoring app developers, the development and results of Facebook’s ADI, the methods third parties used to access users’ data, and key terms relating to the data flow between Facebook and third parties. This information (and more) assisted Plaintiffs in identifying key custodians and pointing out where Facebook’s production was incomplete, and included evidence probative of Plaintiffs’ claims.

59. Plaintiffs also sought documents from state and federal agencies under freedom-of-information laws, including to the FTC for records relating to its investigation and inquiry of Facebook’s privacy practices. Plaintiffs received over 2,800 documents in response to these FOIA requests. Documents obtained through FOIA requests provided an important cross-check on Facebook’s production of FTC correspondence, discovery responses, and documents.

60. Between March 11, 2020 and March 22, 2021, Facebook served 21 Requests for Production and 9 or 10 Interrogatories on each of the then-Named Plaintiffs (resulting in a total of 420 Requests for Production and 225 Interrogatories to which Plaintiffs had to respond). Among other interrogatories, Facebook asked the Named Plaintiffs to describe every Facebook friend they had and to confirm whether they had met in person. The Named Plaintiffs served more 1100 pages of written responses and objections. Plaintiffs produced 14,164 documents to Facebook during this period.

5. Facebook Seeks to Depose the Named Plaintiffs

61. On January 24, 2020, Facebook served deposition notices on each of the then-Named Plaintiffs. At this time, the parties had not agreed to a deposition protocol or to the lifting of the 10-deposition limit imposed on each party (at that time, there were more than 10 Named Plaintiffs). The parties were also still negotiating search terms and other aspects of the production of ESI, including Named Plaintiffs' data. Nor had Plaintiffs completed production of documents in response to Facebook's written discovery requests.

62. Plaintiffs opposed Facebook's efforts to depose the Named Plaintiffs before Facebook had finished producing their data. Plaintiffs proposed postponing the depositions until 90 days following completion or substantial completion of Facebook's production of documents relevant to a given Named Plaintiff. Facebook continued to seek depositions from March through May 2020. Ultimately, these depositions were delayed, and the onset of the pandemic forced the parties to negotiate a remote deposition protocol.

D. March 23, 2021 through July 20, 2021: Appointment of the Discovery Mediators Through the Appointment of Special Master Garrie

63. Class Counsel's primary activities during this period related to discovery mediation. Through active participation in the discovery mediation process, Class Counsel determined that appointment of a Special Discovery Master would assist them in moving discovery forward. This time period ends with the appointment of Special Master Garrie.

1. Appointment of the discovery mediators

64. During a March 4, 2021 discovery conference, Judge Corley suggested that the parties engage a discovery neutral to facilitate resolution of disputes because they were too numerous.

65. The parties agreed to retain the Honorable Judge Gail Andler (Ret.) of JAMS to serve as a discovery mediator, consistent with Judge Corley's instructions. Dkt. 646. With the consent of all parties, Judge Andler was joined by Daniel Garrie, a JAMS mediator and arbitrator, to assist in mediating the often technically complex disputes. Dkt. 662.

2. Mediation of Discovery Disputes

66. Between April 15, 2021 and July 21, 2021, Class Counsel and Facebook met jointly with the discovery mediators 12 times for more than 45 hours. In addition, Class Counsel met separately with the mediators for more than 12 hours.

67. Issues addressed included: disputed ADI materials; production of documents from relevant government investigations, including deposition transcripts and discovery responses; production of exhibits to deposition transcripts already produced from other relevant proceedings; production deficiencies and the use of Technology Assisted Review (TAR); confidentiality issues pertaining to confidential documents publicly disseminated elsewhere; disputed search terms; Plaintiffs' discovery responses; production of non-custodial ESI; production of Named Plaintiffs' data; production of financial information related to Facebook's monetization of user data; Facebook's interrogatory responses; deposition subpoenas (served on both Facebook and Plaintiffs); production of Zuckerberg's notebooks reflecting plans for monetization of user data; production of Facebook's "secret sauce" memo regarding monetization of user data; obtaining deposition dates; and the case schedule.

68. At the mediators' instructions, the parties identified both "big" issues (the production of ADI materials, Facebook's deficient production and the use of TAR, and production of non-custodian ESI) and "small" issues that the mediators hoped might be resolved swiftly. With the mediators' assistance, the parties did make some progress. However, even small matters such as deposition scheduling required hours of discovery mediation to resolve. Indeed, the discovery mediators ultimately declared aspects of nearly all of the above-listed issues at impasse.

69. For "big" issues, resolution took even more time and greater resources. The dispute over production of ADI materials, which spanned nearly the entirety of the active litigation of this action, is addressed below. During this period, ADI was a topic at nearly every mediation session. Similarly, the use of technology assisted review (TAR) and non-custodial

ESI, though addressed at nearly every mediation session, and during the parties' still-weekly meet and confers, were not resolved during this period.

70. Mediation of TAR is illustrative of problems faced in discovery mediation. Facebook proposed utilizing TAR to accelerate document production, a proposal that was discussed during early discovery mediation sessions. After consultation with the discovery mediators and a consulting expert, Plaintiffs agreed that TAR could help speed up document production, and the parties spent three months attempting to negotiate a TAR protocol. When it became clear that the discovery mediators believed the protocol should embrace some degree of transparency and testing to ensure that relevant documents were being produced, Facebook reversed course. Within days of Plaintiffs agreeing that they would accept a mediator's proposal without prior review, Facebook informed Plaintiffs that it no longer wanted to implement TAR. By then, Plaintiffs had expended more than 100 hours attending mediations, consulting with their expert, and drafting proposals to implement TAR.

71. Ultimately, only a few issues were resolved without briefing, with other progress stymied by the fact that the discovery mediators could not compel Facebook's compliance. This led Plaintiffs to propose the appointment of a Special Master.

3. Discovery Served, Responses, and Production

72. Between March 23, 2021 and July 20, 2021, Facebook produced 42,790 documents to Plaintiffs.

E. July 21, 2021 through December 15, 2021: Adjudication of Discovery Motions By the Special Master and Commencement of Settlement Discussions

73. Class Counsel's primary activities during this period concerned the litigation of numerous discovery disputes before Special Master Garrie, the continued discovery mediation of disputes, and the establishment of a deposition protocol.

1. Appointment of the Special Master

74. In July 2021, due to the complex nature and number of the parties' discovery disputes, the Court appointed Discovery Special Master Garrie. Dkt. 708.

75. Ultimately, Special Master Garrie issued scores of discovery orders in this litigation, the large majority of which required Facebook to provide discovery. The discovery that Plaintiffs won through this process bore directly on the merits. In addition to the ADI and Named Plaintiffs data production, addressed in more detail below, Plaintiffs successfully moved for, among others, the production of Mark Zuckerberg's and Sheryl Sandberg's custodial documents; the ability to depose individuals who had previously been deposed by the FTC or SEC in proceedings that touched on similar issues; the production of documents related to the monetization of user data, which enabled calculation of the harms suffered by users; and documents related to case studies and reports relating to Facebook's work with Cambridge Analytica.

76. Special Master Garrie enacted a protocol for resolving discovery disputes that required the discovery mediators to declare impasse before the parties could submit briefing on an issue. Dkt. 733. The protocol required moving papers to be filed within ten calendar days of the mediators' declaration of impasse. It also required a separate statement denoting the discovery request, any responses, the relevant history, the opposition, and an executive summary of the argument. Under the protocol, the Special Master issued a tentative ruling on a discovery issue within six business days after the filing of the reply—at least thirty-three days after the declaration of impasse—and any request for reconsideration had to be brought within four business days after the tentative ruling.

2. Continued Mediation of Discovery Disputes

77. All the while, discovery mediation continued. Between July 21, 2021 and December 15, 2021 the parties met jointly with the discovery mediators eight times, for more than 30 hours.

78. Issues addressed included the production of Named Plaintiffs' data; the production of non-custodial ESI; the production of documents from and deposition of high-level Facebook employees including Mark Zuckerberg and Sheryl Sandberg; the production of relevant requests Facebook received from and the responses it provided to government

investigations; the production of the “secret sauce” memo and Mark Zuckerberg’s notebooks; Facebook’s deficient document production; and the schedule for depositions.

79. New issues that moved from meet and confers to mediation included the production of API developer docs, which Plaintiffs sought in order to continue to develop evidence of the pervasive flow of user data from Facebook to third parties, even in the absence of internal records logging such data flow; production of API call logs; Facebook’s objections to discovery served by Plaintiffs’ on third parties; Facebook’s request for production of Named Plaintiffs’ medical records and email addresses; and Plaintiffs’ discovery responses.

80. Plaintiffs ultimately prevailed on almost all of these issues, either through discovery mediation or, more often, via motion practice once the discovery mediators declared impasse.

3. Select Discovery Disputes, Motions and Hearings

a. ADI

81. Facebook’s ADI began in March 2018 as part of a public response to the Cambridge Analytica scandal. The ADI’s publicly stated purpose was to investigate whether third-party apps improperly accessed or misused user information.

82. Plaintiffs’ Request for Production No. 19 sought documents and communications related to the ADI. Facebook took the position from the outset that the ADI was an attorney-driven investigation intended to evaluate litigation risks following the Cambridge Analytica scandal, and therefore that all materials related to the ADI were privileged and/or protected work-product (other than a narrow subset of communications Facebook produced with a few third-party app developers that were investigated). The parties met and conferred about Facebook’s objection, and Plaintiffs brought it to the Court’s attention in their April 2020 Joint Status Update. Dkt. 413. Plaintiffs continued to raise the ADI in the bi-weekly hearings and Plaintiffs requested that the parties brief Facebook’s assertion of work-product protection over the ADI. Facebook told the court that there was “no urgent need” for briefing. Joint Status Update, Dkt. 449 (May 28, 2020).

83. Judge Corley directed Facebook to state a position on whether certain ADI documents were privileged. Dkt. 877, Ex. 12. She proposed ruling on a subset of ADI documents, so as to provide the parties with legal guidance for the remainder of the documents. *Id.*, Ex. 13. She instructed the parties to create a privilege log of sample documents related to the ADI in July 2020. Dkt. 513. After several months of the back-and-forth on how this exercise would work, the parties selected six exemplar apps investigated by the ADI for which Facebook would create privilege logs. Dkt. 599. In January 2021, the Court directed Plaintiffs to select a number of entries on those privilege logs for in camera review. Dkt. 602. The parties further briefed the issue throughout February 2021, with Plaintiffs moving to compel production of documents related to the ADI. *See, e.g.*, Dkts. 611, 613.

84. After briefing and in camera review, Judge Corley allowed Facebook to present additional evidence on privilege. Dkt. 877, Ex. 5. Judge Corley also explained that she believed the ADI would have been performed even without anticipated litigation. *Id.* She ordered the parties to meet and confer about how to proceed in light of this guidance. Dkt. 655. In July and August 2021, Facebook submitted declarations on privilege. Dkts. 700-1, 720.

85. Judge Corley subsequently ordered that the ADI was not protected work product, because Facebook would have launched it even in the absence of anticipated litigation. Dkt. 736. In that order, she directed Facebook to (a) produce documents related to the six exemplar apps chosen by the parties, and (b) work with Special Master Garrie regarding the production of additional materials. *Id.*

86. The parties met and conferred extensively regarding additional ADI documents to be produced, without resolution. *See, e.g.*, Dkt. 877 at 18. Special Master Garrie conducted a Saturday videoconference hearing where Plaintiffs again sought production of categories of documents previously identified to Facebook. *Id.* at 20.

87. Following the over-four-hour hearing, Special Master Garrie ordered Facebook to produce all ADI reports, audits, interviews, consultant memoranda, and communications. Dkt. 766. In response to Facebook's motion for reconsideration, Special Master Garrie amended his

order to provide that production of communications would await in camera review of 6,000 previously logged documents. *Id.* The Special Master ultimately reviewed these documents and found that most of them were relevant and discoverable as explained in further detail below.

b. Named Plaintiff Data

88. For over two years, Plaintiffs sought discovery relating to the data that Facebook collects on each of the Named Plaintiffs and how it uses that information—which was at the core of Plaintiffs’ claims. Plaintiffs also sought this data to satisfy the adequacy, typicality and commonality requirements of Rule 23 as well as to address Facebook’s argument that the Named Plaintiffs lack standing because they have no evidence that their information has been shared.

89. In November 2019, Plaintiffs first served discovery requests seeking documents and information showing the data that Facebook collects on each of the Named Plaintiffs and how it uses that information.

90. From March 2020 to July 2020, the parties met and conferred regularly about discovery of data relating to Named Plaintiffs. Plaintiffs sought discovery relating to Facebook’s data architecture to search for ways to identify Plaintiffs’ data on an individual or class-wide basis. However, Facebook refused to provide any additional information, telling Plaintiffs on more than one occasion to “Google” such information.

91. In July 2020, Plaintiffs asked that Facebook be required to identify what data it maintains about the Named Plaintiffs and whether it would produce it. Dkt. 484 at 3. Judge Corley required Plaintiffs to complete their review of produced documents first. Thereafter, the parties were to update the Court on what had and had not been produced. Dkt. 487 at 1-2.

92. Plaintiffs’ review showed that Facebook had produced information almost exclusively from its “Download Your Information” Tool (“DYI Tool”), which Facebook had already made available to all users outside litigation. *See* Dkt. 495 at 2–3; Dkt. 877, Ex. 34 at 1–2. The tool provided a subset of users’ activity on the Facebook platform but does not include all of the information Facebook collects about users’ off-Facebook activity or inference that Facebook draws from users’ activity. *See id.*; Dkt. 495 at 2–3. Other documents, however,

appeared to show that Facebook maintained additional types of data. Dkt. 877, Ex. 65. Facebook also appeared to connect and integrate information generated from users' on-platform activity with user information it obtained from third parties and users' off-platform activity. *Id.*, Exs. 63, 64, 65.

93. In August 2020, Plaintiffs raised these concerns with the Court. Dkt. 495 at 2–3. In September 2020, Judge Corley concluded that the parties' dispute over what data was relevant was ripe for resolution. Dkt. 508.

94. In September and October 2020, the parties briefed the issue of what information that Facebook collects and shares about the Named Plaintiffs is discoverable. *See, e.g.*, Dkts. 515, 526, 537, 548.

95. On October 29, 2020, Judge Corley issued an order concluding that “discoverable user data at issue includes” three categories of information: (1) information “collected from a user’s on-platform activity”; (2) information “obtained from third parties regarding a user’s off-platform activities”; and (3) information “inferred from a user’s on or off-platform activity.” Dkt. 557 at 2.

96. Following Judge Corley’s order, Plaintiffs requested that Facebook identify materials responsive to Judge Corley’s Discovery Order so that the parties could discuss production. Dkt. 583 at 1–2. Facebook stated in a December 2020 joint status report and at a hearing that while it was still investigating, it believed it had already produced all information related to the Named Plaintiffs that could have been shared with third parties. *Id.* at 9; Tr. of Dec. 9, 2020 Discovery Hearing at 17:17-18:9. Plaintiffs were concerned that, despite Facebook’s representations, all discoverable data had not yet been produced. Dkt. 583 at 1-2; Tr. of Dec. 9, 2020 Discovery Hearing at 18:10–19:1, 19:8–20:6. After hearing this dispute, Judge Corley allowed Plaintiffs to take a 30(b)(6) deposition on the categories of discoverable user data as listed in her order. Dkt. 588 at 1.

97. A month later, after the parties disputed the topics to be covered at the 30(b)(6) deposition, Judge Corley ordered the parties to conduct these depositions in February 2020 and

limited the scope to “discoverable user data” as she had defined it in her October 28 order. Dkt. 602 at 1. On February 23, 2021 and February 24, 2021, Plaintiffs took 30(b)(6) depositions of Facebook on these topics. For Plaintiffs, these depositions “confirmed that Facebook [was] withholding significant amounts of data relating to the Named Plaintiffs.” Dkt. 631 at 2. Facebook disputed this conclusion.

98. After these depositions, Plaintiffs continued to seek all documents related to the data that Facebook collects on the Named Plaintiffs and how it shares that information. *See* Dkt. 877, Ex. 60. Facebook refused. *Id.*, Ex. 32.

99. Following the appointment of the discovery mediators, Plaintiffs continued to seek information about the data that Facebook maintains on the Named Plaintiffs in an effort to minimize the burden of producing that data. Dkt. 877, Ex. 33 at internal exhibit 15. On October 6, 2021, the discovery mediators declared impasse on the issue of “Production of Named Plaintiffs’ data in compliance with” Judge Corley’s October 29, 2020 order. The parties then submitted briefing. Dkt. 877, Exs. 34, 61.

100. On November 29, 2021, the Special Master issued an order finding that “Facebook appears to maintain data related to the Named Plaintiffs that was not produced in response” to Plaintiffs’ discovery request and requiring Facebook to provide additional information relating to the data systems that could contain additional data relating to the Named Plaintiffs. Dkt. 779-3.

c. Zuckerberg and Sandberg Custodial Files

101. Shortly after the Court’s motion to dismiss order, Plaintiffs sought discovery from Facebook executives Mark Zuckerberg and Sheryl Sandberg. In their initial February 2020 proposal of custodians whose files should be collected, reviewed, and produced, Plaintiffs had included Mark Zuckerberg and Sheryl Sandberg. Ultimately, however, the parties agreed to a set of 72 initial custodians that did not include Zuckerberg or Sandberg, and the Court-ordered addition of nine others did not include them either. Dkts. 431, 436.

102. By November 2020, Plaintiffs believed that documents produced in discovery gave them sufficient cause to request Zuckerberg and Sandberg as additional document custodians. Plaintiffs raised the issue with Judge Corley, who deemed the request premature. Dkt. 588 at 2.

103. Plaintiffs renewed their request in a July 22, 2021 mediation session and the Discovery Mediators declared impasse on September 10, 2021. The parties briefed the issue in September and October 2021.

104. On October 21, 2021, the Special Master granted Plaintiffs' motion to compel and ordered the parties to submit a joint proposed protocol for searching and collecting Zuckerberg's and Sandberg's files. Pursuant to this order, the parties exchanged several emails and met and conferred regarding a protocol. On November 19, 2021, the parties submitted a joint brief outlining their respective proposals.

105. On January 19, 2022, the Special Master issued a protocol for the search and production of documents from Zuckerberg and Sandberg. Dkt. 815. Facebook moved for partial reconsideration of this protocol.

106. The Special Master then held a March 11, 2022 hearing on the issue. Ultimately, he required Plaintiffs to prioritize certain search strings and revise others, and required Facebook to perform a "richness" analysis on a statistically significant sample of hits from these search strings. Dkt. 881.

107. The Special Master later issued several orders requiring Facebook to produce more non-privileged documents from Zuckerberg and Sandberg and asking the parties to propose additional search strings. Facebook moved for reconsideration of one of these orders, which the Special Master modified. *See* Dkt. 920.

108. As a result of this process, Plaintiffs secured the production of 5,428 documents from Zuckerberg and 11,852 from Sandberg. When the case settled, Plaintiffs were preparing to use many of these documents in the scheduled depositions of Zuckerberg and Sandberg.

4. Discovery Served, Responses, and Production

109. Between July 21 and December 15, 2021, Plaintiffs served 27 additional requests for production, seeking documents and information related to topics including: Facebook employees' relevant testimony before legislative bodies; specific, identified tools used to track access by third parties to access information; third party access to APIs and other tools related to videos; and relevant communications with the Board of Directors. Facebook served more than 100 pages of written responses and objections to this discovery. Facebook produced 174,560 documents to Plaintiffs during this period.

110. Between July 21, 2021 and December 15, 2021, Facebook served 21 additional Requests for Production and 18 additional Interrogatories on each of the Named Plaintiffs (resulting in a total of 189 Requests for Production and 162 Interrogatories to which Plaintiffs had to respond). Among other information, Facebook asked for documents and information relating to the Named Plaintiffs' activities on other social media platforms, including the privacy settings of any personal family photographs or videos, and any personal religious or political opinions, similar to those they posted on Facebook. The Named Plaintiffs served more 580 pages of written responses and objections to this discovery. Plaintiffs produced 322 documents to Facebook during this time period.

F. December 16, 2021 through August 26, 2022: Commencement of Depositions of Facebook's Fact and Corporate Witnesses, Discovery Disputes Continue, and the Parties Reach Agreement in Principle to Settle

111. Class Counsel's primary activities during this period reflected a rapid acceleration of discovery as the case moved towards the fact discovery cutoff.

1. Continued Discovery Disputes

112. In January 2022, the Special Master amended the protocol for resolving discovery disputes in order to accelerate the resolution of discovery disputes. Dkt. 821. This protocol required the parties to submit a joint spreadsheet to the Special Master and discovery mediators every week. The spreadsheet identified current outstanding issues, whether impasse was declared, and summarized the parties' positions on each issue. For each issue the discovery

mediators determined to be at impasse, the Special Master would either determine that briefing was unnecessary and issue a tentative ruling or provide the parties with three days to submit briefing—limited to three pages of argument and 100 pages of exhibits—before holding a hearing, at one of the parties’ request, within 48 hours and issuing a tentative ruling. Following the Special Master’s tentative ruling, the parties were permitted to submit a two-page motion for reconsideration within 48 hours.

113. The spreadsheet, referred to as the issue tracker or tracker, identified issues the parties believed would benefit from discovery mediation and which were ripe for motion practice. The discovery mediators required the parties to meet and confer twice weekly concerning the issues reflected on the tracker, starting in February 2022 and continuing through at least June 2022, and to submit an updated tracker weekly. Among other information, the tracker included a summary of each side’s position.

114. Beginning in August 2022, because of the backlog of discovery disputes reflected on the tracker, the Special Master allowed the parties to file motions without mediating, as long as the parties had met and conferred in good faith (as is typical in litigation). This change further enhanced the Special Master’s ability to efficiently resolve disputes. Dkt. 989. This protocol required the parties to request a hearing, if they wanted one, within 48 hours, at which point the Special Master would issue a tentative ruling; the parties then had 24 hours to submit a motion for reconsideration should they wish to challenge the ruling.

2. Select Discovery Appeals, Motions, and Hearings

a. ADI

115. Facebook appealed the Special Master’s amended ADI order to Judge Corley, who affirmed it. Dkt. 806.

116. Meanwhile, Special Master Garrie conducted his in camera review of the 6,000 documents and found that a “substantial number” were relevant. He ordered Facebook to produce all ADI communications, later amending the order to make clear that Facebook need not

produce communications from non-custodians or produce or log certain emails involving attorneys. Dkt. 828.

117. At the February 10, 2022 case management conference, the Court ordered Facebook to complete its ADI production within 21 days. On March 10, 2022, Facebook informed Plaintiffs that it had done so.

118. During meet and confers in late March and early April 2022, Facebook informed Plaintiffs of previously undisclosed limitations on its ADI production. After two additional orders regarding the rate of production, Facebook continued to produce ADI-related documents through July 2022.

119. As a result of Plaintiffs' efforts, Facebook produced hundreds of thousands of documents and communications related to its ADI including the scope of user information and data that was accessed by third parties – documents and communications Facebook had successfully shielded from discovery under privilege assertions in other related cases.

b. Named Plaintiff Data

120. On December 29, 2021, Special Master Garrie issued an Amended Order requiring Facebook to provide descriptions of the purpose of each system and the business units that use each system. Dkt. 793 ¶¶ 21-23 (amended order).

121. Facebook appealed the Special Master's Named Plaintiff data order to Judge Corley, who affirmed it. Dkt. 807.

122. From January 2022 to March 2022, the Special Master engaged with the Parties in an investigation of the sources of Named Plaintiffs' data. He held multiple hearings with Facebook engineers and requested documentation to develop understanding of the data sources containing Named Plaintiffs' data.

123. On March 22, 2022, the Special Master issued an order requiring Facebook to submit a proposed protocol for production of Named Plaintiff data, and Plaintiffs to submit a response. Dkt. 982, Ex. O. The parties provided their respective submissions in April 2022. *Id.* at Ex. P.

124. On May 17, 2022, the Special Master held a hearing with the parties to identify and resolve areas of disagreement with respect to the proposed protocols. Dkt. 982 ¶ 15. Following the hearing, the parties continued to disagree about three issues: “selection of Hive tables for production;[] production of data related to apps installed by friends of Named Plaintiffs; and whether Facebook should search cold storage for Named Plaintiff data in Hive.” *Id.* at ¶ 16. The Special Master requested briefing on these three issues and ordered Facebook to provide additional information regarding the Hive tables. *Id.*

125. On June 6, 2022, the parties entered their submissions in response to the Special Master’s request for additional information. *Id.* at ¶ 17. In their brief, Plaintiffs argued for the production of schema for the 137 Hive tables preserved in cold storage for this litigation and the production of snapshots from the Switchboard system relating to the Named Plaintiffs. Dkt. 982, Ex. V.

126. At the Special Master’s request, the parties submitted supplemental briefs regarding the 137 Hive tables and Switchboard snapshots. Dkt. 982, Exs. W, X.

127. On July 5, 2022, the Special Master issued an order regarding the production of Named Plaintiffs’ data. This order required Facebook to produce the following data over a one-month schedule: (1) “user objects and associations to those objects in [Facebook’s] TAO system for each Named Plaintiff, along with the TAO schema for such data,” and “Named Plaintiffs’ ‘set permissions’ (audience controls on a post);” (2) “Named Plaintiff data from Switchboard system,” (3) “the following types of Named Plaintiff data in Hive regardless of whether it appears in the DYI files: off-platform activity, ad interests, ad click data, ad impressions data, and custom audience data,” as well as the names, of the tables from which this Hive data will be produced, “how Facebook identified the tables, and the schema for such data” (4) the schema for “11,051 Hive tables” identified in Facebook’s April 11, 2022 submission and the schema for “all 137 preserved Hive tables that contain user identifiers;” (5) “updated privacy settings for each Named Plaintiff;” and (6) “data regarding interactions that friends of the Named Plaintiffs had with businesses/apps using Facebook Login.” Dkt. 982 ¶¶ 29-34. In addition, the Special

Master entered a procedure for the identification of Hive tables to be searched for Named Plaintiff data. *Id.* ¶ 35.

128. Following the Special Master's July 1, 2022 order, Facebook produced key evidence relating to the Named Plaintiffs. This included 106 Switchboard snapshots, spanning over 170,000 pages, which contain detailed information about the Named Plaintiffs.

129. The information contained in these records included granular detail about the information Facebook uses to track the Named Plaintiff data that it collects. Unlike the previously produced DYI files (which included only of a list of hashed alphanumeric identifiers and dates and times associated with the Named Plaintiffs, the Switchboard Data contained the full alphanumeric identifier for each cookie associated with the Named Plaintiffs' devices, the accounts associated with that cookie, the number of times that cookie was seen, and the data and time it was seen. The Switchboard data positioned Plaintiffs to seek additional information about how Facebook collects data about the Named Plaintiffs and how it uses that information: specifically, about how the cookie identifiers are maintained and what information is associated to them.

130. In addition, following the Special Master's July 1, 2022 order, the parties each submitted a list of 250 Hive tables to be searched for Named Plaintiff data and Facebook submitted a spreadsheet estimating the amount of data in cold storage for each of the tables that contain such data. Dkt. 1009 ¶ 1. On August 23, 2022, the Special Master issued a scheduling order requiring the parties to meet and confer and to each submit a proposal for searching Hive data in cold storage for data relating to the Named Plaintiffs which the parties provided on August 26, 2022.

131. In total, Plaintiffs submitted 8 formal and letter briefs to the Special Master concerning Named Plaintiff data during this time period alone, exchanged numerous letters and emails with Facebook and the Special Master, attended four half- and full-day hearings held by the Special Master, and met and conferred with Facebook repeatedly on the issue of the production of Named Plaintiff data. Throughout this process, Plaintiffs engaged extensively with

their technological experts to analyze the systems Facebook uses to maintain data relating to Named Plaintiffs, to make sense of the information Facebook was required to disclose, and to craft proposals for it to provide additional information and produce data.

132. As a result of Plaintiffs' efforts, Facebook was required to disclose previously non-public information about the way it stores and makes use of user information, produced thousands of pages of additional documents relating to the Named Plaintiffs, and was in the process of producing additional information when the discovery stay issued.

c. Cambridge Analytica-Related Documents

133. After Plaintiffs reviewed Facebook documents referring to certain case studies and reports about Facebook's work with Cambridge Analytica, Plaintiffs asked Facebook to produce these studies and reports. Facebook refused. Plaintiff moved to compel in January 2022 before the Special Master. Facebook opposed and sought fees from Plaintiffs for pursuing what it deemed a frivolous motion. Special Master Garrie ordered Facebook to produce all non-privileged case studies and presentations addressing work by Facebook on behalf of the Trump campaign or any PAC active in the 2016 presidential campaign in which Facebook interacted with Cambridge Analytica or any of its affiliates. Dkt. 832.

134. Facebook moved for reconsideration of the Special Master's order, which was denied. Dkt. 835. In April 2022, Facebook produced over one hundred documents totaling over one thousand pages related to the case studies.

d. "Secret Sauce"

135. On December 17, 2020, Plaintiffs asked Facebook to produce a document referenced in an antitrust complaint filed against Facebook. Dkt. 827; *see* Complaint, *New York et al. v. Facebook, Inc.*, No. 1:20-cv-03589-JEB (D.D.C. Dec. 9, 2020) ("Complaint, *New York v. Facebook*"), Dkt. 4. The complaint discussed a 2008 internal document called the Facebook "Secret Sauce" Report that allegedly identified as one of the four pillars of Facebook's success the fact that it was responsive to users' desire for privacy and gave them control over their data.

Complaint, *New York v. Facebook* ¶ 76. Facebook refused to produce it. Dkt. 827. Plaintiffs continued to raise the issue directly with Facebook and in discovery mediation.

136. On August 18, 2021, the parties discussed with the discovery mediators whether Facebook would produce the Secret Sauce Report. During this session, Facebook agreed to provide the report, which it produced the next month.

137. Plaintiffs' review of the Secret Sauce Report revealed missing metadata. The report also indicated that it was intended to be updated regularly. On September 25, 2021, Plaintiffs asked Facebook to produce the document electronically, along with any associated metadata, and produce all subsequent versions of the document. Facebook did not respond. On December 23, 2021, Plaintiffs raised the issue with the discovery mediators, who declared impasse.

138. On January 11, 2022, Plaintiffs moved to compel (i) the reproduction of the Secret Sauce Report with metadata, (ii) the production of all subsequent iterations of the report, and (iii) the production of all related communications.

139. After briefing, the Special Master granted Plaintiffs' motion to compel on January 31, 2022. Dkt. 827 ¶ 14. The Special Master also required a good faith effort to identify and search additional custodians for relevant, non-privileged documents to be produced reflecting discussions that informed any iteration of the Secret Sauce Report. *Id.* Facebook moved for reconsideration, which the Special Master denied. Dkt. 846.

140. Facebook ultimately produced 24 documents consisting of iterations of the Secret Sauce Report and communications regarding them. These documents contain information relevant to users' expectations of privacy and Facebook's improper sharing of user information with third parties.

3. Depositions Taken by Plaintiffs

141. Plaintiffs deposed 34 fact witnesses and conducted depositions of corporate designees over 21 days. The resulting testimony lasted 312 hours and 21 minutes and resulted in 13,251 transcribed pages. Pursuant to the Deposition Protocol, Dkt. 755, the Special Master

attended almost every one of these depositions, missing only a few due to scheduling conflicts (including, in several instances, that Plaintiffs were taking multiple depositions at the same time).

a. Facebook Witnesses

142. Plaintiffs took the following depositions (the position noted is the deponent's last known position at Facebook):

Current and Former Facebook Employees		
Deponent	Position	Deposition Date(s)
Jackie Chang	Director of Platform Product Partnerships	December 16, 2021
Eugene Zarashaw	Engineering Director	December 22, 2021
Sam Lessin	Vice President of Product Management	January 13, 2022
Jeremy Galen	Product Manager	January 26, 2022
Grace Molnar	Global Developer Policy Operations	February 3, 2022
Steven Elia	Software Engineering Manager	February 16, 2022
Antonio Garcia-Martinez	Product Manager	February 23, 2022
Anne Lewis	Senior Program Manager	March 3, 2022
Shirine Sajjadi	Privacy & Policy Manager	March 4, 2022
Mike Vernal	Vice President of Search, Local, and Developer Products	March 18, 2022
Deborah Liu	Vice President, Facebook App Commerce	March 25, 2022
Matt Trainer	Head of Program Management, Facebook Marketing Partner Program	March 30, 2022
Bill Fusz	Head of Operations Global Developer	April 7, 2022
Aldo King	Privacy Program Manager	April 8, 2022
Luke Conlan	Developer Operations Project Manager	April 21, 2022
Justin Osofsky	Chief Operating Officer, Instagram	April 26, 2022
Douglas Purdy	Director of Product Management	May 24, 2022
Anne-Marie Lentini	Technical Program Manager	June 15, 2022
Yul Kwon	Director of Product Management	June 20, 2022
Vladimir Fedorov	Data Engineer	June 24, 2022
Luke Shepard	Engineering Manager	June 28, 2022
Carl Sjogreen	Director of Product Management	June 30, 2022
Mustafa Khan	Marketing & Operations Specialist	July 13, 2022
Monika Bickert	Head of Global Policy Management	July 13, 2022 July 14, 2022 July 20, 2022
Robert Sherman	Vice President and Deputy Chief Privacy Officer for Policy	July 28, 2022
Eddie O'Neil	Director of Product Management; Head of Platform	August 10, 2022

Current and Former Facebook Employees		
Deponent	Position	Deposition Date(s)
Konstantinos Papamiltiadis	Vice President	August 12, 2022
Monica (Walsh) Mosseri	Product Partnerships Manager	August 15, 2022
Erin Egan	Vice President of Public Policy; Chief Privacy Officer of Public Policy	August 18, 2022
Steve Satterfield	Director of Privacy and Public Policy	August 19, 2022
Dan Rose	Vice President of Partnerships	August 23, 2022
Ime Archibong	Head of New Product Experimentation	August 24, 2022
Reagan Williams	Director of Business Engineering	August 25, 2022
Allison Hendrix	Public Policy Director on Privacy and Data Policy	August 26, 2022

143. To prepare for these depositions, Plaintiffs conducted exhaustive factual review, including analysis of documents produced by Facebook and third parties. Review was often completed on an accelerated timeline because Facebook frequently produced previously withheld documents related to deponents just weeks or days before the depositions due to privilege disputes and other production delays. Some deponents were the authors or recipients of many tens of thousands of documents. Plaintiffs also completed outside factual research related to each deponent. The attorneys who conducted these depositions developed expertise in areas including Facebook policies, engineering and APIs, revenue and financial information, and partnerships, to increase the efficiency of preparing for and conducting the depositions.

144. These depositions yielded important evidence and helped to identify areas where Facebook's discovery responses were incomplete. For example, deponents identified internal tools used to track the identity of third parties that had been whitelisted for certain API capabilities that Facebook had stated publicly would be deprecated, as well as to track third parties that had been provided extra "capabilities" to access bespoke APIs that, in many instances, provided them access to friends' information that Facebook said was no longer accessible.

145. Additional depositions were scheduled for dates shortly after the discovery stay, including the depositions of three current and former Facebook senior executives: Javier Olivan, Sheryl Sandberg, and Mark Zuckerberg.

b. Rule 30(b)(6) Testimony

146. In addition to fact depositions, Plaintiffs elicited 110 hours of 30(b)(6) testimony over 21 days from thirteen corporate representatives of Facebook and one corporate representative of PwC, the independent assessor of Facebook's privacy program. The position noted is the deponent's last known position:

Fed. R. Civ. P. 30(b)(6) Depositions			
Designee	Position	Topic(s)	Deposition Date
Konstantinos Papamiltiadis	Vice President, Platform Partnerships	Data Format, Nature, and Location	February 23, 2021
Amy Lee	Product Marketing Director, Facebook for Business & Commerce	Monetization and Valuation of Data	February 24, 2021
Allison Hendrix	Head of Data Policy Management	1, 2(b), 2(d), 3, 6 [partial]	May 5, 2022
Simon Cross	Head of Product, Cross-Meta Support	6, 7	May 9, 2022
Simon Cross	Head of Product, Cross-Meta Support	6, 7	May 12, 2022
Mike Clark	Director of Product Management	4	May 18, 2022
Amy Lee	Product Marketing Director, Facebook for Business & Commerce	10	May 19, 2022
Michael Duffey	Manager, eDiscovery Case Management	ESI Preservation	June 2, 2022
Allison Hendrix	Head of Data Policy Management	1, 2(b), 2(d), 3, 6 [partial]	June 3, 2022
Simon Cross	Head of Product, Cross-Meta Support	2(a), 2(c), 6, 7, 8	June 6, 2022
Simon Cross	Head of Product, Cross-Meta Support	2(a), 2(c), 6, 7, 8	June 20, 2022
Simon Cross	Head of Product, Cross-Meta Support	2(a), 2(c), 6, 7, 8	June 21, 2022
Mayur Patel	Software Engineer in Data Privacy	4	June 30, 2022
Chris Casorio	Manager, Meta Business Group Risk	2, 4, 5, 8, 9 (Data Brokers)	July 20, 2022
Michael Fahey	Head of Facebook App Data Engineering	9(a), 9(b)	July 21, 2022
Steven Elia	Software Engineering Manager	9(d)	July 21, 2022

Fed. R. Civ. P. 30(b)(6) Depositions			
Designee	Position	Topic(s)	Deposition Date
Steven Elia	Software Engineering Manager	9(d)	July 22, 2022
David Miller	Sr. Director of Product Management	9(c)	July 22, 2022
Carolyn Holcomb	Privacy Assurance Leader and ESG Partner, PricewaterhouseCoopers	PwC Topics 1, 2, 3.	July 26, 2022
Isabella Leone	Privacy & Policy Manager	2, 8 (Targeted Advertising)	August 5, 2022
Harrison Fisk	Vice President, Engineering	5	August 16, 2022
Amy Lee	Product Marketing Director, Facebook for Business & Commerce	10	August 18, 2022
Allison Hendrix	Head of Data Policy Management	1, 2(b), 2(d), 3, 6 [partial]	August 26, 2022

Topics included the types of data and information that Facebook sold, made accessible, or allowed third parties to use to target users; the processes of developing Facebook's Privacy and App Settings and other controls made available to users which Facebook asserted could prevent or limit user data or information from being accessed by third parties; Facebook's processes of pseudonymization, de-identification, re-identification, association, and deletion of user data and information; the process used to identify strategic and other partners whose access to friend and other data would be whitelisted following the implementation of the Facebook Graph API Version 2; Facebook's Privacy Program, and numerous other highly technical issues.

147. Preparing to depose Facebook's corporate designees required an enormous amount of preparation. Like the fact witnesses, Facebook's corporate designees were not predisposed to volunteer information. Thus, the 30(b)(6) depositions were unusually document-intensive—Plaintiffs' counsel found that until Facebook's witnesses were confronted with documentary evidence, they were generally unwilling to answer questions about relevant topics. Even when shown documents, including documents the witness him or herself authored, witnesses professed a surprising lack of knowledge. Moreover, most of the topics were highly technical, and required mastery of certain APIs, Facebook's byzantine lingo, and the way its

thousands of systems communicated with one another. Preparation went beyond the person taking the deposition, requiring several internal teams and conversations with consulting experts to strategize, review documents, prepare the outline, and research the deponent, all to ensure that Plaintiffs elicited the testimony necessary to support their claims and class certification.

148. Moreover, the parties engaged in numerous disputes about the proper scope of the 30(b)(6) topics. Facebook repeatedly sent letters just days before a 30(b)(6) deposition was to occur that described issues—issues that Plaintiffs believed to be within the defined topics—that the deponent would not be prepared to address. This resulted in numerous hearings before the Special Master and the need to depose multiple corporate designees on the same 30(b)(6) topics. In addition, Plaintiffs were required by the Special Master to identify to Facebook, in advance, all the documents they intended to use during 30(b)(6) depositions.

149. The 30(b)(6) depositions involved a great deal of work but yielded important evidence. For example, during a 30(b)(6) deposition of Facebook regarding the preservation of ESI, the designee testified that Facebook had preserved 137 tables in cold storage from its Hive database for this litigation. June 2 30(b)(6) Tr. at 69:13-21. The same designee also testified that Facebook used a previously undisclosed system, “Switchboard,” to collect Facebook user data about the Named Plaintiffs not captured by the DYI Tool. June 2 30(b)(6) Tr. at 40:4–5. Facebook’s representative testified that the Switchboard snapshots contain, for instance, information about users’ privacy settings (*id.* at 56:9-12), relationships between users (*id.* at 64:22–65:4), and information about Named Plaintiffs’ involvement in Pages, Groups, and advertising accounts (*id.* at 55:2–5). Plaintiffs also learned critical information about strategic and other partners whose access to friend data was whitelisted, and the reasons for these decisions.

c. Third-Party Discovery

150. Plaintiffs served subpoenas for deposition testimony on three third parties: PwC (Facebook’s Privacy Program auditor), Stroz Friedberg, and FTI Consulting.

151. On December 3, 2021, Plaintiffs served a subpoena for the deposition testimony pursuant to Rule 30(b)(6) of PwC. Plaintiffs met and conferred with counsel for PwC on December 17, 2021, January 21, 2022, and February 11, 2022, about the scope of Plaintiffs' subpoena. Plaintiffs took the 30(b)(6) deposition of PwC on July 26, 2022.

152. On March 7, 2022, Plaintiffs served a subpoena for the deposition testimony pursuant to Rule 30(b)(6) of Stroz Friedberg, one of the forensic investigators Facebook employed to investigate developers for data misuse. On March 30, 2022, Gibson Dunn served responses and objections to Plaintiffs' deposition subpoena on behalf of Stroz Friedberg. Plaintiffs exchanged correspondence with attorneys from Gibson Dunn regarding these subpoenas. Gibson Dunn attorneys later clarified that Stroz Friedberg was represented by Latham & Watkins LLP. Plaintiffs met and conferred with Latham attorneys who represented Stroz Friedberg about Plaintiffs' subpoena on May 4, 2022, July 8, 2022, and August 4, 2022. Plaintiffs were scheduled to depose Stroz Friedberg on September 16, 2022 and had already substantially completed preparation for this deposition, which had been rescheduled several times, but it was postponed following the Court's order staying discovery. Dkt. 1015.

153. On March 7, 2022, Plaintiffs served a subpoena for the deposition testimony pursuant to Rule 30(b)(6) of FTI Consulting, another forensic consulting company. On March 30, 2022, Gibson Dunn served responses and objections to Plaintiffs' deposition subpoena on behalf of FTI Consulting. Plaintiffs met and conferred with attorneys from Gibson Dunn regarding Plaintiffs' deposition subpoena to FTI Consulting on May 10, 2022 and June 13, 2022. Plaintiffs and Gibson Dunn attorneys also included Plaintiffs' deposition subpoena on the agenda for their bi-weekly meet and confers from May 2022 to August 2022. Plaintiffs were scheduled to depose FTI Consulting on August 30, 2022 and had largely completed preparation to take this deposition, but it was postponed following the Court's order staying discovery. Dkt. 1015.

4. Depositions of Named Plaintiffs

154. In November 2021, the parties agreed to schedule two Named Plaintiff depositions in December 2021, with others to follow in January 2022 and thereafter. Plaintiffs

spent many hours scheduling and preparing witnesses on that timeline. Facebook took the depositions of Named Plaintiffs Cheryl Senko and Tyler King on December 10, 2021 and December 20, 2021. The depositions of the Named Plaintiffs resumed in early March 2021 and concluded at the end of April 2021.

155. Plaintiffs' counsel worked with the Named Plaintiffs and, as authorized by Dkt. 433, their referring counsel to prepare for these depositions, including by attending multiple separate preparatory sessions over videoconference and telephone. During these sessions, Plaintiffs reviewed and discussed documents and discovery responses and discussed possible lines of questioning. Counsel's preparation for these depositions included a re-review of all documents and discovery responses provided by each Named Plaintiff and the development of a specific deposition preparation plan for each Named Plaintiff. Such preparation was critical for Plaintiffs responsible for representing the best interests of millions of potential class members.

156. On December 6, 2021, Facebook moved the Special Master to order depositions of the former Named Plaintiffs. After briefing, Special Master Garrie denied Facebook's motion and Facebook appealed to Judge Corley, Dkt. 782, who, on January 12, 2022, denied the motion without prejudice to renewal after all current Named Plaintiffs' depositions had been taken. Dkt. 805.

5. Privilege Disputes

157. Facebook began producing privilege logs in August 2020. Under the parties' protocol, Plaintiffs timely challenged appropriate documents on those logs by individually reviewing documents and information provided on the log and crafting document-specific challenges to each privilege designation, and the parties continued to negotiate Plaintiffs' challenges to the privilege designation of certain documents throughout 2020 and 2021.

158. Before January 2022, Facebook had logged fewer than 10,000 documents as privileged. On January 28, 2022, Facebook produced an amended categorical privilege log—which used standardized descriptions to indicate the reason for privilege designation—that brought the total number of logged documents to 14,132.

159. In March 2022, Facebook served another amended categorical privilege log with over 180,000 new entries—an over tenfold increase. After that large increase in the number of purportedly privileged documents, Plaintiffs reached out to Facebook to discuss how to resolve disputes arising from the new log and, after several meet and confers, provided a written proposal for challenges. The parties agreed that Plaintiffs would identify up to nine categories of documents at a time to challenge. Facebook would then review a statistically significant sample of documents in each challenged category before meeting and conferring with Plaintiffs over their challenges.

160. In April 2022, Plaintiffs spent more than 150 hours evaluating Facebook’s categorical privilege log document by document, as the agreed-to process required. Plaintiffs issued their challenges to Facebook and identified the nine categories of documents to prioritize for resolution. Facebook then began identifying and reviewing a statistically significant sample of those documents. After reviewing a sample of over 3,000 documents, Facebook wholly withdrew its assertion privilege over 63% of the sample. In addition, it produced over 300 previously withheld documents with redactions, and withdrew its designation of work product on over a dozen additional documents—effectively de-designating nearly three-quarters of the sampled documents.

161. After the parties met and conferred about this result, Facebook agreed to re-review all withheld documents from the categorical privilege log. It ultimately produced over fifty thousand previously withheld documents to Plaintiffs and altered the privilege designations for thousands more.

162. As Facebook began to produce de-designated documents on a rolling basis, the parties also raised this issue with the Court. Case Management Conference Hearing Transcript, 14:18–17:17 (June 9, 2022). The Court ordered Facebook to produce a new privilege log addressing this re-review by June 24, 2022. *Id.* at 19:23–20:5.

163. Facebook produced a new privilege log addressing this re-review and continued to produce de-designated documents throughout summer 2020. Dkt. 1050-3. The parties continued to negotiate Plaintiffs' challenges to the new privilege log until the stay of discovery.

164. A privilege log provides limited insight into what the designating party has withheld. Despite the information asymmetry, Plaintiffs' efforts secured over fifty thousand documents that otherwise would never have been produced. These de-designated documents ultimately provided important evidence in support of Plaintiffs' case. For example, previously withheld documents suggested that "apps can store any data they get," another used Cambridge Analytica as an example of the portability of Facebook user data, and a third wondered "how much of a better place" Facebook would be in if a 2015 plan to build a more centralized privacy and data use organization "had been implemented three years ago." *See id.* at 24.

6. Discovery Requests, Motions, and Hearings

165. Between December 16, 2021 and August 26, 2022, Plaintiffs served 65 interrogatories and 54 requests for admission. The Court entered the stay before Facebook was required to respond to all of this discovery. Facebook produced 698,503 documents to Plaintiffs during this time period.

166. Between December 16, 2021 and August 26, 2022, Facebook served an additional 71 Interrogatories and from 21 to 23 Requests for Admission on each Named Plaintiff. The Court entered the stay before Plaintiffs were required to respond to this discovery. Plaintiffs produced 1,505 documents to Facebook during this time period.

7. Sanctions

167. At the February 2022 case management conference, the Court invited Plaintiffs to file a motion for sanctions. Dkt. 847.

168. Seeking sanctions in this action was a large undertaking. Plaintiffs had to review several years of complex litigation records that had produced a huge collection of filings, correspondence, discovery, and other documents. Plaintiffs conducted a painstaking review and

had lengthy internal discussions to ensure that their decisions regarding the scope of their sanctions motion were as principled, thoughtful, serious, and well-informed as possible.

169. Due to the sheer size of the litigation, some litigating attorneys had developed specific knowledge about certain aspects of the litigation. The sanctions motion touched on all of those aspects.

170. In their motion for sanctions, Plaintiffs sought reimbursement of fees and expenses. To support that request, Plaintiffs first gathered and reviewed time entries and expenses. That process was a time-consuming enterprise, given the duration and complexity of the litigation. And because that review was intimately tied to legal decisions about the scope of our sanctions motion, review of time and expenses could not be delegated to non-attorneys.

171. Replying to Facebook's response to the sanctions motion was also time-consuming, requiring a further search of the record, further legal research, and internal discussion. It also required Plaintiffs to update the Court on what they had learned since the filing of their motion.

172. Meanwhile, discovery continued—and as it continued, Plaintiffs learned more about what they saw as discovery misconduct. Plaintiffs filed a supplemental brief in support of sanctions in early August 2022. Because the supplemental brief contained so much new material, it required considerable additional work.

173. In total, Plaintiffs' three briefs related to sanctions comprised 110 pages. In support of those briefs, they filed three detailed declarations by Co-Lead Counsel, to which were attached a total of 142 exhibits.

G. August 27, 2022 through December 22, 2022: Confirmatory Discovery and Finalizing the Settlement

174. Co-Lead Counsel's primary activities during this period involved contentious negotiations to reduce the settlement in principle to a written settlement agreement, preparing the motion for preliminary settlement approval, and conducting confirmatory discovery to validate Facebook's assertions that it had ceased most of the practices that gave rise to Plaintiffs' claims.

1. Settlement Negotiations and Confirmatory Discovery

175. Like the litigation itself, the settlement negotiations were extraordinarily hard fought and difficult. Resolution required the assistance of two mediators, six days of formal mediation spanning 11 months, and dozens of videoconferences and telephone calls with the mediators, and even more between the parties, after the settlement in principle was reached.

176. The parties retained former federal Judge Jay Gandhi to serve as the settlement mediator in June 2021. Plaintiffs provided Judge Gandhi with extensive litigation materials, including mediation statements, summaries of pleadings and key discovery from the litigation, and detailed responses to questions provided by Judge Gandhi. Plaintiffs conducted several telephonic meetings with Judge Gandhi, as well as a joint telephonic meeting with Facebook on September 10, 2021.

177. The parties' first joint mediation session occurred on October 8, 2021. At that session, each side made a presentation to the other, and to Judge Gandhi, summarizing the strengths of their position. Plaintiffs' presentation, delivered by Co-Lead Counsel, reflected a deep dive into the documents already produced, including several produced shortly before in response to Judge Corley's order granting Plaintiffs' motion to compel the production of ADI-related documents, which supported their key claims. More than 10 attorneys worked on the presentation, almost all of whom met in person at Keller Rohrback's Seattle office to finalize their preparation.

178. On November 20, 2021, the parties and Judge Gandhi met via Zoom for an all-day mediation session. Plaintiffs started the mediation with a lengthy presentation discussing the claims and the evidence developed to date. Facebook gave a presentation of its own, which provided a different interpretation of the facts and law. After several additional hours of discussion, the mediation ended without resolution. The parties were much too far apart in their assessments of the litigation to make meaningful progress. Therefore, litigation continued, during which time the parties continued to meet with Judge Gandhi. Plaintiffs provided Judge Gandhi with updates regarding the litigation, including the results of motions practice and discovery.

179. On April 18, 2022, the parties met in person with Judge Gandhi in San Francisco for a second full day mediation. Despite extensive discussion with the mediator, both separately and jointly, the day once again ended without a resolution. In the ensuing months, Plaintiffs continued to provide Judge Gandhi with discovery orders issued in the case, key pleadings and key evidence obtained by Plaintiffs. The parties also spoke separately with Judge Gandhi on multiple occasions through which settlement demands and offers were exchanged but without any agreement.

180. On May 27, 2022, Plaintiffs met in person with Judge Gandhi in San Francisco to discuss the status of the case and potential paths for resolution. Over the ensuing several months, the parties spoke with Judge Gandhi on multiple occasions and engaged in shuttle diplomacy, while Plaintiffs pressed forward with the litigation.

181. On August 17, 2022, Plaintiffs met again with Judge Gandhi and Facebook. Progress was made regarding a potential resolution and after several days, an agreement in principle was reached on the dollar amount of the settlement. Over the ensuing several weeks, the parties negotiated other terms of the agreement, requiring numerous calls and videoconferences, which were often contentious.

182. On August 26, 2022, the parties were able to execute a term sheet that set forth certain key terms such as the settlement amount, but did not resolve others. As a result, extensive negotiations continued after the term sheet was executed. Despite best efforts, the parties were not able to reach agreement on these open issues. Other disputes arose as the parties sought to finalize the settlement agreement.

183. After several months of nearly daily negotiations, on October 13, 2022, the parties agreed to ask Judge Corley if she would be willing to mediate the remaining obstacles to agreement. Judge Corley agreed. The parties provided Judge Corley with information regarding the unresolved issues and met with her via Zoom initially on October 17, 2022 and then on three subsequent dates, Nov. 7, 8, and 14, 2022. The parties made significant progress on open issues

with Judge Corley, and after more than an additional month of lengthy and intense direct negotiations with each other, a settlement agreement was executed on December 22, 2022.

184. Following extensive and hard-fought negotiations, the parties finalized key terms and Facebook provided declarations from high-level employees Steven Elia and Elizabeth Dunphy. Dkts. 1094, 1095. Those declarations provided that Facebook had ceased the practices giving rise to Plaintiffs' claims, including regarding friend sharing and many video-related permissions, and had meaningfully improved its efforts to limit the number of third-party apps with access to Facebook users' sensitive data and more effectively monitor those apps' use of Facebook user data.

2. Sanctions Hearing and Supplemental Briefs

185. The Court held a hearing on Plaintiffs' sanctions motion on September 15, 2022. Nearly all the attorneys working on this case were involved in the preparation for this hearing.

186. During the hearing, the Court asked two additional questions about how the sanctions would be allocated and whether that allocation might affect the compensatory nature of the sanctions. To answer the questions properly, Plaintiffs held internal discussions, conducted extensive legal research, and filed a letter brief. Dkt. 1061.

187. Then, in November 2022, the Court asked Plaintiffs "to submit billing records for the attorney's fees incurred as a result of the alleged misconduct associated with the App Developer Investigation and the named plaintiff data," and invited a supplemental brief in support of the fees. Dkt. 1073. Plaintiffs filed a detailed declaration and supplemental brief, and submitted billing records in camera. Dkts. 1079, 1080..

188. On February 9, 2023, the Court issued an order sanctioning Facebook and Gibson Dunn. Dkt. 1104. Any order awarding fees and expenses should deduct the total amounts that have already been paid by Facebook and its counsel pursuant to the sanctions order. Dkt. 1104 at 52. Specifically, the fee award should be reduced by \$800,217.38, and the reimbursement of expenses should be reduced by \$124,861.13. *Id.*

H. December 23, 2022 through May 31, 2023: Settlement Administration and Communications with Class Members

189. As part of the Court’s March 29, 2023, Preliminary Approval Order, the Court appointed Angeion Group (“Angeion” or the “Settlement Administrator”) to provide notice to Class Members, process claims, and otherwise administer the Settlement. Angeion, in coordination with Class Counsel and Facebook, subsequently began the process of providing notice to the Class through in-app notification as well as a robust media campaign consisting of print publication, social media notice, programmatic display advertising and search engine marketing, among other forms of media notice.

190. Over the last several months, Class Counsel has had near daily contact with Angeion and Meta’s counsel to ensure that the notice program ran smoothly and on schedule, and met the requirements of the Court’s Preliminary Approval Order. Class Counsel’s monitoring of the administration process including attending weekly (or more frequent) video conferences to receive status updates and discuss any issues that arose with regard to administering the notice and claims programs and reviewing weekly reporting prepared by Angeion. Class Counsel also worked with Angeion and Facebook to verify that the in-app notice program was implemented as planned.

191. According to its counsel, Facebook, in coordination with Class Counsel and Angeion, facilitated in-app notification over three phases—starting with 1.8 million notices per day for 4 days, then increasing to 20.8 million notices per day for 12 days and culminating with 50 million notices per day for 5 days. In total, 685 million in-app notifications were provided to Class Members who are current Facebook users between April 12, 2023 and May 11, 2023.

192. Class Counsel also engaged with Class Members and refined the settlement website and claim form to ensure that Class Members were able to easily access information regarding the Settlement, select their preferred method of payment, and ensure they could submit claims which allowed them to fully reflect their time as Facebook users during the Class Period.

Class Counsel recently updated the Court regarding the most substantive amendments to the website and claim form. *See* Dkts. 1134, 1136.

193. Class Counsel has also been closely monitoring the filing of claims. During several weeks of the notice program, Class Members were filing in excess of 600,000 claims per day, with a peak during the week of April 22, 2023 of 889,000 claims per day. As of June 20, 2023, Class Members have filed 15,009,329 claims, although these claims have not yet been validated and assessed for duplicates. Class Counsel are also promptly responding to Class Member inquiries regarding the Settlement on a daily basis. As of June 20, 2023, Class Counsel have addressed more than 1,800 inquiries from Class Members. This is in addition to the calls, emails, and other correspondence the Settlement Administrator has received directly. Class Counsel expects it will spend substantial time working through the claim deadline, August 25, 2023, and beyond.

I. Throughout, Class Counsel Litigated the Case Efficiently

194. Class Counsel made numerous decisions that enabled them to litigate this complex case with unusual efficiency.

195. First, a core group of just 11 partners and associates, including us, led the litigation. As a result, each of these individuals developed institutional knowledge of the ins and outs of the complex proceedings and intimate knowledge of relevant terms, technology, and evidence. This saved the time and effort of continuously needing to educate team members on aspects of this sometimes sprawling case with which they were not familiar.

196. Second, Class Counsel ensured that these core individuals met frequently. These meetings increased efficiency by ensuring that this litigation was consistently pursued with shared goals. These meetings saved time by preventing tangential efforts before they started. Instead, Class Counsel stayed focused on the steps required to keep the litigation effort moving forward in a unified directly.

197. Third, Class Counsel made specific staffing decisions to further promote efficiency, including:

- Use of technology: Class Counsel used predictive coding, based on their linear review of early document productions, that helped rank unreviewed documents based on their likely relevance. Then, the documents were batched out for review with those likeliest to be relevant collected in the earliest batches. In this way, “hot” documents were likely to be quickly surfaced, coded, and circulated to the litigating attorneys.
- Document analysis: Class Counsel developed a comprehensive coding protocol that enabled the large number of staff attorneys and document review analysts required to review the documents in this case to do so based on a defined set of parameters. These protocols evolved over time, as Class Counsel’s understanding of the documents grew.
- Designated lead authors: Class Counsel designated specific individuals to lead all efforts to communicate about particular issues in briefs, letters, and other communications with the Court, Judge Corley, the Special Master, the discovery mediators, and opposing counsel. This effort enabled substantial efficiencies based on subject-matter expertise and the parties’ positions gained throughout the litigation.
- Depositions: To increase the efficiency of preparing for and conducting depositions, the taking attorneys, and the staff attorneys and document reviewers supporting them, developed expertise in key subject-matter areas including Facebook policies, engineering and APIs, revenue and financial information, and partnerships.

III. BENEFITS OBTAINED FOR THE CLASS

A. An Unprecedented Monetary Recovery

198. Under the proposed Settlement, Facebook will pay \$725 million into a non-reversionary fund for class benefits, notice and administration costs, attorneys’ fees and expenses in the amount determined by the Court, and any service awards for the Settlement Class Representatives approved by the Court.

199. To our knowledge, the proposed Settlement of \$725 million is the largest amount recovered in any private U.S. data privacy or data breach class action. It is also the largest amount Facebook has ever paid to resolve a private class action.

B. Practices Suspended or Improved During the Litigation

200. As set forth in detail in our declaration in support of preliminary approval, Dkt. 1096-1, and in the Elia and Dunphy Declarations, Dkts. 1094 and 1095, Facebook has suspended practices at the heart of this litigation, including whitelisting third parties' access to data and friend sharing, implemented improved privacy controls, meaningfully enhanced monitoring of third party apps' data use, and significantly expanded disclosures and controls regarding third party targeted advertisements. Dkt. 1096-1 ¶¶ 114-150. The changes are critically important and a substantial benefit to Facebook users. While many factors prompted Facebook to make these changes, including FTC oversight and activity, it is nonetheless the case that this litigation was ongoing during the time that many of the changes were implemented.

C. Public Disclosure

201. In addition to the monetary relief provided by the Settlement, this litigation has benefitted Class Members in other ways. In addition to making the business-practice changes set forth above, this litigation has also resulted in some of the only—if not *the* only—independent insight into and public disclosure of the conduct that resulted in the Cambridge Analytica scandal. Through Co-Lead Counsel's efforts, Facebook was forced to produce a massive volume of documents and communications related to the ADI, including many meaningful and highly relevant discovery that no other plaintiff or governmental entity was able to obtain in related litigation. That discovery included internal Facebook communications and memoranda concerning individual apps and developers prepared by Facebook's consultants FTI Consulting and Stroz Friedberg. In addition, the litigation secured unprecedented discovery on the information that Facebook collects and maintains about its users, including the revelation of the Switchboard files.

202. Discovery from this action has enabled others to ensure Facebook is complying with its obligations to users worldwide. For example, the Irish Council for Civil Liberties, a non-profit human rights organization, told the European Commission that the “materials unsealed in th[is] case are revelatory.” In fact, the organization “examined thousands of pages of

documentation and depositions of Meta engineers” from this litigation and used them to urge that the Commission act to ensure Facebook’s compliance with the EU Digital Markets Act and General Data Protection Regulation.⁶

203. The public disclosure of a previously non-public document in this litigation has also led to a Congressional inquiry regarding developers in “high-risk jurisdictions,” including China, Russia, Iran, and North Korea. Specifically, Senate Select Committee on Intelligence Chairman Mark Warner and Vice Chairman Marco Rubio cited a document unsealed at Dkt. 1100-6 in a letter to Facebook noting that they were “startled to learn,” due to discovery in this case, “that Facebook had concluded that a much wider range of foreign-based developers, in addition to [Chinese]-based device-makers, also had access to” Facebook users’ data that could be used for espionage.⁷

IV. ANTICIPATED POST-APPROVAL WORK

204. Class Counsel’s obligation to serve the Class will not end when and if the Court finally approves the proposed Settlement. The Settlement must be administered, implemented, defended, and enforced until its benefits have been delivered to all eligible Class Members.

205. Based on their previous experience in class actions, Class Counsel anticipate expending approximately 10,000 additional hours on post-approval work. These hours are a deliberately conservative estimate of the time that Class Counsel will spend furthering and protecting the Class’s interests after final approval, should final approval be given.

⁶ Letter from Dr. Johnny Ryan to Margrethe Vestager, Executive Vice President, European Commission (Nov. 17, 2022), *available at* <https://www.iccl.ie/wp-content/uploads/2022/11/ICCL-to-Commission-17-November-2022.pdf>.

⁷ Letter from Senators Mark R. Warner & Marco Rubio to Mark Zuckerberg, CEO, Meta Platforms, Inc. (Feb. 6, 2023), *available at* <https://www.warner.senate.gov/public/index.cfm/2023/2/warner-rubio-question-meta-on-internal-documents-revealing-developers-in-china-russia-other-nations-had-access-to-user-data> [<https://perma.cc/E96F-2YV8>].

206. Based on Class Counsel's blended rate, \$604, an additional 10,000 hours would add \$6,040,000 to the lodestar.⁸ If included, the total lodestar would be \$97,274,005.50, yielding a multiplier of 1.86.

207. Class Counsel's post-approval work will include guiding Class Members through the settlement administration and allocation process, defending the Settlement against challenges to it, and working with the Settlement Administrator and Defendant to ensure the Settlement terms are carried out and to address any Class Members' concerns and communications.

208. The number of Class Members—and the number of claims filed—suggests that Class Counsel will be required to spend a significant amount of time supervising the administration of the settlement, straightening out any unanticipated issues that may arise, and communicating with Class Members.

209. Class Counsel's estimate of post-approval time reasonably assumes that if this Court approves the proposed Settlement and awards fees and expenses, its approval or award (or both) will be appealed. These appeals can require a great deal of work. That was the case, for example, when multiple objectors appealed the class certification, settlement approval, and fee award in *Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC, which Co-Lead Counsel Loeser's firm then successfully defended.

V. ADDITIONAL RATE INFORMATION

A. Bleichmar Fonti & Auld LLP

210. This section of the declaration is submitted by Lesley E. Weaver.

211. Bleichmar Fonti & Auld LLP has over 25 attorneys based out of offices in five cities. It has recovered more than \$17 billion for investors and consumers since the firm was formed in 2014. Its achievements have been profiled in publications including the Wall Street Journal and the New York Times.

⁸ The blended rate is calculated by dividing Class Counsel's total lodestar by their total hours.

212. Bleichmar Fonti & Auld attorneys have, in recent years, been selected for leadership roles in numerous high-profile cases, including groundbreaking data privacy cases in addition to this one, including *In re Google RTB Consumer Privacy Litigation*, No. 21-cv-02155 (N.D. Cal.), a nationwide class action alleging that's Google's digital ad auction system violates the company's contractual promise not to share or sell its account holders' personal information; consumer class actions including *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Products Liability*, No. 17-md-02777 (N.D. Cal.), multidistrict litigation concerning Fiat Chrysler Automobiles' alleged cheating on emissions testing of Dodge and Jeep trucks marketed as environmentally friendly; and numerous securities fraud cases, including *The Police Retirement System of St. Louis v. Granite Construction Inc.*, No. 19-cv-04744 (N.D. Cal.), *In re Teva Securities Litigation*, No. 17-cv-00558 (D. Conn.), and *Owen v. Elastos Foundation*, No. 19-cv-5462 (S.D.N.Y.).

213. Bleichmar Fonti & Auld's hourly rates are reviewed and adjusted annually. Based on our regular monitoring of prevailing market rates charged by attorneys of comparable skill, experience, and qualifications in the San Francisco Bay Area and other major metropolitan areas, we adjust our rates so that they are in line with those charged by counsel performing similar national class action work. Our rates are substantially lower than a number of firms and consistent with many others.

214. Fee awards supported by Bleichmar Fonti & Auld's then-current hourly rates and corresponding lodestar have been approved in numerous class action settlements: *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices & Products Liability*, No. 17-md-02777 (N.D. Cal.), ECF No. 561 (May 3, 2019); five separate settlements in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, & Products Liability Litig.*, MDL No. 2672 (N.D. Cal.)—Audi C02 Cases, MDL 2672, Docket No. 7244 (Mar. 2, 2020); 3.0-liter TDI Settlement, 2017 WL 3175924 (July 21, 2017); Bosch Settlement, 2017 WL 2178787 (May 17, 2017); 2.0-liter TDI Settlement, 2017 WL 1047834 (Mar. 17, 2017), and Porsche Gasoline Settlement, Docket No. 8088 (Nov. 9, 2022); *The Police Retirement System of St. Louis v. Granite Construction Inc.*,

No. 19-cv-04744 (N.D. Cal.), ECF No.303 (Mar. 17, 2022), *In re Teva Securities Litig.*, No. 17-cv-00558 (D. Conn.), ECF No. 963 (June 2, 2022), *In re Farm-Raised Salmon and Salmon Prods Litig.*, No. 1:19-cv-21551 (S.D. Fla.), ECF No. 543 (Oct. 12, 2022), and *In re Disposable Contact Lens Antitrust Litig.*, No. 3:15-MD-02626 (M.D. Fla.), ECF No. 1363 (Oct. 12, 2022).

215. The Bleichmar Fonti & Auld attorneys and legal professionals for whose work compensation is sought are set forth in Ex. A; see Ex. B (Bleichmar Fonti & Auld's firm resume and attorney biographies).

B. Keller Rohrback L.L.P.

216. This section of the declaration is submitted by Derek W. Loeser.

217. Keller Rohrback L.L.P. has over 60 attorneys in seven cities, and its Complex Litigation practice group has spent more than 35 years fighting corporate abuse and pursuing litigation on behalf of consumers, whistleblowers, government entities, small businesses, institutional investors, and employees in many of the major class action cases litigated in the United States. The firm prides itself on serving the public interest by taking on cases that make a tangible difference in our communities. To date, Keller Rohrback has recovered over \$75 billion for the individual, institutional and governmental plaintiffs the firm represents.

218. Keller Rohrback attorneys have, in recent years, been appointed to leadership roles in numerous high-profile cases, including *In re National Opiate Litigation*, MDL 2804, an important MDL seeking to hold opioid manufacturers and distributors accountable for devastating communities across the country; *In re Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation*, MDL 2913 (N.D. Cal.), another case with important public health implications relating to the marketing of Juul e-cigarette products; *Jabbari v. Wells Fargo*, No. 15-02159 (N.D. Cal.), the Wells Fargo unauthorized account consumer class action; *In re: EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices & Antitrust Litigation*, MDL No. 2785 (D. Kan.), the MDL concerning EpiPen price-gouging allegations; *In Re: Blackbaud, Inc., Customer Data Breach Litigation*, MDL 2972 (D.S.C.), the MDL regarding Blackbaud's

massive data breach; and *In re: T-Mobile Customer Data Security Breach Litigation*, MDL 3019 (W.D. Mo.), the MDL regarding T-Mobile's massive data breach.

219. Keller Rohrback's hourly rates are reviewed and adjusted annually. Based on our regular monitoring of prevailing market rates charged by attorneys of comparable skill, experience, and qualifications in Seattle and other major metropolitan areas, we adjust our rates so that they are in line with those charged by counsel performing similar national class action work. Our rates are substantially lower than a number of firms, but consistent with many others.

220. Fee awards supported by Keller Rohrback's then-current hourly rates and corresponding lodestar have been approved in numerous class action settlements. Recent examples include *In Re: Volkswagen Clean Diesel Marketing, Sales Practices, and Prod. Liability Litig.* No. 15-md-02672 (N.D. Cal), No. 15-md-02672-CRB, Dkt. 8088 (N.D. Cal. Nov. 9, 2022); *Rollins v. Dignity Health*, No. 13-cv-01450-JST, Dkt. 115 (N.D. Cal. July 15, 2022); *In re: EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation*, MDL No. 2785, Dkt. 2622 (D. Kan. July 11, 2022); *Southern Cal. Gas Leak Cases*, Coord. Proc. No. 4861 (Cal. Super. Ct. Apr. 29, 2022); *Fox et al. v. Iowa Health System*, Case No. 3:18-cv-00327, Dkt. 115 (W.D. Wis. Mar. 4, 2021); and *In re Chrysler-Dodge-Jeep "EcoDiesel" Marketing, Sales, Practices, and Products Liability Litig.*, MDL No. 2777, Dkt. 561 (N.D. Cal. May 3, 2019).

221. The Keller Rohrback attorneys and legal professionals for whose work compensation is sought are set forth in Ex. A; see Ex. C (Keller Rohrback L.L.P.'s firm resume & attorney biographies).

VI. CLASS COUNSEL'S EXPENSES

222. Class Counsel also respectfully requests \$4,101,608.09 in litigation expenses incurred to date in connection with the prosecution of this case. Counsel incurred these expenses with full knowledge that they might never be reimbursed, and that any potentiality of reimbursement was unlikely to occur for many years.

223. Below is a summary of these expenses, identified by the category of expense and the amount incurred in each category.

Category	Total
Federal Express / Local Courier	3,451.70
Postage Charges	3,301.76
Long Distance	584.07
In-House Photocopying	31,857.95
Outside Photocopying	19,957.04
Hotels	24,418.84
Meals	14,655.27
Air Travel	35,104.52
Deposition Costs	425,277.64
Lexis/Westlaw	103,711.25
Court Fees	15,792.00
Witness/Expert Fees	400,057.12
Investigation Fees / Service Fees	1,375,618.44
Transcripts	14,201.91
Ground Transportation	11,285.38
Other	1,623,333.20
TOTAL	\$ 4,101,608.09

224. The vast majority of expenses submitted for reimbursement (99.74%) were incurred by Class Counsel, are based on information maintained contemporarily in the ordinary course by Class Counsel and supported by invoices or other appropriate documentation. Class Counsel have reviewed these expenses, believe them to be an accurate record of the expenses

incurred by Class Counsel in this matter and have concluded that they are fair, reasonable and necessary for the efficient and effective prosecution of this litigation.

225. Co-Lead Counsel also attest that the expenses set forth here comply with Co-Lead Counsel's respective firm policies governing reimbursement as well as the Common Benefit Order, Dkts. 121, 433. To the extent any expenses did not comply with Co-Lead Counsel's respective firm policies or the Common Benefit Order, those expenses (or portion of expenses) were excluded from the expenses set forth above.

226. Those minimal expenses reflected here that were incurred by Bankruptcy and Participating Counsel (0.26%) were collected by Co-Lead Counsel who ensured that the expenses were for the common benefit of Plaintiffs, timely submitted, and reasonable as required by the Common Benefit Orders, Dkts. 121, 433. As explained further below, Co-Lead Counsel reimbursed bankruptcy counsel, Lowenstein Sandler, for its expenses.

227. Of the expenses set forth above, the vast majority, approximately 95%, consist of the following eight expenses:

- The largest amount, \$1,553,322.24 (or 37.8% of the total expenses) was expended on JAMS for services provided by the discovery mediators and settlement mediator, as well as by the Special Master. Class Counsel split these costs with Defendant. This expense is reflected in the "Other" category;
- The second largest amount, \$1,198,562.00 (or 29.2% of the total expenses) was expended on Relativity database licenses and services related to the hosting of over 2 million documents obtained and analyzed in this case. This expense is reflected in the "Investigation Fees/Service Fees" category;
- The third largest amount, \$425,277.64 (or 10.4% of the total expenses) was expended on Veritext for deposition related services including hosting remote depositions as well as stenographer services. This expense is reflected in the "Deposition Costs" category;

- The fourth largest amount, \$400,057.12 (or 9.75% of the total expenses) was expended on consultants who provided expert advice to Class Counsel on damages, data analysis and other key aspects of establishing support for Plaintiffs' claims. This expense is reflected in "Witness/Expert Fees" category;⁹
- The fifth largest amount, \$103,711.25 (or 2.5% of the total expenses) was expended on online legal research. This is reflected in the "Lexis/Westlaw" category;
- The sixth largest amount, \$84,100.20 (or 2.0% of the total expenses) was expended on Gryphon Strategies who provided research services in support of Plaintiffs' claims. This is reflected in the "Investigation Fees/Services Fees" category;
- The seventh largest amount, \$60,683.97 (or 1.48%) was expended on retention of bankruptcy counsel, Lowenstein Sandler, including a \$50,000 retainer and reimbursement of expenses related to the litigation, \$10,683.97—both are reflected in the "Other" category above. The \$10,683.97 is comprised of the following types of expenses: \$67.60 in postage; \$412.65 in long distance charges; \$200.00 in court fees; \$297.84 in in-house photocopying; \$93.00 in meals; \$5,529.38 in online legal research charges; \$3,527.14 in transcripts; \$531.36 in ground transportation; and \$25.00 in miscellaneous charges; and
- The eighth largest expense is comprised of the remaining expenditures in the Investigation Fees/Service Fees category which are comprised of: \$57,669.84 (or 1.4% of the total expenses) on case-related software, \$24,134.96 (or 0.59% of the total expenses) in potential client outreach costs, \$8,456.47 (or 0.21% of the total

⁹ Class Counsel also retained several experts who provided opinions with regard to Class Counsel's fee request, Professor William B. Rubenstein, Professor Brian T. Fitzpatrick and Jill Dessalines. These expenses have been paid by Co-Lead Counsel and are not being submitted for reimbursement.

expenses) toward process servers, \$1,449.38 (or 0.04% in total expenses) paid to discovery-related vendors, and \$1,245.59 (or 0.03% in total expenses) in other internet-based research expenses.

228. The remaining expenses collectively comprise approximately 4% of the total expenses incurred to date. These include:

- Air travel (\$35,104.52), Hotels (\$24,418.84), Meals (\$14,655.27) – these expenses were fairly limited due to the pandemic;
- Ground transportation such as taxis and other car ride services (\$11,285.38);
- In-house photocopying (\$31,857.95);
- Outside vendor photocopying (\$19,957.04);
- Court fees (\$15,792.00);
- Transcripts (\$14,201.91);
- Various miscellaneous charges in the “Other” category (\$8,326.99)—these expenses include out-of-office computer usage charges, various electronic storage devices to aid in the collection or production of documents, research materials and press releases;
- FedEx and other courier charges (\$3,451.70);
- Postage charges (\$3,301.76); and
- Long distance charges (\$584.07).

VII. OTHER FIRMS’ WORK ON THE CASE

229. In addition to Class Counsel, five other firms have billed time pursuant to the Court’s approval.

Firm	Hours	Lodestar
Lowenstein Sandler LLP	701.8	\$678,494.50
Cohen Milstein Sellers & Toll PLLC	20.25	\$12,142.50
Motley Rice LLC	13.80	\$9,510.00
Gustafson Gluek PLLC	7.00	\$6,392.50
Schonbrun Seplow Harris Hoffman & Zeldez, LLP	6.40	\$4,522.00

230. Co-Lead Counsel retained Lowenstein Sandler LLP to represent Plaintiffs in the Cambridge Analytica and SCL USA Inc. bankruptcy cases, *see* Dkt. 119, including litigating a motion seeking relief from the automatic stay and seeking and obtaining discovery concerning the debtors. *See* Ex. D (Declaration of Michael S. Etkin).

231. Cohen Milstein Sellers & Toll PLLC, Gustafson Glueck PLLC, Motley Rice LLC, and Schonbrun Seplow Harris Hoffman & Zeldez, LLP engaged in common benefit work pursuant to Dkts. 121 and 433. Because these firms each had clients among the class representatives in this action, the firms were instrumental in communicating with their clients and ensuring that they met their obligations under the discovery rules and as class representatives.

232. In total, these five firms have billed 749.25 hours and generated a lodestar of \$711,061.50 for work undertaken pursuant to the Court's orders cited above, a *de minimis* amount compared to Co-Lead Counsel. Specifically, these five firms' combined time is 0.5% of the total hours and 0.78% of the total lodestar.

VIII. OTHER EXHIBITS

233. Attached hereto as **Exhibit A** is a true and correct copy of the list of each biller whose time is counted as part of Class Counsel's hours and lodestar in this case, along with the biller's experience level and billing rate.

234. Attached hereto as **Exhibit B** is a true and correct copy of Bleichmar Fonti & Auld LLP's firm resume and attorney biographies.

235. Attached hereto as **Exhibit C** is a true and correct copy of Keller Rohrback L.L.P.'s firm resume and attorney biographies.

236. Attached hereto as **Exhibit D** is a true and correct copy of the Declaration of Michael S. Etkin in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, dated June 18, 2023.

237. Attached hereto as **Exhibit E** is a true and correct copy of the Declaration of Jill Dessalines in Support of Plaintiffs' Notice of Motion and Motion for Attorneys' Fees, Expenses, and Service Awards, dated June 19, 2023.

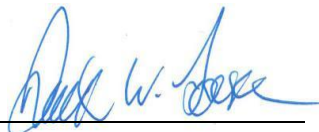
238. Attached hereto as **Exhibit F** is a true and correct copy of the Declaration of William B. Rubenstein in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, dated June 20, 2023.

239. Attached hereto as **Exhibit G** is a true and correct copy of the Declaration of Brian T. Fitzpatrick in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, dated June 20, 2023.

240. Attached hereto as **Exhibit H** is a true and correct copy of the Order Granting Facebook, Inc.'s Motion for Summary Judgment in *District of Columbia v. Facebook, Inc.*, Civ. No. 2018-CA-008715-B, (D.C. Super. Ct.), dated June 1, 2023.

We declare under penalty of perjury that the foregoing is true and correct and to the best of our knowledge.

Dated June 21, 2023

By: 
Derek W. Loeser

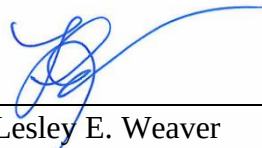
By: 
Lesley E. Weaver

Exhibit A

In Re: Facebook, Inc. Consumer Privacy User Profile Litigation
Class Counsel Timekeepers

Professional	Firm	Prof Type	Year of First Bar Admission	Years of Practice as of 2023	Billing Rate	Total Time Billed	Total Lodestar
Aldridge, Emily	BFA	Associate	2014	9	\$ 625.00	607.00	\$ 379,375.00
Bard, Robert J.	KR	Discovery Analyst	1982	41	\$ 480.00	576.70	\$ 276,816.00
Bertero, Anthony	BFA	Staff Associate	2012	11	\$ 450.00	3,344.00	\$ 1,504,800.00
Bleichmar, Javier	BFA	Partner	1999	24	\$ 1,150.00	148.40	\$ 170,660.00
Bradley, Vera L.	KR	Discovery Analyst	2017	6	\$ 475.00	513.10	\$ 243,722.50
Cibulka, Britt	BFA	Special Projects Associate	2002	20	\$ 470.00	74.30	\$ 34,921.00
Coleman, Timothy	BFA	Staff Associate	1992	30	\$ 470.00	797.30	\$ 374,731.00
Cullen, Mark	KR	Discovery Analyst	2014	9	\$ 475.00	246.00	\$ 116,850.00
Culpepper, DeAnna	KR	Paralegal	n/a	4	\$ 260.00	1,544.50	\$ 401,570.00
Curran, Whitney	KR	Discovery Analyst	2004	19	\$ 480.00	1,752.40	\$ 841,152.00
Daniel, Adele A.	KR	Attorney	2018	5	\$ 650.00	2,490.80	\$ 1,619,020.00
Dao, William	KR	Discovery Analyst	2016	7	\$ 480.00	1,525.20	\$ 732,096.00
Davis, Anne	BFA	Partner	2009	14	\$ 895.00	6,105.20	\$ 5,464,154.00
Dillman, Jason	KR	Paralegal	n/a	23	\$ 425.00	436.90	\$ 185,682.50
Erickson, Karyn	BFA	Staff Associate	2008	15	\$ 460.00	2,095.50	\$ 963,930.00
Evans, John	KR	Paralegal	n/a	14	\$ 330.00	1,844.90	\$ 608,817.00
Fay, Alexandra V.	KR	Discovery Analyst	2021	2	\$ 475.00	431.30	\$ 204,867.50
Fierro, Eric	KR	Partner	2009	14	\$ 875.00	968.00	\$ 847,000.00
Fonti, Joseph	BFA	Partner	2000	23	\$ 1,150.00	154.60	\$ 177,790.00
Garfield, Christopher	KR	Discovery Analyst	2005	18	\$ 480.00	4,495.70	\$ 2,157,936.00
Garland, David	KR	Discovery Analyst	2002	21	\$ 475.00	2,026.70	\$ 962,682.50
Geisheimer, Ann	KR	Discovery Analyst	2001	22	\$ 475.00	1,652.90	\$ 785,127.50
Gerend, Matthew M.	KR	Partner	2010	13	\$ 795.00	151.60	\$ 120,522.00
Gonzalez, Sandy	BFA	Associate	2020	3	\$ 665.00	61.80	\$ 41,097.00
Gotto, Alex	KR	Paralegal	n/a	8	\$ 330.00	262.20	\$ 86,526.00
Gotto, Maxwell	KR	Paralegal	n/a	5	\$ 305.00	294.20	\$ 89,731.00
Gould, Benjamin B.	KR	Partner	2007	16	\$ 895.00	2,503.60	\$ 2,240,722.00
Graver, Christopher T.	KR	Partner	1990	33	\$ 1,095.00	131.10	\$ 143,554.50
Guglielmelli, Joseph	BFA	Staff Associate	1982	40	\$ 495.00	668.80	\$ 331,056.00
Horowitz, Amy	BFA	Staff Associate	2004	18	\$ 395.00	165.80	\$ 65,491.00

In Re: Facebook, Inc. Consumer Privacy User Profile Litigation
Class Counsel Timekeepers

Professional	Firm	Prof Type	Year of First Bar Admission	Years of Practice as of 2023	Billing Rate	Total Time Billed	Total Lodestar
Jones, Kris C.	KR	Discovery Analyst	2007	16	\$ 475.00	987.90	\$ 469,252.50
Kilner, Paige	KR	Paralegal	n/a	11	\$ 350.00	52.70	\$ 18,445.00
King, Kevin	BFA	Staff Associate	2009	13	\$ 395.00	148.80	\$ 58,776.00
Kish, Charles M.	KR	Discovery Analyst	1997	26	\$ 480.00	222.90	\$ 106,992.00
Ko, David	KR	Partner	2006	17	\$ 895.00	2,672.20	\$ 2,391,619.00
Koo, Jooyoung	BFA	Projects Associate	2013	10	\$ 525.00	148.60	\$ 78,015.00
Korkhov, Tanya X.	KR	Attorney	2001	22	\$ 660.00	243.90	\$ 160,974.00
Korkhov, Tanya X.	KR	Attorney	2001	22	\$ 440.00	185.00	\$ 81,400.00
Kruse, Jordan	KR	Discovery Analyst	2011	12	\$ 475.00	555.70	\$ 263,957.50
LaDuca, Kimberly W.	KR	Attorney	2014	7	\$ 400.00	55.30	\$ 22,120.00
Lantz, Benjamin J.	KR	Partner	1995	28	\$ 475.00	711.00	\$ 337,725.00
Laufenberg, Cari Campen	KR	Partner	2003	20	\$ 1,095.00	5,170.50	\$ 5,661,697.50
Law, Julie	BFA	Paralegal	n/a	7	\$ 385.00	486.50	\$ 187,302.50
Lee, Zachary	BFA	Staff Associate	1997	25	\$ 425.00	4,476.10	\$ 1,902,342.50
Lenaburg, Harry J.	KR	Discovery Analyst	1979	44	\$ 475.00	1,274.20	\$ 605,245.00
Loeser, Derek W.	KR	Partner	1994	29	\$ 1,200.00	3,887.10	\$ 4,664,520.00
Long, Vanessa	KR	Discovery Analyst	2017	6	\$ 475.00	953.50	\$ 452,912.50
Mai, Luan	KR	Discovery Analyst	2013	10	\$ 415.00	277.30	\$ 115,079.50
Mankowski, Andrew	KR	Discovery Analyst	1993	30	\$ 475.00	3,871.00	\$ 1,838,725.00
Markham, Cynthia	BFA	Staff Associate	2013	12	\$ 435.00	957.60	\$ 416,556.00
Matteson, Eric N.	KR	Discovery Analyst	2012	11	\$ 480.00	538.70	\$ 258,576.00
McAdoo, Lori	KR	Paralegal	n/a	27	\$ 395.00	801.80	\$ 316,711.00
Melamed, Matthew	BFA	Partner	2008	15	\$ 895.00	3,681.90	\$ 3,295,300.50
Mensher, Ian J.	KR	Attorney	2007	16	\$ 595.00	174.90	\$ 104,065.50
Mittenthal, Robert	KR	Paralegal	n/a	41	\$ 425.00	1,015.20	\$ 431,460.00
Montgomery, Matthew	BFA	Of Counsel	1996	26	\$ 740.00	1,293.80	\$ 957,412.00
Moody, Janelle	BFA	Projects Associate	2003	20	\$ 525.00	5,850.30	\$ 3,071,407.50
Moran, Renee	KR	Paralegal	n/a	9	\$ 260.00	65.30	\$ 16,978.00
Morowitz, Rachel E.	KR	Attorney	2018	5	\$ 525.00	74.60	\$ 39,165.00

In Re: Facebook, Inc. Consumer Privacy User Profile Litigation
Class Counsel Timekeepers

Professional	Firm	Prof Type	Year of First Bar Admission	Years of Practice as of 2023	Billing Rate	Total Time Billed	Total Lodestar
Myhr, Elizabeth	KR	Paralegal	n/a	12	\$ 255.00	89.80	\$ 22,899.00
Onaga, Naomi	BFA	Staff Associate	2003	20	\$ 425.00	3,891.30	\$ 1,653,802.50
Ornelas, Angelica	BFA	Associate	2012	11	\$ 760.00	1,384.00	\$ 1,051,840.00
Pacheco, Tessa	KR	Discovery Analyst	2015	8	\$ 475.00	2,788.50	\$ 1,324,537.50
Parrilla, Cavin	KR	Paralegal	n/a	11	\$ 330.00	307.90	\$ 101,607.00
Patrikios, Peter	BFA	Projects Associate	2007	16	\$ 525.00	568.80	\$ 298,620.00
Perez, Gayle C.	KR	Discovery Analyst	2005	18	\$ 475.00	75.90	\$ 36,052.50
Riel, Edward	BFA	Staff Associate	2003	20	\$ 460.00	3,091.20	\$ 1,421,952.00
Robertson, Kelsey	BFA	Paralegal	n/a	7	\$ 350.00	474.20	\$ 165,970.00
Saas, Hildja	KR	Discovery Analyst	2006	17	\$ 440.00	1,776.10	\$ 781,484.00
Sakthivel, Ravi K.	KR	Discovery Analyst	2005	18	\$ 475.00	1,137.20	\$ 540,170.00
Samra, Joshua	BFA	Associate	2016	7	\$ 665.00	5,907.50	\$ 3,928,487.50
Sarko, Lynn Lincoln	KR	Partner	1981	42	\$ 1,320.00	438.40	\$ 578,688.00
Scown, S.L.	KR	Paralegal	n/a	3	\$ 295.00	72.30	\$ 21,328.50
Simnowitz, Sara	BFA	Special Counsel	2002	21	\$ 860.00	1,759.70	\$ 1,513,342.00
Smith, Tyrone	KR	Discovery Analyst	2008	15	\$ 480.00	2,466.00	\$ 1,183,680.00
Springer, Christopher L.	KR	Partner	2013	10	\$ 695.00	4,849.40	\$ 3,370,333.00
Strakosch, Margaret	BFA	Projects Associate	2018	15	\$ 525.00	3,614.70	\$ 1,897,717.50
Strosky, Beth M.	KR	Attorney	2001	22	\$ 475.00	219.90	\$ 104,452.50
Sullivan, Kasey	BFA	Projects Associate	2000	23	\$ 525.00	3,171.60	\$ 1,665,090.00
Sum, Sylvia	BFA	Staff Associate	2000	23	\$ 470.00	3,084.70	\$ 1,449,809.00
Tamondong, Cesar	BFA	Paralegal	n/a	19	\$ 350.00	201.00	\$ 70,350.00
Tate, Ken L.	KR	Discovery Analyst	2014	9	\$ 475.00	208.00	\$ 98,800.00
Teller, Ralph	KR	Discovery Analyst	1980	43	\$ 475.00	3,130.70	\$ 1,487,082.50
Terlap, Michael F.	KR	Paralegal	n/a	1	\$ 320.00	129.00	\$ 41,280.00
Tiezazu, Y. Tizzy	KR	Paralegal	n/a	6	\$ 305.00	491.20	\$ 149,816.00
Trimble, Lynne	KR	Discovery Analyst	1995	28	\$ 480.00	4,885.40	\$ 2,344,992.00
Tsurudome, Glen	BFA	Staff Associate	2005	18	\$ 495.00	2,764.50	\$ 1,368,427.50
Tuato'o, Jennifer	KR	Paralegal	n/a	24	\$ 425.00	4,204.70	\$ 1,786,997.50

In Re: Facebook, Inc. Consumer Privacy User Profile Litigation
Class Counsel Timekeepers

Professional	Firm	Prof Type	Year of First Bar Admission	Years of Practice as of 2023	Billing Rate	Total Time Billed	Total Lodestar
Tunkkari, Katja	KR	Paralegal	n/a	4	\$ 330.00	2,102.10	\$ 693,693.00
Ulmer, Daniel	BFA	Projects Associate	2011	12	\$ 395.00	1,360.40	\$ 537,358.00
Wax, David	BFA	Staff Associate	2006	17	\$ 460.00	85.50	\$ 39,330.00
Weaver, Lesley	BFA	Partner	1997	26	\$ 1,150.00	4,814.40	\$ 5,536,560.00
Weiler, Matthew	BFA	Associate	2004	19	\$ 655.00	835.90	\$ 547,514.50
Williams, Franklyn	BFA	Senior Projects Associate	2007	16	\$ 545.00	656.80	\$ 357,956.00
Willott, Brenna L.	KR	Discovery Analyst	2012	11	\$ 480.00	445.90	\$ 214,032.00
Wilson, S. Carolyn	KR	Discovery Analyst	2014	9	\$ 440.00	130.90	\$ 57,596.00
Wright, Emma M.	KR	Attorney	2020	3	\$ 595.00	2,659.10	\$ 1,582,164.50
						149,179.40	\$ 90,522,944.00

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EXHIBIT B



FIRM RESUME

OVERVIEW

Bleichmar Fonti & Auld LLP (“BFA” or the “Firm”) is a leading class action law firm founded in 2014 with offices in Oakland, California; New York City, New York; Toronto, Ontario; Westchester, New York; and Wilmington, Delaware. The Firm focuses on the prosecution of consumer protection, antitrust, securities, and corporate governance actions on behalf of consumers, governmental entities, and institutional investors.

Our Consumer Protection Group is led by a diverse group of attorneys who have deep experience across a gamut of practice areas. We enforce laws meant to protect the environment as well as the health, privacy, and financial wellbeing of consumers and our communities. The group has recovered billions of dollars on behalf of private companies, municipalities, and individual consumers. Lesley E. Weaver, head of the group, has litigated some of the most significant consumer actions of recent years, including: *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litig.*, which resulted in settlements totaling greater than \$17 billion, the largest automotive settlement in history; *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Products Liability Litig.*, which resulted in a settlement of \$307.5 million; and the instant action, *In re Facebook, Inc. Consumer Privacy User Profile Litig.* Lesley is also co-lead counsel or executive committee in other significant privacy cases, including *In re Google RTB Consumer Privacy Litigation* and *Calhoun, et al. v. Google LLC*.

BFA’s Antitrust Practice Group enforces laws meant to protect markets from anticompetitive behavior on behalf of private companies, municipalities, and individual consumers in landmark cases. We work with whistleblowers, experts, public enforcers, nonprofit organizations, and private actors to redress serious problems and identify solutions to them. This group plays a key role in significant antitrust actions and has achieved significant recoveries on behalf of plaintiffs.

In addition, BFA’s founding partners have worked together for nearly two decades, recovering billions of dollars for investors. In the last ten years, BFA’s partners have represented lead plaintiffs in dozens of securities class actions. Our partners are supported by a team recruited for their excellence and dedication to our practice, as they carefully built a talented team who have collaborated for years, ensuring a wealth of experience to draw on for our clients.

The lawyers leading these cases are nationally recognized as leading litigators in the field of privacy, consumer, and securities litigation, and our achievements have been profiled in a variety of national and international media, including *The Wall Street Journal*, *The New York Times*, *Law 360*, *Chambers*, the *National Law Journal’s* Plaintiffs’ Hot List, and *The Legal 500*. We are also frequently asked to comment on breaking developments in antitrust, consumer, financial fraud, securities, and other investment-related issues.

CONSUMER LITIGATION HIGHLIGHTS

The Consumer Protection Group plays an important role in significant actions, including those described below.

In re Facebook, Inc. Consumer Privacy User Profile Litigation

- MDL No. 2843
- Northern District of California, No. 3:18-md-02843

Case Status:
Pending

Background: This high-profile case arising out of the Cambridge Analytica scandal, seeks redress for Facebook users in the U.S. whose private content was unlawfully shared with numerous third parties. The detailed consolidated complaint alleges that Facebook violated consumer fraud and privacy laws by disclosing Facebook users' private information, without their knowledge or consent, to third parties, and that Facebook failed to take adequate steps to monitor third parties' access to, and use of, that information in violation of Facebook's terms of service.

BFA's Role: Ms. Weaver serves as Co-Lead Counsel for Plaintiffs.

Status: On March 29, 2023, Judge Vince Chhabria issued an Order Granting Preliminary Approval of the proposed \$725 million class action settlement.

In re Google RTB Consumer Privacy Litigation

- Northern District of California, No. 4:21-cv-02155

Case Status:
Pending

Background: The case is the first in the country to demand transparency about what information Google reveals about its users when it auctions ad placements to Google users through Google's "Real-Time Bidding" system.

BFA's Role: Ms. Weaver is a member of the Plaintiffs' Executive Committee.

Status: On June 13, 2022, Judge Gonzalez Rogers denied in large part Google's motion to dismiss, upholding all but one of Plaintiffs' claims. Discovery in this matter is ongoing.

Calhoun, et al. v. Google LLC

- Northern District of California, No. 4:20-cv-05146

Case Status:
Pending

Background: This nationwide data privacy class action is brought on behalf of Google Chrome users alleging that Google violated its express promise not to take users' personal data when using the Chrome browser outside of synched mode.

BFA's Role: BFA is acting as co-lead counsel representing the class of Chrome users in this litigation.

Status: In March 2021, Judge Koh issued a landmark ruling holding that data is property in upholding Plaintiffs' claims at the pleading stage. In December 2022, Judge Gonzalez Rogers granted Google's motion for summary judgement. Plaintiffs have filed a notice of appeal.

In re: ZF-TRW Airbag Control Units Products Liability Litigation

- MDL No. 2905
- Central District of California, No. 2:19-MD-02905

Case Status:
Pending

Background: The class action complaint alleges the ZF-TRW airbag and seat belt control units in over 15 million cars sold are defective and may prevent airbags from inflating in the event of crash. This defect has been linked to at least eight deaths and several serious injuries.

BFA's Role: Judge John A. Kronstadt of the Central District of California appointed Lesley Weaver to the Plaintiffs' Steering Committee for this multidistrict litigation.

Status: The parties have briefed motions to dismiss, to stay discovery, and to compel arbitration.

Ji, et al. v. Naver Corp., et al.

- Northern District of California, No. 4:21-cv-05143

Case Status:
Pending

Background: The class action complaint alleges Defendants surreptitiously collected personal information of users of the mobile messenger app, LINE Messenger, and photo altering app, B612.

BFA's Role: BFA is acting as co-lead counsel representing the class of users of the LINE Messenger and B612 apps.

Status: Plaintiffs filed their First Amended Class Action Complaint on October 28, 2022. The Defendants' motions to dismiss are pending.

White, et al. v. Samsung Electronics America, Inc.

- District of New Jersey, No. 2:17-cv-01775

Case Status:
Pending

Background: Plaintiffs allege that Samsung Electronics America, Inc. violated the federal Wiretap Act by surreptitiously collecting the personal and private information of Smart TV consumers without obtaining informed consent. The information Samsung collects through its Smart TVs includes what consumers watch, listen to, and their private conversations.

BFA's Role: BFA represents the putative class as interim class counsel.

Status: The case is proceeding through discovery. On August 21, 2019, Judge Arleo denied, in part, Defendants' motion to dismiss, and upheld Plaintiffs' claim for violation of the Wiretap Act.

On December 29, 2021, Judge Arleo denied Samsung's motion to compel arbitration. Samsung appealed and on March 7, 2023, the Third Circuit Court of Appeals affirmed the District Court's order holding that Samsung waived its right to arbitrate.

Nazos, et al. v. Toyota Motor Sales, U.S.A., Inc.

- Central District of California, No. 2:22-cv-02214

Case Status:
Pending

Background: This case alleges that the 2007 to 2014 Toyota FJ Cruisers lack adequate rust protection, causing the frames of the vehicles to excessively and prematurely rust and corrode. Plaintiffs bring claims for fraudulent concealment and breach of implied warranty under the respective laws of the named plaintiffs' states.

BFA's Role: BFA represents the putative classes as interim class counsel.

Status: On March 3, 2023, Judge Percy Anderson denied, in part, Toyota Motor Sales U.S.A.'s motion to dismiss. Discovery in this matter is ongoing.

In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation

- MDL No. 2672
- Northern District of California, No. 3:15-md-02672

Total Settlements:
\$17 Billion

Background: This landmark case resolved claims against Volkswagen, Audi and Porsche in connection with the widely-reported news that the companies had installed emission systems created to avoid regulator detection and defraud customers who believed they were buying Volkswagen and Audi vehicles with "clean diesel" engines. VW admitted that it installed these "defeat devices," which eliminated the emissions reduction during normal driving, and only allowed for reduced fuel emissions when the automobiles were being tested.

BFA's Role: Judge Charles R. Breyer appointed Ms. Weaver to the Plaintiffs' Steering Committee. Ms. Weaver's leadership position in the case included spearheading the investigation that ultimately uncovered German auto supplier Robert Bosch GmbH's significant role in multiple schemes to place software purposefully designed to evade emissions laws in vehicles. She also led the investigation into additional claims relating to defeat devices in certain gas vehicles, resulting in an additional \$96.5 million settlement for the Class.

Status: Lead Counsel and the Plaintiffs' Steering Committee have achieved settlements for Plaintiffs worth more than \$17 billion, the largest automotive class action recovery in history.

In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Products Liability Litigation

- MDL No. 2777
- Northern District of California, No. 3:17-md-02777

Total Settlements:
\$307.5 Million

Background: This case resolved claims against Fiat Chrysler and Bosch over allegations that they deliberately cheated on emission testing of 2014-2016 model Dodge and Jeep trucks marketed and sold as environmentally friendly "eco-diesel" vehicles.

BFA's Role: Judge Edward Chen of the U.S. District Court for the Northern District of California appointed Ms. Weaver as one of nine members of the Plaintiffs' Steering Committee. Ms. Weaver played a key role in litigating the action, including taking depositions and coordinating with experts.

Result: The case has settled for \$307 million in cash in addition to extended warranties worth more than \$120 million.

U.S. ANTITRUST LITIGATION HIGHLIGHTS

Lesley Weaver, Anne Davis, and the BFA team play key roles in many significant antitrust actions, including in those described below.

In re Local TV Advertising Antitrust Litigation

- MDL No. 2867
- Northern District of Illinois, No. 1:18-cv-0678

Case Status:
Pending

Background: Plaintiffs allege a price fixing cartel facilitated by an anticompetitive information exchange between and among certain major television station owners and operators to artificially inflate the prices of broadcast television spot advertisements.

BFA's Role: BFA acts as counsel for Plaintiff One Source Heating & Cooling, LLC and is an integral member of the litigation team.

Status: On November 6, 2020, Judge Virginia Kendall of the Eastern District of Illinois denied Defendants' motion to dismiss. Discovery in this matter is ongoing.

In re Packaged Seafood Products Antitrust Litigation

- MDL No. 2670
- Southern District of California, No. 3:15-md-02670

Case Status:
Pending

Background: Plaintiffs allege Defendants entered into a conspiracy involving packaged seafood products in violation of the Sherman Act and state antitrust law.

BFA's Role: BFA is part of a critical discovery effort against a key Defendant.

Status: On July 30, 2019, Judge Janis L. Sammartino granted class certification to a class of direct purchasers. In January 2021, Direct Purchaser Plaintiffs and Defendants Tri-Union Seafoods d/b/a Chicken of the Sea International and Thai Union Group PCL announced a settlement agreement in principle, and a motion for final approval is pending. The remaining parties have briefed motions for summary judgment and are awaiting a decision.

In re Domestic Airlines Travel Antitrust Litigation

- District of Columbia, No. 1:15-mc-01404

Case Status:
\$60 million in settlements;
Remaining litigation pending

Background: Plaintiffs allege a conspiracy by the four largest commercial air passenger carriers in the United States—American Airlines, Inc., Delta Airlines, Inc., Southwest Airlines Co., and United Airlines, Inc.—to fix prices for domestic air passenger transportation services in violation of the Sherman Act by colluding to limit capacity on their respective airlines.

BFA's Role: BFA is a key part of Plaintiffs' nonparty discovery committee and has led meet and confer negotiations with dozens of nonparties, resulting in the production of some of Plaintiffs' best evidence.

Status: Plaintiffs settled for \$15 million with Defendant Southwest Airlines and \$45 million with Defendant American Airlines. The parties have briefed summary judgment motions brought by the remaining Defendants.

In re Mexican Government Bonds Antitrust

- Southern District of New York, No. 1:18-cv-02830

Case Status:
\$21 million in
settlements;
Remaining litigation
pending

Background: Plaintiffs allege that Defendant broker-dealers have fixed auctions for securities issued by the Mexican government and manipulated the bid-ask spread in transactions to U.S.-based investors, causing U.S.-based investors to pay artificially inflated prices for their Mexican government bonds.

BFA's Role: BFA represents Southeastern Pennsylvania Transit Authority and is assisting the team litigating the case in the Southern District of New York.

Status: Plaintiffs negotiated ice-breaker settlements with JPMorgan for \$15 million and Barclays PLC for \$5.7 million, both of which are cooperating in litigating against the remaining Defendants, including by providing incriminating documents that have bolstered Plaintiffs' highly detailed complaint. The action against the remaining Defendants is on appeal.

In re Disposable Contact Lens Antitrust Litigation

- MDL No. 2626
- Middle District of Florida, No. 3:15-md-02626

Total Settlements:
\$118 million

Background: This case resolved claims against four leading contact lens manufacturers and the largest nationwide distributor of contact lenses. Plaintiffs alleged that Defendants unilaterally imposed minimum retail prices for contact lenses, in violation of state and federal antitrust laws.

BFA's Role: BFA led discovery efforts against the largest manufacturer-Defendant, Johnson & Johnson.

Status: Plaintiffs settled with Defendant CooperVision, Inc. for \$3 million, with Defendant Bausch & Lomb for \$10 million, with Defendant ABB Optical Group LLC for \$30.2 million, with Defendant Alcon Vision, LLC for \$20 million, and with Defendant Johnson & Johnson Vision Care, Inc. for \$55 million.

In re Farm-Raised Salmon and Salmon Products Litigation

- Southern District of Florida, No. 19-CV-21551

Total Settlements:
\$85 Million

Background: Plaintiffs alleged that Defendants fixed prices of farm-raised Atlantic salmon sold in the United States.

Role: BFA worked with the executive team in facilitating jurisdictional discovery.

Status: Plaintiffs achieved a \$85 million settlement.

SECURITIES LITIGATION HIGHLIGHTS

BFA partners have represented lead plaintiffs in dozens of securities class actions and individual actions, including the cases featured below.

The Police Retirement System of St. Louis v. Granite Construction Incorporated, et al.

- Northern District of California, No. 19-cv-04744
- Client: The Police Retirement System of St. Louis

Total Settlement:
\$129 Million

Background: Plaintiffs alleged that Granite and its senior management fraudulently misrepresented the impact of several of the company's largest joint venture construction projects on Granite's business by understating the significant cost overruns and schedule delays the Company was experiencing and their impact on Granite's financial statements.

BFA's Role: BFA is sole Lead Counsel for Court-appointed Lead Plaintiff the Police Retirement System of St. Louis.

Status: BFA achieved a \$129 million settlement for the class in 2022. When approving the settlement, Judge William Alsup observed that it "is almost entirely the result of the hard work of class counsel."

Ontario Teachers' Pension Plan Board, et al v. Teva Pharmaceutical Industries Ltd. et al.

- District of Connecticut, No. 17-cv-00558
- Clients: Ontario Teachers' Pension Plan Board and Anchorage Police and Fire Retirement System

Total Settlement:
\$420 Million

Background: Plaintiffs alleged that the company and its senior management made materially false and misleading statements that concealed that Teva had engaged in a multi-year scheme to exponentially increase generic drug prices across its portfolio, in some instances by more than 1000%. Often, these increases were in lock-step with so-called competitors.

BFA's Role: BFA was sole Lead Counsel for Court-appointed Lead Plaintiff Ontario Teachers' and Named Plaintiff Anchorage Police and Fire Retirement System.

Status: BFA secured a \$420 million settlement for the class. In approving the settlement, Judge Stefan R. Underhill described the case as "the most complex securities case I've ever had" and praised BFA's work as Lead Counsel, stating, "[t]he quality of the representation was excellent in the face of very quality defense . . . This was not a case that every law firm could handle, and I think it was done exceptionally well."

In re Citigroup Securities Litigation

- Southern District of New York, No. 20-CV-9132
- Client: Public Sector Pension Investment Board ("PSP")

Case Status:
Pending

Background: Plaintiffs allege that Citigroup and its senior management misrepresented and concealed that the company's internal controls and risk management systems suffered from serious and longstanding deficiencies that exposed the Company to massive regulatory penalties that will cost significantly more than \$1 billion to remediate.

BFA's Role: BFA is sole Lead Counsel for Court-appointed Lead Plaintiff PSP.

Status: The Court appointed PSP as Lead Plaintiff and approved its choice of BFA as Lead Counsel on February 4, 2021. BFA filed an Amended Complaint on April 20, 2021. The Court dismissed the complaint on March 24, 2023. BFA's motion to amend the complaint is due May 24, 2023.

Bilinsky v. Gatos Silver, Inc.

- District of Colorado, No. 22-CV-00453
- Client: Individual Investors

Case Status:
Pending

Background: Plaintiffs allege that Gatos and its senior management made materially false and misleading statements and concealed the fact that a key technical report for its Cerro Los Gatos silver mine located in Chihuahua, Mexico contained significant errors and overestimated the mineral reserves in the mine by as much as 50%.

BFA's Role: BFA was appointed sole Lead Counsel for the putative class on June 3, 2022.

Status: BFA filed an amended class action complaint on August 15, 2022. Defendants' motion to dismiss is pending.

In re Talis Biomedical Securities Litigation

- Northern District of California, No. 22-CV-00105
- Client: Individual Investors

Case Status:
Pending

Background: Plaintiffs allege that the company, its senior officers and directors, as well as the underwriters for Talis's initial public offering violated the Securities Act of 1933 by misrepresenting the effectiveness, regulatory status, and ability to manufacture a COVID-19 test.

BFA's Role: BFA was appointed co-Lead Counsel for the putative class on June 3, 2022.

Status: BFA filed a second amended class action complaint on January 13, 2023. On April 28, 2023, the Court denied defendants' motion to dismiss. Discovery is ongoing.

Owen v. Elastos Foundation

- Southern District of New York, No. 19-CV-05462
- Client: Individual Investors

Case Status:
Pending

Background: Lead Plaintiffs allege that the Defendants offered and sold unregistered securities in the form of ELA Tokens, which the Defendants marketed as the “intrinsic token on the Elastos blockchain” that could “be used for trading, investing in digital assets, paying for blockchain processing fees and so on.” Defendants offered or sold the ELA Tokens in an initial coin offering (“ICO”) in January 2018, in the secondary market, and in a “Lock-In” program, whereby Elastos offered investors additional ELA Tokens in exchange for the investors agreeing not to sell their tokens for a predetermined length of time. Lead Plaintiffs allege violations of Sections 5, 12(a)(1), and 15 of the Securities Act of 1933, and the case raises complex and novel issues concerning the application of the Securities laws to digital assets.

BFA’s Role: BFA was appointed Lead Counsel for the putative class on May 26, 2020.

Status: On December 9, 2021, the Court denied the Defendants’ motion to dismiss the Lead Plaintiffs’ Amended Complaint. In adopting BFA’s arguments, Judge Woods held that it had personal jurisdiction over the Defendants and that the Amended Complaint properly alleged timely violations of the Securities Act related to the sale, offer, and/or delivery of ELA Tokens in the initial coin offering (“ICO”), on the secondary market, and in connection with Elastos’ lock-in program. The case is now in discovery.

Lozada v. TaskUs, Inc.

- Southern District of New York, No. 22-CV-01479
- Client: Individual Investors

Case Status:
Pending

Background: Plaintiffs allege that TaskUs and certain of its senior officers made materially false and misleading statements and concealed that the company was experiencing business challenges, and overstated the size of TaskUs’s workforce and understated employee attrition rates.

BFA’s Role: BFA filed the class action complaint against TaskUs on February 23, 2022. The Court appointed BFA as sole Lead Counsel on October 20, 2022.

Status: BFA filed an Amended Complaint on December 16, 2022.

MTA v. Allianz Global Investors U.S., L.L.C.

- Southern District of New York, No. 20-CV-7842
- Client: Metropolitan Transportation Authority

Case Status:
Settled

Background: Plaintiff the Metropolitan Transportation Authority (“MTA”) alleged that it lost over 90% of its investment in Allianz Global Investor’s Structured Alpha funds due to Allianz’s negligent and imprudent trading strategies and its failure to implement adequate risk management procedures.

BFA’s Role: BFA represented the MTA.

Status: BFA achieved a confidential settlement in 2022.

In re MF Global Holdings Ltd. Securities Litigation

- Southern District of New York, No. 11-cv-07866
- Client: Alberta Investment Management Corp. (“AIMCo”)

**Total Settlements:
\$234.3 Million**

Background: This litigation arose from MF Global’s dramatic bankruptcy in October 2011. Plaintiffs alleged that Defendants misrepresented MF Global’s risk controls, liquidity position, and exposure to European sovereign debt, and failed to properly account for its deferred tax assets.

BFA’s Role: BFA represented Court-appointed Co-Lead Counsel for the putative class.

Status: Lead Counsel achieved five partial settlements totaling just over \$234 million on behalf of investors: (1) a \$74 million settlement with Goldman Sachs and certain other underwriters of the company’s securities; (2) a \$64.5 million settlement with former officers and directors, including MF Global’s former CEO Jon Corzine; (3) a \$65 million settlement with auditor PricewaterhouseCoopers; (4) a \$29.825 million settlement with Jeffries and other underwriters of the final bond offering issued during the Class Period; and (5) a separate \$932,828 settlement with another underwriter Defendant associated with that last offering.

In re Genworth Financial Inc. Securities Litigation

- Eastern District of Virginia, No. 14-cv-00682
- Client: Alberta Investment Management Corp. (“AIMCo”)

**Total Settlement:
\$219 Million**

Background: Plaintiffs alleged that Defendants misrepresented the profitability of the company’s core business and reported false financial results by grossly understating long-term care insurance reserves.

BFA’s Role: The Court appointed BFA to serve as Co-Lead Counsel for the putative class.

Status: Lead Counsel achieved a \$219 million settlement for the class, the largest securities class action recovery achieved in the Eastern District of Virginia.

In re Weatherford International Securities Litigation

- Southern District of New York, No. 12-cv-02121
- Client: Anchorage Police and Fire Retirement System

**Total Settlement:
\$120 Million**

Background: Plaintiffs alleged that Weatherford, one of the world’s largest oil and gas servicing companies, issued false financial statements that misled investors about its tax structure and internal controls.

BFA's Role: BFA represented Court-appointed Co-Lead Plaintiff Anchorage Police and Fire Retirement System, and BFA partner Javier Bleichmar represented Anchorage continuously since the case was filed in March 2012.

Status: Plaintiffs achieved a \$120 million settlement.

In re Computer Sciences Corp. Securities Litigation

- Eastern District of Virginia, No. 11-cv-00610
- Client: Ontario Teachers' Pension Plan Board

Total Settlement:
\$97.5 Million

Background: Plaintiffs alleged that the company and two of its executive officers misrepresented a multi-billion-dollar contract with the United Kingdom's National Health Service, and that the company's internal controls were adequate.

BFA Role: BFA partners Javier Bleichmar, Joseph A. Fonti, and Dominic Auld represented Court-appointed Lead Plaintiff Ontario Teachers' at all stages of this case.

Status: Plaintiffs achieved a \$97.5 million settlement.

In re Celestica Inc. Securities Litigation

- Southern District of New York, No. 07-cv-00312
- Client: New Orleans Employees' Retirement System

Total Settlement:
\$30 Million

Background: Plaintiffs alleged that Defendants made false and misleading statements relating to a significant corporate restructuring plan, earnings, profitability, and financial outlook.

BFA's Role: BFA partners Joseph Fonti and Erin Woods represented Lead Plaintiffs in this litigation.

Status: Plaintiffs achieved a \$30 million settlement.

DERIVATIVE ACTION HIGHLIGHT

The BFA team has also represented lead plaintiffs in derivative actions, including the case featured below.

The Police and Fire Retirement System of the City of Detroit v. Elon Musk, et al.

- Delaware Chancery Court, C.A. No. 2020-0477
- Client: Police and Fire Retirement System of the City of Detroit

Case Status:
Pending

Background: Plaintiffs allege that certain current and former members of Tesla's Board of Directors awarded themselves unfair and excessive compensation.

BFA's Role: BFA is Counsel for Plaintiff Police and Fire Retirement System of the City of Detroit.

Status: BFA is co-counsel representing the Police and Fire Retirement System of the City of Detroit ("Plaintiff") in a derivative suit brought on behalf of Tesla, Inc. against members of Tesla's Board of Directors (the "Director Defendants"). In its complaint, Plaintiff alleges that, from 2017 to 2020, the Director Defendants awarded themselves excessive compensation each year. Specifically, they awarded themselves tens of thousands of stock options, with grant date fair values regularly exceeding more than \$2 million per director per year. This compensation was significantly above the compensation awarded to directors at Tesla's peer companies. Through these awards, Plaintiff alleges that the Director Defendants breached their fiduciary duties and unjustly enriched themselves at Tesla's expense.

On September 17, 2020, the Director Defendants filed an answer to the complaint. The parties have been engaged in discovery: Plaintiff has completed 22 fact witness depositions, the parties have exchanged opening expert reports, and expert discovery is scheduled to conclude by the end of July 2023. The parties will then prepare for a five-day trial, which is scheduled for November 27 to December 1, 2023.

TEAM PROFILES

LESLEY E. WEAVER
Partner

Oakland

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Lesley Weaver is the Partner in Charge of BFA's California office, and the practice head of the Antitrust and Consumer teams. For nearly thirty years, Lesley has litigated high profile cases that protect the public interest, consumers, and public entities and has been appointed to leadership positions in some of the largest class actions in the country.

As Co-Lead Counsel for plaintiffs in *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, Lesley and the BFA team resolved an extremely complex and hard fought litigation, resulting in the largest privacy class action settlement in history at \$725 million. The case arose from revelations arising out of the Cambridge Analytica scandal, which revealed third parties' use of Facebook user profile data. After five years of intense litigation, resulting in numerous notable orders relating to both privacy and discovery matters, the matter resolved, and has been preliminarily approved. Lesley also served as liaison counsel in *In re Twitter Secs. Litigation*, which settled for \$805 million in 2022.

Lesley served on the Plaintiffs' Steering Committee "legal dream team" in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litig.*, MDL No. 2672 CRB (JSC). The PSC in the Volkswagen litigation recovered roughly \$12 billion for class members and nearly \$5 billion for the environment, the largest automotive class action recovery ever. In June 2017, Lesley was appointed to the Plaintiffs' Steering Committee bringing claims against Fiat Chrysler and Bosch in *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Products Liability*, MDL No. 17-MD-02777-EMC ("Fiat Chrysler"). Like Volkswagen, that lawsuit provided significant financial relief to consumers arising out of the emissions defeat devices, resulting in consumer payments of roughly \$400 million and another \$350 million for the environment. In 2015, Lesley won a complete jury verdict in one of the few privacy cases to go to trial in the country, which awarded 100% of economic damages and \$15 million in punitive damages.

Lesley has received numerous awards throughout her career, including being honored as National Law Journal's Elite Women of the Plaintiffs' Bar (2023), National Trial Lawyers Top 100 (2023), Lawdragon 500 Leading Lawyers in America (2023), California Lawyer of the Year (2018), the National Law Journal's Plaintiffs' Trailblazer (2018), and a SuperLawyer since 2016.

Currently, Lesley is a member of the Plaintiffs' Executive Committee in the *In re Google RTB Consumer Privacy Litigation*, a nationwide class action challenging Google's practice of sharing and selling users' personal information through Google's digital ad auction system, Google Real-Time Bidding (RTB); and a member of the Plaintiffs' Steering committee in *In re ZF-TRW Airbag Control Units Products Liability*

Litigation, a class case alleging that airbag and seat belt control units in over 15 million cars are defective and may prevent airbags from inflating in the event of crash.

Lesley also has extensive experience in litigating antitrust actions and representing sophisticated institutional investors in landmark securities actions. Some of those cases include *In re Local TV Advertising Antitrust Litigation*, *In re Domestic Airlines Travel Antitrust Litigation*, *In re Marsh & McLennan Cos., Inc. Securities Litigation* (\$400 million settlement); *In re Cavanaugh Securities Litigation* (including an appeal to the Ninth Circuit concerning the method of selecting lead plaintiff and lead counsel after the enactment of the Private Securities Litigation Reform Act (“PSLRA”)); *In re Cardinal Health Inc. Securities Litigation* (\$600 million settlement); and *In re Cisco Systems, Inc. Securities Litigation* (\$99 million settlement).

Lesley is committed to public service through volunteer efforts. She is currently a Lawyer Representative for the Northern District of California; Chair of BASF’s cybersecurity and privacy committee. She is active in Sedona Working Groups 1, 6 and 11. She has been a repeat presenter at the Bolch Institute’s MDL Certificate training program; PLI Accounting for Lawyers; and is one of the original drafters of the Duke MDL Diversity Guidelines. She is a past Co-Chair of Bay Area Lawyers for Individual Freedom; a past Co-Chair of the San Francisco LGBT Community Center; past National Chair of the National Center for Lesbian Rights; past Vice-President and Director of the Board of the Frameline Film Festival; and a former Director of Equality California and the International Gay and Lesbian Human Rights Commission.

Lesley studied at the University of Bonn (Germany) and Harvard College (A.B.), and received a J.D. from the University of Virginia Law School (1997). She is admitted to practice in the federal district courts of California, the Eastern District of Michigan, and the Ninth Circuit, and speaks German, Danish and some French.

Lesley is admitted to practice in California (1997), the U.S. Court of Appeals for the Ninth Circuit (1998), and the U.S. District Courts for the Northern District (1997) and the Eastern, Central, and Southern Districts of California (1998).

JAVIER BLEICHMAR <i>Partner</i>	New York	• Email: jbleichmar@bfalaw.com • Tel: +1 212 789 1341 • www.bfalaw.com/professionals/javier-bleichmar

Javier Bleichmar leads BFA’s U.S. Case Evaluation and U.S. Securities Litigation teams. He brings a long career of litigation success to his prosecution of large-scale fraud class actions on behalf of institutional investors. Javier has over two decades of experience and in addition to recently being named a Titan of the Plaintiffs’ Bar by Law 360, has been “recommended” in the field of securities litigation by *The Legal 500*.

Javier currently leads the BFA team prosecuting the class action against Citigroup, Inc. Recently, he prosecuted the securities action against Allianz Global Investors U.S., L.L.C. on behalf of the Metropolitan Transportation Authority, and was a

member of the team litigating a securities class action against Teva Pharmaceutical Industries, Ltd., which settled for \$420 million.

Previously, Javier obtained a \$129 million recovery from Granite Construction Inc., on behalf of the Police Retirement System of St. Louis and Granite investors, in connection with the company's restatement of its financial results in 2020. BFA's recovery was multiples higher than the enforcement action brought by the SEC, which recovered \$12 million.

Javier also was BFA's lead lawyer *In re MF Global Holdings Limited Securities Litigation* on behalf of Her Majesty the Queen in Right of Alberta and MF Global investors, in connection with the company's dramatic collapse and bankruptcy. Plaintiffs secured settlements in 2015 totaling over \$234 million, resolving claims against MF Global's former officers and directors, several underwriter defendants, and MF Global's outside auditor.

Javier is active in educating international institutional investors on developing trends in the law, particularly the ability of international investors to participate in securities class actions outside the United States. Through these efforts, many of Javier's international clients were able to join the organization representing investors (i.e., the Foundation) in the first securities class action settlement under the then-recently enacted Dutch statute against Royal Dutch Shell. He has co-authored articles concerning the potential conflicts of interest in the private equity industry and developments in the class action landscape in Australia, and also provides thought leadership as a regular contributor on securities issues in the *New York Law Journal*. He has co-authored "IndyMac Leaves Uncertain Landscape for Opt-Out Litigation" and "The Evolving Legacy of *Fait v. Regions Financial*." Javier is an active member of the National Association of Public Pension Plan Attorneys (NAPPA).

Prior to founding the Firm, Javier was a Partner at two other plaintiffs' securities firms, where he was actively involved in the *In re Williams Securities Litigation*, which resulted in a \$311 million settlement, as well as significant securities matters involving Lucent Technologies, Consec, and Biovail. He began his legal career at Kirkland & Ellis LLP. Javier earned a B.A. from the University of Pennsylvania and a J.D. from Columbia University School of Law (1998), where he was a Harlan Fiske Stone Scholar. During law school, he served as a law clerk to the Honorable Denny Chin, U.S. District Judge for the Southern District of New York. Javier is a native Spanish speaker and fluent in French.

Javier is admitted to practice in New York (1999), the U.S. Supreme Court (2014), and the U.S. Courts of Appeals for the Second Circuit (2010), Eighth Circuit (2010), Ninth Circuit (2010), Tenth Circuit (2013), and Eleventh Circuit (2011). He is also admitted in the U.S. District Courts for the Southern and Eastern Districts of New York (1999).

JOSEPH A. FONTI
Partner

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Joseph A. Fonti leads the Firm's U.S. Securities Litigation practice. With over two decades of experience representing institutional investors in complex litigation, Joseph's commitment to clients, dedication to his cases, and advocacy skills have led to exceptional results in several of the most prominent cases in recent decades. Joseph and BFA have been recognized by several of the nation's leading and most selective legal publications, including *The Legal 500*, *ISS Securities Class Action Services*, and *Law 360*. Most recently, Joseph has been named a Titan of the Plaintiffs Bar by Law360, and has been profiled by *The New York Law Journal*, *Forbes & Fortune*, and *CT Insider* for the landmark achievements he achieved for investors.

Joseph led BFA's prosecution of the securities class action against Teva Pharmaceutical Industries, Ltd. arising from misrepresentations concerning price fixing and other unlawful conduct. BFA secured a \$420 million settlement after five years of hard-fought litigation, including class certification, completing intensive fact and expert discovery, and preparing a summary judgment motion. This represents the second largest securities class settlement in 2022 and the all-time fourth-largest within the Second Circuit, excluding cases arising from restatements or the 2008-09 financial crisis.

Throughout his career, Joseph has led historic litigations representing U.S. institutional investors as well as a number of Canada's most significant pension systems and asset managers. He served as co-lead counsel in the \$219 million recovery on behalf of shareholders of Genworth Financial, a long-term care insurer, which represents the largest securities class action settlement in the history of the Eastern District of Virginia. Likewise, Joseph served as sole Lead Counsel in the securities class action involving Computer Science Corporation, and resolved the case for \$97.5 million for the class at the brink of trial. Joseph also helped lead the prosecution and ultimate resolution of the *Weatherford* securities litigation achieving a \$120 million recovery for Weatherford shareholders. He also contributed to securing a \$173.5 million settlement in *In re Broadcom Corp. Securities Litigation*, which, at the time, was the second-largest cash settlement involving a company accused of options backdating.

Joseph's career is also marked by significant successes in the area of auditor liability. He represented shareholders in the \$671 million recovery in *In re HealthSouth Securities Litigation* and recovered \$109 million from HealthSouth's outside auditor Ernst & Young LLP, one of the largest recoveries to date against an auditing firm.

Currently, Joseph is leading BFA's securities class action against Citigroup, Inc. and derivative action against Tesla's Board of Directors.

Additionally, Joseph has achieved notable success as an appellate advocate. He successfully argued before the Second Circuit Court of Appeals in *In re Celestica Inc.*

Securities Litigation, resulting in the Second Circuit reversing the District Court's dismissal of claims. Joseph was also instrumental in the advocacy before the Ninth Circuit Court of Appeals in the *In re Broadcom Corp. Securities Litigation*, which marked the first occasion in which a court upheld allegations against an outside auditor related to options backdating.

Joseph is a member of the American Bar Association, the New York State Bar Association, the Bar of the City of New York, and the National Association of Public Pension Attorneys (NAPPA).

Deeply dedicated to community service, Joseph maintains an active pro bono practice and serves as Chair of the Leadership Committee for the Cardinal's Annual Stewardship Appeal for the Archdiocese of New York, which supports local communities throughout ten New York counties.

ANNE DAVIS <i>Partner</i>	Oakland	• Email: adavis@bfalaw.com • Tel: +1 415 445 4016 • www.bfalaw.com/professionals/anne-davis

Anne Davis has more than a decade of experience litigating complex matters in both federal and state courts, including the courts of California, Delaware, and Kansas. She focuses her practice on complex investigations and litigation of antitrust, consumer, and securities matters.

Anne plays a key role in litigating *In re: Facebook, Inc. Consumer Privacy User Profile Litigation* and *In re Google RTB Consumer Privacy Litigation*; as well as a member of the *In Re: ZF-TRW Airbag Control Units Products Liability Litigation*, *In re Local TV Advertising Antitrust Litigation* and *In re Domestic Airlines Travel Antitrust Litigation* teams. She serves on the Executive Committee of the California Lawyer's Association's Antitrust and Unfair Competition Law Section, and is an active member of and contributor to the Data Security and Privacy Liability (WG11) for the Sedona Conference.

Prior to joining BFA, Anne served as a Principal Counsel for Sales Practice Enforcement at the Financial Industry Regulatory (FINRA), where she, as appropriate, brought charges and negotiated resolutions or litigated formal actions pertaining to violations of FINRA, U.S. Securities and Exchange Commission (SEC), and Municipal Securities Rulemaking Board (MSRB) rules, and the federal securities laws by registered individuals and FINRA member firms.

Before FINRA, she was a senior associate at a global law firm, where she specialized in securities litigation and enforcement, complex civil litigation, and internal investigations.

Anne earned a B.A. with honors from DePaul University (2002), a M.A. (Political Science) from the University of Michigan (2006), and a J.D. from the University of Michigan Law School (2008). She is admitted to practice in California (2009), and the U.S. District Courts for the Northern (2010), Central (2011) and Eastern (2014) Districts of California and the Eastern District of Michigan (2019).

MATTHEW MELAMED
*Partner***Oakland**

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Matt Melamed is a Partner in BFA's Oakland office, where he is a member of the firm's Consumer Litigation and Antitrust teams. He has nearly 15 years of experience representing plaintiffs, municipalities, and states in almost every aspect of litigation.

Since joining BFA, Matt has primarily focused on representing the plaintiffs in the multi-district litigation *In re: Facebook, Inc. Consumer Privacy Litigation*, which consolidates numerous cases that arose out of the Cambridge Analytica scandal. Before joining the firm, Matt was a partner at another plaintiffs' class action firm, where he represented cities, counties, and states in nationwide litigation concerning the marketing, distribution, and dispensing of prescription opioids. Among other roles in those cases, he represented the City and County of San Francisco, whose case was remanded as an MDL bellwether from *In re: National Opiate Litigation*. Matt also litigated numerous securities fraud lawsuits, including *Villella v. Chemical & Mining Company of Chile, Inc.*, *In re St. Jude Medical, Inc. Securities Litigation*, *In re LeapFrog Enterprise, Inc. Securities Litigation*, and *Jones v. Pfizer Inc.*, each of which resulted in plaintiff recoveries. All told, Matt has been a member of case teams that recovered more than \$1.2 billion for investors, consumers, and municipalities.

Matt was previously a law clerk for the Honorable Joseph A. Greenaway, Jr. on both the United States District Court for the District of New Jersey and the United States Court of Appeals for the Third Circuit. He was also the Kazan-Wallace Attorney at Public Justice PC.

Matt has authored the articles *Planning for Aggressive Multiparty Discovery in a Fast-Moving, Complex MDL: An Example from the Opioids Litigation*, 89 UMCK L. Rev. 897 (2021); *A Theoretical Justification for Special Solicitude: States and the Administrative State*, 8 Cardozo Pub. L. Pol'y & Ethics J. 577 (2010); *Timeliness and the Non-Existence of Arbitration Agreements: Three Analogies*, 12 J. Consumer & Commercial L. 78 (2009); and *Towards an Explicit Balancing Inquiry—R.A.V. and Black through the Lens of Foreign Freedom of Expression Jurisprudence*, 59 Hastings L. J. 407 (2007).

Matt earned a B.A. from Wesleyan University and a J.D., *magna cum laude*, from the University of California, Hastings College of the Law (2008). He is admitted to practice in California (2008), the United States Courts of Appeals for the Third (2010) and Tenth (2009) Circuits, and the United States District Courts for the Northern (2010) and Central (2012) Districts of California.

SARA PILDIS SIMNOWITZ
Special Counsel

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Sara Pildis Simnowitz is Special Counsel at BFA, prosecuting a variety of complex litigations.

Sara has nearly twenty years of experience in all aspects of litigating complex matters. Sara is dedicated to prosecuting securities, antitrust, and consumer fraud class actions on behalf of institutional, municipal, and individual clients. Sara draws on her extensive litigation experience while playing a key role in prosecuting the Firm's antitrust and consumer cases, including *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*.

Sara is also an active member of BFA's securities litigation teams. For example, she was a member of the team in both *In re Teva Securities Litigation* and *In re Genworth Financial Securities Litigation*.

Before joining BFA, Sara was a senior associate at Arnold & Porter LLP, where she focused on complex commercial litigation. She previously practiced at Heller Ehrman LLP in New York and Foley Hoag LLP in Massachusetts, where she focused on complex commercial and securities litigation.

Sara earned a B.A., *summa cum laude*, from Brandeis University, a J.D. from the University of Chicago Law School (2001), and an M.A. from the London School of Economics and Political Science (2002). She is admitted to practice in Massachusetts (2002), New York (2006), the U.S. Supreme Court (2008), the U.S. Court of Appeals for the First Circuit (2003), and the U.S. District Courts for the District of Massachusetts (2002), the Southern and Eastern Districts of New York (2006), and the Western District of New York (2008).

ANGELICA ORNELAS
Associate

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Angelica has been a member of BFA's antitrust and consumer litigation team since 2020. She has substantial experience litigating class actions and other complex matters in federal courts across the country. She currently represents plaintiffs in consumer privacy litigation, including *In re Facebook, Inc., Consumer Privacy User Profile Litigation* and *Calhoun v. Google*. Prior to joining BFA, Angelica was an associate at a class action litigation firm, where she specialized in consumer protection and financial products litigation. She was appointed co-class counsel in *Prather v. Wells Fargo Bank, N.A.*, representing individuals who received illegal automated calls and text messages from the bank. Angelica was also a member of the litigation team in *Daccache v. Raymond James Financial, Inc.*, brought on behalf of victims of the Jay Peak investment fraud—the largest in the history of the EB-5 visa program—and *Larson v. John Hancock Life Insurance Company (U.S.A.)*, a

certified class action alleging that John Hancock improperly inflated cost of insurance charges deducted from its customers' life insurance policies.

From 2012-2013, Angelica was a Fellow at the California Monitor Program, a program of the California Attorney General, where she worked closely with Congresswoman Katie Porter to ensure that the nation's five largest mortgage servicers delivered the relief then California Attorney General Kamala Harris negotiated for Californians as part of the landmark \$25 billion National Mortgage Settlement.

Angelica earned an undergraduate degree from UC Los Angeles and completed a master's program at San José State University before receiving her law degree from UC Berkeley. After law school, she clerked for the United States District Court for the Northern District of California and the United States Bankruptcy Court for the District of Nevada.

Angelica is an active member of the Sedona Conference, Working Group 1 on Electronic Document Retention and Production. Angelica is also a member of the Federal Bar Association, Northern District of California Chapter, and serves on the Board of the East Bay La Raza Lawyers Association Scholarship Fund. She has been selected as a Northern California Rising Star every year since 2017, named to The National Trial Lawyers' list of "Top 40 Under 40 Civil Plaintiff Trial Lawyers in California" from 2020 to 2022, and made the *Best Lawyers: Ones to Watch in America* (Insurance Law) list in 2022.

She is admitted to practice in California (2012), the U.S. Court of Appeal for the Ninth Circuit (2019) and the U.S. District Courts of the Northern District of California (2016), the Central District of California (2017), and the Northern District of Illinois (2019).

JOSHUA SAMRA Associate	Oakland	• Email: jsamra@bfalaw.com • Tel: +1 415 445 4017 • www.bfalaw.com/joshua-samra

Josh Samra is an associate in the Firm's Antitrust and Consumer practice group. Josh currently plays a significant role in the *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, *Calhoun, et al. v. Google LLC*, and *In re Google RTB Consumer Privacy Litigation*.

Prior to joining BFA, Josh was a Deputy District Attorney in Contra Costa County. As a Deputy District Attorney, Josh oversaw all parts of criminal prosecutions, including filing complaints, preparing and arguing motions, interviewing witnesses, trying cases before a jury, and litigating post-trial appeals. During his time in the District Attorney's office, Josh prosecuted ten jury trials to verdict.

Josh earned his B.A. from the University of California Berkeley (2013) and his J.D. from the University of California Los Angeles (2016), where he served as an Associate Editor for the UCLA Law Review. Josh is admitted to practice in California (2016).

Josh is an active member of The Sedona Conference, Working Group 1 on Electronic Document Retention and Production, and Working Group 6 on International Electronic Information Management, Discovery, and Disclosure.

JOOYOUNG KOO <i>Projects Associate</i>	Oakland	• Email: jkoo@bfalaw.com • Tel: +1 415 445 4003 • www.bfalaw.com/professionals/jooyoung-koo

Jooyoung Koo is a Project Associate in BFA's Oakland office.

Jooyoung is an experienced attorney who has worked on complex IP, antitrust, consumer protection and pharmaceutical product liability cases, and has conducted in-depth document review and research analysis on wide variety of subject matters.

She is also fluent in Korean.

KATHERINE SULLIVAN <i>Projects Associate</i>	Oakland	• Email: ksullivan@bfalaw.com • Tel: +1 415 445 4014 • www.bfalaw.com/katherine-sullivan

Katherine ("Kasey") joined the Firm in 2016 and is currently a Projects Associate in BFA's Oakland office. Kasey brings nearly two decades of experience to BFA. She currently plays a significant role in managing discovery in the *In re Domestic Airlines Travel Antitrust Litigation*, *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, and *In re Google RTB Consumer Privacy Litigation*.

Kasey earned her J.D. from Northwestern University School of Law (1999), and is admitted to practice in California (2000).

MARGARET STRAKOSCH <i>Projects Associate</i>	Oakland	• Email: mstrakosch@bfalaw.com • Tel: +1 415 445 4003 • www.bfalaw.com/margaret-strakosch

Margaret ("Margo") Strakosch joined the firm in 2020 and is currently a Projects Associate in BFA's Oakland office, where she works with the consumer and antitrust litigation team.

Margo plays a significant role in BFA's discovery efforts against defendants in major consumer privacy class actions including *In re: Facebook, Inc. Consumer Privacy User Profile Litigation* and *In re Google RTB Consumer Privacy Litigation*.

Prior to joining BFA, she clerked for Alaska Supreme Court Justice Susan M. Carney and the U.S. Department of Labor's Office of Administrative Law Judges.

Margo earned her J.D. from the University of Michigan Law School (2015) and a B.A. from the Thomas More College of the Liberal Arts (2008). While at the University of Michigan Law School, Margo served as an Executive Editor of the Michigan Journal of International Law. Margo is admitted to practice in California (2018).

GLEN TSURUDOME
*Staff Associate***Oakland**

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Glen joined BFA's Oakland office in 2019. Glen brings over a decade of experience to his role as staff associate, where he focuses on prosecuting consumer and antitrust class actions. Glen is a key member of the team litigating the *In re: Facebook, Inc. Consumer Privacy User Profile Litigation* and *Calhoun, et al. v. Google LLC*.

Glen received a B.A. (2005) from the UC San Diego and a J.D. from the University of San Francisco School of Law (2005). Glen has also completed the Yamasa Institute Academic Intensive Japanese Program (2012). Glen is admitted to practice in California (2005).

JENNIFER JURMARK
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As BFA's Senior Discovery Operations Manager, Jennifer Jurmark oversees daily discovery operations firmwide and manages large scale document reviews. She works closely with Partners, Associates, Staff Attorneys and other external stakeholders on the strategy and implementation of eDiscovery protocols for complex high-stakes litigation. Jennifer leverages AI and Data Analytics to optimize evidence gathering and case analysis.

Jennifer helped lead the eDiscovery efforts and designed and implemented workflows for document reviews as a member of the teams that prosecuted the securities actions concerning Teva Pharmaceuticals Industries Ltd, Granite Construction Inc, and Allianz Global Investors U.S. LLC. Currently, Jennifer manages the eDiscovery efforts as a member of the teams litigating BFA's securities case against Elastos, and the firm's derivative action against Tesla's Board of Directors. She also helps manage eDiscovery efforts in the *In re Google RTB Consumer Privacy Litigation*.

Jennifer has nearly fifteen years of experience working at the intersection of law, business and technology. Prior to joining BFA, Jennifer worked at large financial institutions and law firms. In her prior roles, she gained extensive experience managing and leading eDiscovery efforts for multiple complex investigations and litigations using cutting edge technology, advising senior stakeholders daily, and running large document review teams.

For more information, please visit:
www.bfalaw.com

Exhibit C



COMPLEX LITIGATION

ABOUT KELLER ROHRBACK



Devoted to Justice

"[Keller Rohrback] has performed an important public service in this action and has done so efficiently and with integrity . . . [Keller Rohrback] has also worked creatively and diligently to obtain a settlement from WorldCom in the context of complex and difficult legal questions."

In re WorldCom, Inc. ERISA Litig., No. 02-4816, 2004 WL 2338151, at *10 (S.D.N.Y. Oct. 18, 2004) (Cote, J.)

Keller Rohrback's lawyers excel by being prepared and persuasive. It's a simple formula that combines our strengths: outstanding writing and courtroom skill, together with unparalleled passion and integrity. We have recovered billions of dollars for our clients and have served as lead counsel in many prominent cases, including numerous financial crisis cases against Wall Street banks and mortgage originators. Our lawyers are recognized as leaders in their fields who have dedicated their careers to combating corporate fraud and misconduct. We have the talent as well as the financial resources to litigate against Fortune 500 companies—and do so every day.



Who We Are



Keller Rohrback's Complex Litigation Group has a national reputation as the go-to plaintiffs' firm for large-scale, complex individual and class action cases. We represent public and private investors, businesses, governments and individuals in a wide range of actions, including securities fraud, fiduciary breach, antitrust, insurance coverage, whistleblower, environmental and product liability cases. Our approach is straightforward—we represent clients who have been harmed by conduct that is wrong, and we litigate with passion and integrity to obtain the best results possible. Every case is different, but we win for the same reason: we are persuasive. When you hire us, you hire smart, creative lawyers who are skilled in court and in negotiations.

Founded in 1919, Keller Rohrback's over 70 attorneys and more than 100 staff members are based in seven offices across the country in Seattle, Missoula, New York, Oakland, Phoenix, Portland, and Santa Barbara. Over the past century, our firm has built a distinguished reputation by providing top-notch representation. We offer exceptional service and a comprehensive understanding of federal and state law nationwide. We also are well known for our abilities to collaborate with co-counsel and to work together to achieve outstanding results—essential skills in large-scale cases in which several firms represent the plaintiffs. We pride ourselves on our reputation for working smartly with opposing counsel, and we are comfortable and experienced in coordinating high-stakes cases with simultaneous state and federal government investigations. Keller Rohrback attorneys earn the respect of our colleagues and our opponents through our deft handling of the array of complex issues and obstacles our clients face.

ABOUT KELLER ROHRBACK



What We Do

Keller Rohrback's Complex Litigation Group represents plaintiffs in large-scale cases involving corporate wrongdoing. We litigate against companies that pollute, commit fraud, fix prices and take advantage of consumers, employees, and investors. We are passionate advocates for justice. In addition, the Complex Litigation Group regularly calls on attorneys in the firm's other practice areas for expertise in areas such as bankruptcy, constitutional law, corporate transactions, financial institutions, insurance coverage and intellectual property. Our group's access to these in-house resources distinguishes Keller Rohrback from other plaintiffs' class action firms and contributes to the firm's success. We also have a history of working with legal counsel from other countries to vigorously pursue legal remedies on behalf of clients around the globe.

We have won verdicts in state and federal courts throughout the nation and have obtained judgments and settlements on behalf of clients exceeding \$78 billion. Courts around the country have praised our work, and we are regularly appointed lead counsel in nationally prominent class action cases. Our work has had far-reaching impacts for our clients in a variety of settings and industries, creating a better, more accountable society.

Whom We Serve

We represent individuals, institutions, and government agencies. The common denominators of our clients is a desire to see justice done—and to be represented by attorneys who practice law with integrity, honesty, and devotion to serving our clients' interests.



"Despite substantial obstacles to recovery, Keller Rohrback L.L.P. was willing to undertake the significant risks presented by this case . . . Class Counsel achieved real and substantial benefits for members of the Class. [Their] extensive prior experience in complex class action securities litigation . . . enabled the Class to analyze and achieve this excellent result." Order at 2, Getty v. Harmon (SunAmerica Sec. Litig.), No. 98-178 (W.D. Wash. Sept. 20, 1999) (Dwyer, J.)

ANTITRUST AND TRADE REGULATION



ATTORNEYS

Lynn Lincoln Sarko
Gretchen Freeman Cappio
Alison Chase
Felicia Craick
Matt Gerend
Cari Campen Laufenberg
Derek Loeser
Ryan McDevitt
Daniel Mensher

Keller Rohrback's antitrust and trade regulation practice represents Plaintiffs in state and federal courts to ensure that consumers get the benefits of free and fair competition in the marketplace. Keller Rohrback has successfully litigated cases on behalf of both consumers and businesses who have been harmed by illegal anti-competitive conduct, such as price fixing, price discrimination, misleading and deceptive marketing practices, and the monopolization and attempted monopolization of markets.

Keller Rohrback has served as lead counsel, on MDL executive committees, and in other prominent roles in large price-fixing and price discrimination cases. In 2022, Keller Rohrback was honored by the American Antitrust Institute for its work on the *In re EpiPen Marketing, Sales Practices, and Antitrust Litigation*, receiving an award in the category of Outstanding Antitrust Litigation Achievement in Private Law Practice.

REPRESENTATIVE CASES

In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig., MDL No. 2785 (D. Kan.)

Keller Rohrback serves as Plaintiffs' Co-Lead Counsel in this litigation regarding the marketing, pricing, and sale of EpiPen auto-injector devices in the United States. Plaintiffs alleged that defendants Mylan and Pfizer engaged in unfair and illegal activities that stifled competitors, allowing defendants to maintain their dominant market positions and increase the prices of EpiPen products by over 500%. These practices forced consumers to pay inflated and unnecessary costs for EpiPens—a device on which many lives depend. The Court certified two classes of consumers and payors against Defendants Mylan and Pfizer. Through separate settlements with the Mylan and Pfizer defendants, Class Counsel achieved settlements totaling \$609 million for the benefit of the classes.

Nurse Wage Litigation: Fleischman v. Albany Med. Ctr., No. 06-765 (N.D.N.Y.); *Cason-Merenda v. Detroit Med. Ctr.*, No. 06-15601 (E.D. Mich.)

Keller Rohrback was Co-Lead Counsel in these long-running antitrust actions which recovered \$105 million in underpaid wages resulting from an alleged conspiracy among hospitals to set the compensation of their nurse employees in Albany, New York, and Detroit, Michigan.

Ferko v. National Ass'n for Stock Car Auto Racing, Inc., No. 02-50 (E.D. Tex.)

Keller Rohrback was Counsel for Plaintiff, a shareholder in Texas Motor Speedway (TMS), in a lawsuit that charged NASCAR with breach of contract, unlawful monopolization, and conspiring with International Speedway Corporation (ISC) to restrain trade in violation of the antitrust laws. The settlement agreement allowed TMS to purchase North Carolina Speedway from ISC and required NASCAR to sanction a Nextel Cup Series race at TMS in the future, relief that was valued at \$100.4 million.

"The Court has repeatedly stated that the lawyering in the case at every stage was superb, and does again." Mem. at 12, *In re Linerboard Antitrust Litig.* (E.D. Pa. June 2, 2004) (DuBois, J.).

ANTITRUST AND TRADE REGULATION



REPRESENTATIVE CASES continued

In re Vitamins Antitrust Litig., MDL No. 1285 (D.D.C.)

Keller Rohrback played a significant role in litigating this MDL case, one of the largest and most successful antitrust cases in history. Chief Judge Thomas Hogan certified two classes of businesses who directly purchased bulk vitamins and were overcharged as a result of a ten-year global price-fixing and market-allocation conspiracy. Recoveries for the class through settlement and verdict totaled over \$1 billion.

In re Liquid Aluminum Sulfate Antitrust Litig., MDL No. 2687 (D.N.J.)

In 2016, Keller Rohrback filed numerous class action complaints in federal courts on behalf of several municipalities in Washington, California, and Arizona that purchase and use liquid aluminum sulfate ("Alum") to treat and clean their waste water. The complaints contained claims against the major manufacturers of Alum who allegedly engaged in a conspiracy to artificially inflate the price of this essential chemical used in municipal water treatment. As a result of these antitrust violations, municipalities—and their taxpayers—had overpaid millions of dollars to the co-conspirators for the Alum they purchased during the long life of this conspiracy. In March 2020, the Court authorized the transfer of settlement funds to pay claims of the Settlement Class Members.

In re Online DVD Rental Antitrust Litig., MDL No. 2029 (N.D. Cal.)

Keller Rohrback represented purchasers of online DVD rental services accusing Walmart and Netflix of engaging in a market allocation scheme. The class achieved settlements of over \$30 million.

Transamerican Refining Corp. v. Dravo Corp., No. 88-789 (S.D. Tex.)

Keller Rohrback served as Co-Lead Counsel in this class action filed on behalf of all cost-plus purchasers of specialty steel pipe. Fabricators and suppliers of that pipe were sued on allegations of a nationwide price fixing conspiracy. The class of electric generating plant and oil refinery owners, achieved a settlement of over \$49 million.

Johnson v. Arizona Hosp. & Healthcare Ass'n, No. 07-1292 (D. Ariz.)

Keller Rohrback represented agency nurses who worked at various Arizona hospitals seeking to recover the underpayment of wages resulting from a conspiracy to suppress the cost of agency nurses. The class achieved settlements of more than \$26 million.

Daisy Mountain Fire Dist. v. Microsoft Corp., MDL No. 1332 (D. Md.)

Keller Rohrback obtained a settlement in of over \$4 million on behalf of a class of Arizona governmental entities that indirectly purchased operating systems and software from Microsoft for overcharges resulting from Microsoft's monopolistic practices. The settlement returned millions of dollars to local government entities at a time of severe budget crisis in the state.

Molecular Diagnostics Labs. v. Hoffmann-La Roche Inc., No. 04-1649 (D.D.C.)

Keller Rohrback served on the Executive Committee of this class action lawsuit on behalf of direct purchasers of thermus aquaticus DNA polymerase (Taq), an essential input to technologies used to study DNA. The lawsuit alleged that various Hoffman-La Roche entities, in concert with the Perkins Elmer Corp., fraudulently procured a patent for Taq with the intent of illegally monopolizing the Taq market. The court approved a \$33 million settlement in 2008.

In re Delta Dental Antitrust Litig., No. 19-6734 (N.D. Ill.)

Ryan McDevitt serves on several of the plaintiffs' committees in the sprawling multistate Delta Dental antitrust litigation on behalf of dentists nationwide, in which the numerous state Delta insurers are alleged to have coordinated efforts not to compete and to abuse their monopsony power in the market for dental insurance throughout the United States.

APPELLATE PRACTICE



ATTORNEYS

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Matt Gerend
Ben Gould
Ron Kilgard
Cari Campen Laufenberg
Jeffrey Lewis
Derek Loeser
Erin Riley
Matthew Preusch

Appeals require specialized skills and experience, and Keller Rohrback has a seasoned appellate team that includes award-winning brief writers and outstanding oral advocates. Our appellate experience is particularly important in large cases, including complex class actions. Keller Rohrback has the experience and talent to handle any issue that arises involving interlocutory appeals and will work to ensure that any judgment or settlement is affirmed on appeal.

REPRESENTATIVE CASES

ERISA Indus. Comm. v. City of Seattle, 840 F. App'x 248 (9th Cir. 2021)

Keller Rohrback and the Seattle City Attorney persuaded the Ninth Circuit to affirm the dismissal of an industry group's ERISA preemption lawsuit, which sought to invalidate a City ordinance mandating the payment of additional

compensation to enable hotel employees to better afford health care. On November 21, 2022, the U.S. Supreme Court denied a petition for certiorari, thereby ending efforts to invalidate the City ordinance.

Smith v. OSF Healthcare Sys., 933 F.3d 859 (7th Cir. 2019)

Keller Rohrback successfully obtained reversal of summary judgment in litigation to protect the pension benefits of hospital employees. The Seventh Circuit held that the trial court abused its discretion by granting a summary judgment motion filed long before the close of discovery when plaintiffs were diligently pursuing relevant discovery and had filed a well-supported motion under Federal Rule of Civil Procedure 56(d).

Campidoglio, LLC v. Wells Fargo & Co., 870 F. 3d 963 (9th Cir. 2017)

This is a proposed class action arising out of Wells Fargo's alleged miscalculation of the interest rates charged to Borrowers. The Ninth Circuit reversed the dismissal finding that the Home Owners' Loan Act does not preempt the Borrowers' interest rate calculation breach of contract claim, which arises under Washington law.

Hall v. Elected Officials Retirement Plan, 241 Ariz. 33, 383 P.3d 1107 (2016)

Keller Rohrback successfully represented a class of all sitting Arizona general jurisdiction judges in a challenge to the legislature's reduction of their retirement benefits as in violation of the Arizona constitution

Kaplan v. Saint Peter's Healthcare Sys., 810 F.3d 175, 177 (3d Cir. 2015); *Stapleton v. Advocate Health Care Network*, 817 F.3d 517, 523 (7th Cir. 2016); *Rollins v. Dignity Health*, 830 F.3d 900, 906 (9th Cir. 2016); *rev'd*, 137 S. Ct. 1652 (2017)

Keller Rohrback obtained unanimous decisions from panels of the Third, Seventh, and Ninth Circuits that religiously affiliated health care systems were not exempted from ERISA, the federal pension law, by virtue of a particular provision of the relevant statute. Keller Rohrback also defended the appellate decisions in the U.S. Supreme Court, which disagreed with the Circuits on the statutory interpretation issue presented and remanded for further litigation, which Keller Rohrback also handled, on other sources for a possible statutory exemption.

APPELLATE PRACTICE



REPRESENTATIVE CASES continued

Gates v. UnitedHealth Grp. Inc., 561 F. App'x 73 (2d Cir. 2014)

Keller Rohrback persuaded the Second Circuit to reverse the district court's dismissal of our client's claims for medical coverage.

Comerica Bank v. Mahmoodi, 224 Ariz. 289 (App. 2010)

Keller Rohrback successfully reversed a multi-million dollar judgement entered on summary judgment for a plaintiff. The opinion is a major statement in Arizona on the principles of summary judgment practice.

Braden v. WalMart Stores, Inc., 588 F.3d 585 (8th Cir. 2009)

Keller Rohrback represented a class of Walmart employees who alleged that Walmart's 401(k) plan charged them excessive fees. Keller Rohrback convinced the Eighth Circuit to reverse the trial court and reinstate the employees' claims.

James v. PacifiCorp, No. A179017 (Oregon Court of Appeals, Jan. 25, 2023)

Keller Rohrback successfully defended in the Oregon Court of Appeals a trial court's order certifying a liability issues class of fire survivors, the first class certification order of its kind in a major utility-caused fire case.

AUTOMOTIVE LITIGATION



ATTORNEYS

Lynn Lincoln Sarko
Gretchen Freeman Cappio
Derek Loeser
Alison Chase
Felicia Craick
Adele Daniel
Kylie Fisher
Zack Gussin
Ryan McDevitt
Sydney Read
Emma Wright

Keller Rohrback is renowned for its success in representing consumers in high-stakes, complex litigation involving automotive defects and misrepresentations. Courts regularly appoint our nationally recognized attorneys to plaintiffs' leadership teams for automotive class actions, including numerous actions consolidated in multidistrict litigation. These cases reflect our firm's ongoing commitment to ensuring the safety of drivers, passengers, their vehicles, and the environment.

REPRESENTATIVE CASES

In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig., MDL No. 2672 (N.D. Cal.)

Keller Rohrback filed the first multi-Plaintiff complaint against Volkswagen on September 20, 2015, two days after the defeat device scheme came to light. Keller Rohrback represented consumers nationwide who alleged they were damaged by Volkswagen's fraudulent use of an emissions "defeat device" in

over 500,000 vehicles in the United States. Keller Rohrback Managing Partner Lynn Sarko served on the Plaintiffs' Steering Committee for this national litigation. Lynn Sarko and partner Gretchen Freeman Cappio served on the negotiating team for the \$15 billion class action settlement for 2.0-liter vehicles, the largest auto-related consumer class action in U.S history. Keller Rohrback played a similar role in reaching and implementing similar settlements with Volkswagen and Bosch regarding approximately 100,000 3-liter vehicles.

In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Pracs., & Prods. Liab. Litig., MDL No. 2777 (N.D. Cal.)

From the outset, Keller Rohrback played a major role in this multidistrict litigation, representing consumers nationwide who alleged that Fiat Chrysler used an emissions defeat device in over 100,000 Ram 1500 and Jeep Grand Cherokee diesel trucks and SUVs. Keller Rohrback Managing Partner Lynn Sarko was appointed by the Court to the Plaintiffs' Steering Committee leading this case, and Keller Rohrback attorneys took an active role in discovery and served on the negotiating

In re ZF-TRW Airbag Control Units Prods. Liab. Litig., MDL No. 2905 (C.D. Cal.)

Gretchen Freeman Cappio is a member of the Plaintiffs' Steering Committee ("PSC"). In her work on the PSC, Gretchen has directed briefing efforts on cutting edge legal issues and steers plaintiffs' global strategy. Plaintiffs' allegations against auto parts supplier ZF-TRW and automakers Fiat Chrysler Automobiles/Stellantis, Kia, Hyundai, Toyota, Honda, and Mitsubishi relate to defective airbag control units in 12.3 million vehicles that may cause airbags to fail to inflate in the event of a crash.

AUTOMOTIVE LITIGATION



REPRESENTATIVE CASES continued

Speerly v. General Motors, LLC, No. 19-11044 (E.D. Mich.)

Gretchen Freeman Cappio was appointed to the Plaintiffs' Steering Committee in the General Motors ("GM") transmission litigation and expects to play a major role in the case. In this putative class action, Plaintiffs allege that transmission defects in GM, Chevrolet, and Cadillac vehicles sold as early as 2014 can cause unsafe conditions that GM failed to disclose or repair despite longstanding knowledge and numerous attempts.

In re Hyundai and Kia Engine Litig. II, No. 18-02223 (C.D. Cal.)

Gretchen Freeman Cappio was appointed as settlement counsel by the court in consolidated litigation against automakers Hyundai and Kia and their American subsidiaries. The litigation arises out of Hyundai's and Kia's failure to disclose or timely remedy several serious design and manufacturing defects that can cause engines to suddenly stall or burst into flames while driving. Judge Stanton granted preliminary approval of the Settlement on February 8, 2023.

Stringer v. Nissan North Am. Inc., No. 21-99 (M.D. Tenn.)

Ryan McDevitt served on the court-appointed Executive Committee that achieved a settlement valued at over \$300 million for consumers in litigation concerning defective transmissions in Nissan and Infiniti vehicles, *Stringer v. Nissan North Am., Inc.*, No. 21-99 (M.D. Tenn.)

In re Chevrolet Bolt EV Battery Litig., No. 20-13256 (E.D. Mich.)

Judge Berg appointed Keller Rohrback Co-Lead Counsel in the consolidated Chevrolet Bolt defective battery litigation. Plaintiffs allege that General Motors failed to disclose dangerous battery defects that led to an increased risk of catastrophic fires and diminished battery function. The litigation is on-going.

BANKRUPTCY-RELATED LITIGATION



ATTORNEYS

Laurie Ashton
Gary A. Gotto
Christopher Graver

Keller Rohrback attorneys have deep and broad experience litigating in the bankruptcy courts on behalf of Plaintiffs whose claims were interrupted by bankruptcy petitions, as well as creditors, debtors, and creditor committees.

Our experience includes representing claimants and class claimants in numerous large-scale bankruptcies - such as the pending Purdue Pharma bankruptcy in New York, which forms a part of our larger representations in the nationwide opioid litigation. Keller Rohrback's representations have involved virtually all areas of sophisticated bankruptcy practice, including: (i) negotiating acceptable terms of a

plan of reorganization with the debtor, creditors' committee, and other bankruptcy constituencies; (ii) pursuing relief from the automatic stay to litigate claims in district court; (iii) seeking and opposing orders to withdraw the reference to the bankruptcy court; (iv) certifying a claimant class in bankruptcy; (v) asserting rights to officer, director, or fiduciary insurance policies between conflicting bankruptcy claimants; (vi) evaluating and negotiating proposals for debtor financing, cash collateral orders, estate sale orders and other bankruptcy administrative matters; and (vii) defending against subordination claims.

Keller Rohrback's bankruptcy attorneys also have extensive experience in a wide variety of matters involving corporate restructuring and commercial bankruptcies. Our bankruptcy clients have ranged from tort claimants to operating entities to institutional lenders. Examples include representation of the official committee of victims of clergy sexual abuse in the Chapter 11 reorganization of a Catholic diocese, the debtors in a reorganization of fifty commercial real properties across the nation; and a national services company in the acquisition of a competitor's assets in a bankruptcy court-approved sale in the Northern District of California.

In addition to the representative cases listed below, Keller Rohrback has achieved similar results in numerous other bankruptcy proceedings involving corporations such as Global Crossing Ltd., Mirant Corp., Delphi Corp., and Fremont General Corp.

REPRESENTATIVE CASES

In re Enron Corp., No. 01-16034 (Bankr. Ct. S.D.N.Y.)

Keller Rohrback obtained stay relief to pursue litigation in the Southern District of Texas and defended against a motion to subordinate claims. Keller Rohrback achieved a settlement for the class that included the allowance of a \$265 million claim in the Enron bankruptcy.

In re WorldCom, Inc. Sec. Litig., Nos. 02-3288, 02-8981 (S.D.N.Y.)

Keller Rohrback defended against a motion to subordinate claims and successfully negotiated a simultaneous resolution of claims in the bankruptcy and district courts against third parties in the total amount of \$48 million.

In re Nortel Networks Inc., No. 09-10138 (Bankr. Ct. D. Del.)

Keller Rohrback represented class claimants in simultaneous insolvency proceedings in Canada under the Companies' Creditors Arrangement Act and bankruptcy court in the District of Delaware. Keller Rohrback obtained stay relief to pursue litigation in the Middle District of Tennessee and ultimately settled class claims in Tennessee for over \$21 million.

In re Washington Mut., Inc., No. 08-12229 (Bankr. Ct. D. Del.)

Keller Rohrback sought stay relief to pursue litigation in the Western District of Washington and pursued claims in bankruptcy court in Delaware, resulting in a simultaneous resolution of claims in the bankruptcy and district courts for \$20 million.

CONSUMER PROTECTION CLASS ACTIONS **KR**

ATTORNEYS

Lynn Lincoln Sarko
Derek Loeser
Gretchen Freeman Cappio
Alison Chase
Felicia Craick
Juli Farris
Kylie Fisher
Alison Gaffney
Laura Gerber
Zack Gussin
Dean N. Kawamoto
David Ko
Cari Campen Laufenberg
Ryan McDevitt
Daniel Mensher
Nathan Nanfelt
Matthew Preusch
Mark D. Samson
Chris Springer
Havila C. Unrein
Michael Woerner

For decades, consumers have trusted Keller Rohrback attorneys to protect them from harmful and unfair practices. Our firm is a leader in representing consumers in class action and complex litigation in diverse areas, including vehicles, children's products, food contamination, drugs, mortgage modifications, identity theft, and data breaches. Keller Rohrback currently represents a wide range of consumers, such as vehicle owners and lessees, parents, environmentalists, fishermen, employees, professors, doctors, and nurses.



Through decades of hard work, ingenuity, and creativity, Keller Rohrback has achieved meaningful results. These results impact not only our clients, but future consumers too. For example, homeowners now benefit from improved loan-modification practices at one of the country's biggest banks as a result of our advocacy.

Keller Rohrback attorneys are frequently featured speakers and presenters at prestigious legal education seminars on class actions, consumer protection, and data privacy.

REPRESENTATIVE CASES

In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig., MDL No. 2785 (D. Kan.)

Keller Rohrback serves as Plaintiffs' Co-Lead Counsel in this litigation regarding the marketing, pricing, and sale of EpiPen auto-injector devices in the United States. Plaintiffs alleged that defendants Mylan and Pfizer engaged in unfair and illegal activities that stifled competitors, allowing defendants to maintain

their dominant market positions and increase the prices of EpiPen products by over 500%. These practices forced consumers to pay inflated and unnecessary costs for EpiPens—a device on which many lives depend. The Court certified two classes of consumers and payors against Defendants Mylan and Pfizer. Through separate settlements with the Mylan and Pfizer defendants, Class Counsel achieved settlements totaling \$609 million for the benefit of the classes.

Jabbari v. Wells Fargo & Co., No. 15-2159 (N.D. Cal.)

Keller Rohrback filed a class action lawsuit against Wells Fargo alleging the bank victimized its customers by opening checking, savings and credit card accounts, and lines of credit without customers' authorization. Keller Rohrback negotiated a \$142 million settlement on behalf of consumers, which required Wells Fargo to refund fees charged to unauthorized accounts, compensate consumers for increased borrowing costs due to credit damage, and provide other substantial compensation.

CONSUMER PROTECTION CLASS ACTIONS

REPRESENTATIVE CASES continued

White v. Symetra Assigned Benefits Serv. Co., No. 20-01866 (W.D. Wash.)

Plaintiffs brought this class action lawsuit on behalf of themselves and all others who, in settling underlying tort litigation, became the beneficiaries of a Symetra Life Insurance structured settlement annuity, and who then sold their future annuity payments to SABSCO or another Symetra affiliate. On August 3, 2022, Judge Marsha J. Pechman of the United States District Court for the Western District of Washington certified a nationwide class of structured settlement annuity holders who allege that certain business practices by Symetra Life Insurance and its affiliate Symetra Assigned Benefits Service Company ("SABSCO") violated RICO, the Washington Consumer Protection Act, civil conspiracy, unjust enrichment, and their contractual rights. The Court certified the following class: "All persons who are or were, at any time, annuitants of [a structured settlement annuity ("SSA")] that contemplated life contingent payments issued by Symetra and who subsequently sold to a Symetra affiliate the right to receive payments from that SSA in a factoring transaction." A Rule 23(f) appeal is pending before the United States Court of Appeals for the Ninth Circuit.

In re JPMorgan Chase Mort. Modification Litig., MDL No. 2290 (D. Mass.)

Keller Rohrback served as Co-Lead Counsel in this MDL, representing homeowners who attempted to obtain mortgage loan modifications from JPMorgan Chase and related entities. Plaintiffs alleged breach of contract and violations of consumer protection laws when Defendants failed to timely evaluate or approve mortgage modification applications of homeowners who had completed identified prerequisites. Keller Rohrback achieved a settlement for the class valued at over \$500 million.

In re Mattel, Inc., Toy Lead Paint Prods. Liab. Litig., MDL No. 1897 (C.D. Cal.)

Keller Rohrback served as Chair of the Executive Committee in this nationwide MDL against Mattel and Fisher-Price on behalf of purchasers of toys recalled because they were manufactured using lead paint and/or dangerous magnets. On behalf of Plaintiffs, Keller Rohrback achieved a settlement valued at approximately \$50 million.

Fox v. Iowa Health Sys., No. 18-327 (W.D. Wis.)

Plaintiffs filed this complaint against Iowa Health System (UnityPoint Health) on behalf of individuals in Wisconsin, Iowa, and Illinois whose protected health information was compromised as a result of data breaches that occurred on at least two separate occasions between November 2017 and March 2018. On July 25, 2019, the Court granted in part and denied in part Defendant's motion to dismiss. The parties have since reached a settlement, providing for credit monitoring and insurance services, reimbursement for out-of-pocket costs, and payment for time incurred as a result of the data breaches. The Court granted final approval of the settlement on March 4, 2021.

Ormond v. Anthem, Inc., No. 05-1908 (S.D. Ind.)

Anthem Insurance converted from a mutual company to a stock company on November 2, 2001. More than 700,000 former members of the mutual company sued Anthem, alleging that the cash compensation they received as a result of the demutualization was inadequate. After class certification and shortly before the start of trial, Keller Rohrback and co-counsel settled the action for \$90 million.

CONSUMER PROTECTION CLASS ACTIONS

REPRESENTATIVE CASES continued

In re Arizona Theranos, Inc. Litig., No. 16-2138 (D. Ariz.)

Keller Rohrback filed class action complaints in California and Arizona federal courts against Walgreens Boots Alliance, Inc., Walgreen Arizona Drug Company, Theranos Inc., and the leaders of Theranos, Inc.: Elizabeth Holmes and Ramesh (Sunny) Balwani. Theranos claimed to have developed a “tiny blood test,” and it ventured with Walgreens to market its product and offer it in select Walgreens retail stores. The vaunted technology did not work. Thousands of Theranos test results were either invalidated or called into question. Holmes and Balwani were subsequently convicted of criminal charges. On March 6, 2020, the U.S. District Court in Phoenix, Arizona granted class certification in favor of an estimated 175,000 consumers in Arizona and California against Defendants. After Defendants’ appeal, on September 8, 2021, the Ninth Circuit substantially affirmed in part the lower court’s ruling. The case was remanded back to the District Court of Arizona for further proceedings where on July 14, 2022, class notice was subsequently issued. On May 4, 2023 Judge Campbell issued an order denying Walgreens’ motion for Summary Judgment. Trial is set to begin in September 2023.

Corona v. Sony Pictures Ent., Inc., No. 14-9600 (C.D. Cal.)

Keller Rohrback served as interim Co-Lead Counsel and Liaison Counsel in this case against Sony Pictures Entertainment, Inc. on behalf of former and current Sony employees affected by the company’s highly publicized data breach. Plaintiffs alleged that Sony failed to secure and protect its computer systems, servers, and databases, resulting in the release of the named Plaintiffs and other class members’ personal information. Keller Rohrback obtained a significant settlement for the class in October 2015, which was approved in April 2016.

Carlin v. DairyAmerica Inc., No. 09-00430 (E.D. Cal.)

In 2009, Plaintiffs brought suit alleging claims under federal and California state law. The class action complaint alleged that Defendants, DairyAmerica, Inc. and California Dairies, Inc., negligently and incorrectly reported dairy product prices to the National Agricultural Statistic Service, a division of the United States Department of Agriculture. As a result of this misreporting, prices for various grades of milk products were set lower than they should have been, inflating DairyAmerica’s profits and depriving dairy farmers of tens of millions of dollars in income. On May 9, 2019, U.S. District Court Judge Anthony W. Ishii granted final approval to a \$40 million settlement.

Iacovelli v. SBTickets.com, LLC, No. 15-1459 (Ariz. Super. Ct., Maricopa Cnty.)

Keller Rohrback filed a class action in Arizona state court on behalf of individuals who paid for, but did not receive, tickets to the 2014 Super Bowl (Super Bowl XLIX) from the ticket broker SBTickets. Despite purchasing tickets and receiving numerous representations that their tickets were guaranteed, SBTickets customers were told just days before the game, and in some instances, only hours before kickoff, that their ticket orders would not be fulfilled. The case was settled on favorable terms for the class notwithstanding the Defendant’s insolvency and bankruptcy proceedings.

Telephone Consumer Protection Act (TCPA) Cases (Wash. Super. Ct., King Cnty.)

Keller Rohrback prosecuted numerous class actions concerning the sending of unsolicited facsimiles in violation of the Telephone Consumer Protection Act and the Washington Consumer Protection Act, resulting in the issuance of eleven permanent injunctions and the recovery of over \$56 million on behalf of injured Plaintiffs.

CONSUMER PROTECTION CLASS ACTIONS

REPRESENTATIVE CASES continued

In re Bisphenol-A (BPA) Polycarbonate Plastic Prods. Liab. Litig., MDL No. 1967 (W.D. Mo.)

Keller Rohrback served on the Plaintiffs' Steering Committee in this MDL on behalf of purchasers of plastic baby bottles and "sippy" cups which contained the chemical bisphenol-A (BPA). The action was favorably settled.

Brotherson v. Professional Basketball Club, L.L.C., No. 07-1787 (W.D. Wash.)

Keller Rohrback represented Seattle SuperSonics season ticket holders who renewed their 2007–2008 season ticket packages before the team was relocated to Oklahoma City. After Plaintiffs prevailed on class certification and defeated summary judgment, the parties negotiated a significant settlement that returned substantial sums to the class.

In re 21st Century Oncology Customer Data Sec. Breach Litig., MDL No. 2737 (M.D. Fla.)

In 2016, Keller Rohrback L.L.P. filed three proposed Class Action Complaints against the Florida-based healthcare provider 21st Century Oncology concerning an October 2015 data breach. All cases concerning the breach were consolidated in October 2016 for coordinated pretrial proceedings. On November 18, 2016, Keller Rohrback and Robinson Calcagnie were appointed Interim Co-Lead Counsel. On March 11, 2019, the Court entered its Order denying the Defendants' Motion to Dismiss the Amended Consolidated Complaint. In June 2020, the parties reached a settlement in principle, which the Court preliminarily approved on November 2, 2020. Notice to class members will be sent in early January, and a Hearing to determine whether the Settlement is fair, adequate and reasonable will be held June 15, 2021.

In re Apple Inc. Device Performance Litig., MDL No. 2827 (N.D. Cal.)

Keller Rohrback served as Co-Chair of the Executive Committee for Offensive Discovery and also as the ESI Coordinator in this consolidated action concerning IOS software installed on certain Apple iPhone devices. The Plaintiffs asserted claims that this software diminished the performance of those devices. Numerous cases were consolidated before Judge Edward J. Davila in the Northern District of California. A settlement of up to \$500 million has been granted preliminary approval for the benefit of the Settlement Class Members. The Final Fairness Hearing was held December 4, 2020.

MultiCare Health System, Inc., No.18-2-08055-5 (Pierce Cty. Wash. Super. Ct.)

Keller Rohrback and co-counsel represent individuals in Washington against MultiCare Good Samaritan Hospital ("MultiCare") in a lawsuit that alleges MultiCare negligently hired and inadequately supervised an emergency department nurse.

The trial court certified two classes: the Weberg Treatment Class; and the General Treatment Class. MultiCare subsequently filed a Motion for Summary Judgment seeking the dismissal of all claims of the General Treatment Class, which the trial court granted. The trial court then denied Plaintiffs' Motion for Reconsideration. Plaintiffs appealed the trial court's decision, however the Washington Court of Appeals affirmed the dismissal. Plaintiffs petitioned the Washington Supreme Court to review the Court of Appeals' decision. On April 5, 2023, the Washington Supreme Court granted Plaintiffs' petition. The parties have filed additional briefs in the Washington Supreme Court.

DATA PRIVACY LITIGATION



ATTORNEYS

Lynn Lincoln Sarko
Gretchen Freeman Cappio
Felicia Craick
Adele Daniel
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Benjamin Gould
Dean N. Kawamoto
David Ko
Cari Campen Laufenberg
Derek Loeser
Ryan McDevitt
Sydney Read
Chris Springer
Michael Woerner
Emma Wright

Keller Rohrback is a pioneer in representing consumers and employees who have had their personal information breached. Our Data Privacy Litigation team has an established reputation of successful data breach litigation in federal and appellate courts.

Our success in this area includes the groundbreaking case, *Krottner v. Starbucks Corp.* Nos. 09-35823, 09-35824 (W.D. Wash.), where the Ninth Circuit recognized that Plaintiffs-Appellants' injury caused by a stolen laptop containing their personal information sufficiently satisfied the Article III standing requirement. This decision established an important legal precedent that formed a building block for privacy litigation under federal law.

Keller Rohrback's Data Privacy Litigation team has made headlines in various publications with their work featured in *Variety*, the *Los Angeles Times*, *The Wall Street Journal*, Law.com, CNN.com, Bloomberg.com, NPR.org, CNBC.com, Nasdaq.com, Reuters.com and *The Guardian*. We have also been featured on broadcasts such as CNN and NPR's Morning Edition.

REPRESENTATIVE CASES

In re Facebook, Inc. Consumer Priv. User Profile Litig., MDL No. 2843 (N.D. Cal.)

Keller Rohrback partner Derek Loeser serves as co-lead counsel in this high profile litigation related to the 2018 news that the data mining firm Cambridge Analytica had harvested information from up to 87 million Facebook users. Plaintiffs allege that Facebook granted numerous third parties access to their Facebook content and information without their consent, and that Facebook failed to adequately monitor the third parties' access to, and use of, that information.

Facebook's motion to dismiss was denied, and after several years of hard-fought litigation, in which Plaintiffs obtained extensive discovery regarding Facebook's data sharing practices, including millions of pages of discovery and over 45 depositions, the parties reached a \$725 million settlement – the largest ever privacy class action settlement in the United States. The Court granted Plaintiffs' motion for preliminary approval of the settlement on March 29, 2023 and a Fairness Hearing is scheduled to take place on September 7, 2023.

Corona v. Sony Pictures Ent., Inc., No. 14-9600 (C.D. Cal.)

Keller Rohrback served as Interim Co-Lead Counsel and Liaison Counsel in this case against Sony Pictures Entertainment, Inc. on behalf of former and current Sony employees affected by the company's highly publicized data breach. Plaintiffs alleged that Sony failed to secure and protect its computer systems, servers, and databases, resulting in the release of the named Plaintiffs and other class members' personal information. Keller Rohrback obtained a significant settlement for the class in October 2015, which was approved in April 2016.



DATA PRIVACY LITIGATION

REPRESENTATIVE CASES continued

Fox v. Iowa Health Sys., No. 18-327 (W.D. Wis.)

Plaintiffs filed this complaint against Iowa Health System (UnityPoint Health) on behalf of individuals in Wisconsin, Iowa, and Illinois whose protected health information was compromised as a result of data breaches that occurred on at least two separate occasions between November 2017 and March 2018. On July 25, 2019, the Court granted in part and denied in part Defendant's motion to dismiss. The parties have since reached a settlement, providing for credit monitoring and insurance services, reimbursement for out-of-pocket costs, and payment for time incurred as a result of the data breaches. The Court granted final approval of the settlement on March 4, 2021.

In re Experian Data Breach Litig., No. 15-1592 (C.D. Cal.)

In October 2015, Experian announced a nationwide data breach affecting an estimated 15 million consumers. Keller Rohrbach was appointed to serve on the Plaintiffs' Steering Committee. After three years of litigation, a settlement was reached valued at more than \$150 million, providing credit monitoring and insurance services, reimbursement for out-of-pocket costs, and payment for time incurred as a result of the data breach. The Court granted final approval of the settlement in May 2019.

In re Blackbaud, Inc., Customer Data Sec. Breach Litig., MDL No. 2972 (D.S.C.)

Keller Rohrbach partner Gretchen Freeman Cappio serves as Chair of the Plaintiffs' Steering Committee in this multidistrict litigation arising out of the 2020 Blackbaud Data Breach. Plaintiffs' consolidated complaint, filed in the District of South Carolina, alleges that Blackbaud's clients' user data was exposed during a breach that lasted months, and Blackbaud further delayed Plaintiffs' ability to protect their data by their failure to announce the breach, despite knowledge of it, for months. Plaintiffs' claims survived Blackbaud's three motions to dismiss. On December 16, 2022, Plaintiffs filed their Motion for Class Certification with respect to six claims (including alleged violations of California, Florida and New York statutes). Judge Anderson ordered that Plaintiffs' remaining claims shall be stayed until the six identified claims are resolved. .

Krottner v. Starbucks Corp., 628 F.3d 1139 (9th Cir. 2010)

In 2008, Keller Rohrbach filed a class action on behalf of approximately 97,000 Starbucks employees whose unencrypted private information was contained on a stolen Starbucks laptop. Plaintiffs' claims included negligence and breach of contract for failing to protect employees' personally identifiable information. The district court granted Starbucks's motion to dismiss, but Keller Rohrbach successfully appealed the decision as to standing, resulting in the Ninth Circuit establishing a new legal precedent that the theft of PII constituted injury under Article III.



DATA PRIVACY LITIGATION

REPRESENTATIVE CASES continued

In re T-Mobile Customer Data Sec. Breach Litig., MDL No. 3019 (W.D. Mo.)

Keller Rohrbach filed class action complaints on behalf of the approximately 76.6 million T-Mobile customers whose data was exposed in the August 2021 Data Breach, alleging that T-Mobile failed to protect data of customers, as well as consumers who applied for credit with T-Mobile, leading to the exposure of information including their Social Security numbers, names, and dates of birth. Cases concerning the breach were consolidated for pretrial proceedings by the JPML in December 2021. In February 2022, Keller Rohrbach, Stueve Siegel Hanson LLP, and Hausfeld LLP were appointed Co-Lead Interim Class Counsel. The parties have reached a settlement, including a \$350 million settlement fund and a \$150 million spending commitment to improve T-Mobile's data security and address vulnerabilities that resulted in the Data Breach. The Court granted preliminary approval of the settlement in July 2022 and a final fairness hearing occurred on January 20, 2023.

In re 21st Century Oncology Customer Data Sec. Breach Litig., MDL No. 2737 (M.D. Fla.)

In 2016, Keller Rohrbach filed three proposed class action complaints against the Florida-based healthcare provider 21st Century Oncology concerning an October 2015 data breach impacting 2.2 million class members. All cases concerning the breach were consolidated in October 2016 for coordinated pretrial proceedings. On November 18, 2016, Keller Rohrbach and Robinson Calcagnie were appointed Interim Co-Lead Counsel. On March 11, 2019, the Court entered its order denying the Defendants' motion to dismiss the amended consolidated complaint. In June 2020, the parties reached a settlement in principle, valued at more than \$16 million, providing for credit monitoring and insurance services, reimbursement for out-of-pocket costs, and payment for time incurred as a result of the data breach. The Court granted final approval of the settlement on June 25, 2021.



EMPLOYEE BENEFITS

ATTORNEYS

Lynn Lincoln Sarko
 Derek Loeser
 Laurie Ashton
 Gretchen Freeman Cappio
 Juli Farris
 Alison Gaffney
 Laura Gerber
 Matthew Gerend
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 Garrett Heilman
 Dean N. Kawamoto
 Ron Kilgard
 David Ko
 Cari Campen Laufenberg
 Jeffrey Lewis
 David Preminger
 Erin Riley
 Havila C. Unrein
 Michael Woerner

Keller Rohrbach is the preeminent firm for Employee Retirement Income Security Act of 1974 (ERISA) and other employee benefit class action and complex litigation. Our firm is a pioneer of ERISA class action litigation, with over a billion dollars of pension and health benefits recovered for our clients. Keller Rohrbach has played a major role in developing the law and establishing that ERISA's protections apply to all investments in company-sponsored retirement plans, as well as to benefits in health and welfare plans. Keller Rohrbach's attorneys are also well versed in ERISA preemption matters and have a long history of supporting city and state efforts to fill gaps in providing health and retirement benefits to their constituents.

Keller Rohrbach is routinely appointed lead or co-lead counsel in major employee benefit class actions. Our work in this complex and rapidly developing area has been praised by our clients, our co-counsel, and federal courts. Managing a complex, large-scale employee benefit case requires knowledge of employee benefit, securities, accounting, corporate, bankruptcy, and class action law. Keller Rohrbach has excelled in these cases by developing a deep understanding of ERISA and by drawing on our expertise in numerous related practice areas.

Keller Rohrbach has a very deep bench in ERISA matters. Lawyers at Keller Rohrbach have testified before Congress, served as editors of numerous employee benefit books and manuals, and written scholarly ERISA articles, amicus briefs, and comments to regulatory agencies overseeing ERISA plans. We are frequently featured speakers and presenters at prestigious legal education seminars on employee benefit class actions and ERISA. We have also served as fiduciaries and mediators.

We are involved in all aspects of ERISA litigation, from administrative reviews to district court trials to circuit court appeals to handling cases and filing amicus briefs in the U.S. Supreme Court. We are proud of our history, but we don't rest on

our laurels, we listen carefully to employees' and retirees' stories and craft cases that enforce ERISA's longstanding duties—which are the highest known to the law.

REPRESENTATIVE CASES

In re IKON Off. Sols., Inc. Sec. Litig., MDL No. 1318 (E.D. Pa.)

The wave of 401(k) company stock cases began with *Whetman v. IKON Office Solutions, Inc.* No. 98-89 (D. Utah). In a first-of-its-kind complaint, we alleged that company stock was an imprudent investment for IKON's 401(k) plan, that the fiduciaries of the plan failed to provide complete and accurate information about company stock to the participants, and that they failed to address their conflicts of interest. This case resulted in ground-breaking opinions in the ERISA 401(k) area of law on motions to dismiss, class certification, approval of securities settlements with a carve-out for ERISA claims, and approval of ERISA settlements providing a total recovery to the Plans of \$111 million. Judge Marvin Katz granted final approval of the settlement in 2002.

EMPLOYEE BENEFITS



REPRESENTATIVE CASES continued

In re Enron Corp. Sec., Derivative ERISA Litig., MDL No. 1446 (S.D. Tex.)

Keller Rohrback served as Co-Lead Counsel in this class action. After groundbreaking motions to dismiss decisions and several years of discovery, Keller Rohrback negotiated four separate settlements with different groups of Defendants, resulting in recoveries of over \$264 million. Judge Melinda Harmon approved the fifth and final settlement on February 23, 2007.

Reinhart v. Lucent Techs. Inc., No. 01-3491 (D.N.J.)

Keller Rohrback served as Co-Lead Counsel in this class action brought on behalf of participants and beneficiaries of the Lucent defined contribution plans who invested in Lucent stock. A settlement providing injunctive relief and the payment of \$69 million to the plan was approved by Judge Joel Pisano on December 12, 2003.

"[Keller Rohrback] has performed an important public service in this action and has done so efficiently and with integrity. . . . [Keller Rohrback] has also worked creatively and diligently to obtain a settlement from WorldCom in the context of complex and difficult legal questions . . . [Keller Rohrback] should be appropriately rewarded as an incentive for the further protection of employees and their pension plans not only in this litigation but in all ERISA actions." *In re WorldCom, Inc. ERISA Litig.*, No. 02-4816, 2004 WL 2338151, *10 (S.D.N.Y. Oct. 18, 2004) (Cote, J.).

In re WorldCom, Inc. ERISA Litig., No. 02-4816 (S.D.N.Y.)

Keller Rohrback served as Lead Counsel in this class action filed in the Southern District of New York on behalf of participants and beneficiaries of the WorldCom 401(k) Salary Savings Plan who invested in WorldCom stock. Settlements providing for injunctive relief and payments of over \$48 million to the plan were approved by Judge Denise Cote on October 26, 2004 and November 21, 2005.

In re AIG ERISA Litig., No. 04-9387 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this class action filed in the Southern District of New York on behalf of participants and beneficiaries of the AIG 401(k) retirement plans who invested in AIG stock. A settlement providing for injunctive relief and the payment of \$25 million to the plans was approved by Judge Kevin T. Duffy on October 8, 2008.

Alvidres v. Countrywide Fin. Corp., No. 07-5810 (C.D. Cal.)

Keller Rohrback served as Lead Counsel in this class action filed on behalf of participants and beneficiaries of the Countrywide 401(k) plan who invested in Countrywide stock. A settlement providing for injunctive relief and the payment of \$55 million to the plan was approved by Judge John F. Walter on November 16, 2009.

In re Global Crossing Sec. & ERISA Litig., No. 02-7453 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this class action filed in the Southern District of New York on behalf of participants and beneficiaries of the GX defined contribution plans who invested in GX stock. A settlement providing injunctive relief and a payment of \$79 million to the plan was approved by Judge Gerard E. Lynch on November 24, 2004.



EMPLOYEE BENEFITS

REPRESENTATIVE CASES continued

In re Merrill Lynch & Co., Inc. Sec., Derivative & ERISA Litig., No. 07-10268 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this class action filed in the Southern District of New York on behalf of participants and beneficiaries of Merrill Lynch's defined contribution plans who invested in Merrill Lynch stock. A settlement providing injunctive relief and a payment of \$75 million to the plans was approved by Judge Jed S. Rakoff on August 4, 2009.

In re Washington Mut. Inc., Sec., Derivative & ERISA Litigation, No. 07-1874 (W.D. Wash.)

Keller Rohrback served as Co-Lead Counsel in this ERISA breach of fiduciary duty class action filed on behalf of participants and beneficiaries in the company's retirement plans who invested in Washington Mutual stock. On January 7, 2011, Judge Marsha J. Pechman granted final approval of the \$49 million settlement in the ERISA action.

Hodges v. Bon Secours Health Sys., Inc., No. 16-1079 (D. Md.)

Keller Rohrback served as co-counsel in this lawsuit alleging that Bon Secours Health System's seven defined benefit pension plans were improperly claiming an exemption from ERISA as "church plan(s)." In 2017, the Court granted final approval of a settlement providing for equitable relief, plus payment of over \$98 million to the Plans.

In re Bakery & Confectionery Union & Indus. Int'l Pension Fund Pension Plan, No. 11-1471 (S.D.N.Y.)

Keller Rohrback and co-counsel filed this action alleging that an amendment to the Bakery & Confectionery Union & Industrial Pension Fund Pension Plan violated ERISA's anti-cutback provisions. Plaintiffs prevailed at both the district court and appellate levels, and Defendants implemented adjustments to reinstate the benefits due to eligible employees.

Palmason v. Weyerhaeuser Co., No. 11-695 (W.D. Wash.)

Keller Rohrback and co-counsel filed this action alleging that Weyerhaeuser and other fiduciaries caused its pension plan to engage in a risky investment strategy involving alternative investments and derivatives, causing the Plans' master trust to become underfunded. A settlement was reached for injunctive relief on behalf of the Plans' participants and beneficiaries.

In re State Street Bank & Tr. Co. ERISA Litig., No. 07-8488 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this ERISA breach of fiduciary duty class action filed in the Southern District of New York brought on behalf of participants and beneficiaries in the company's retirement plans. A settlement providing a payment of \$89.75 million was approved by Judge Richard J. Holwell on February 19, 2010.

In re Regions Morgan Keegan ERISA Litig., No. 08-2192 (W.D. Tenn.)

Keller Rohrback served as Co-Lead Class Counsel in this ERISA breach of fiduciary duty class action on behalf of participants and beneficiaries in the company's retirement plans as well as customer plans for which Regions served as a fiduciary. A settlement providing injunctive relief and a payment of \$22.7 million was approved by Judge Samuel H. Mays, Jr.

Gates v. United Healthcare Ins. Co., No. 11-3487 (S.D.N.Y.)

Keller Rohrback served as counsel in this lawsuit that alleged Defendants violated ERISA through use of an "estimating policy" which caused Medicare eligible participants and beneficiaries to be paid lower benefits than required by the plan in which they participate for services provided by out-of-network providers. Following an initial dismissal, Keller Rohrback successfully appealed to the Second Circuit Court of Appeals, and the district court then agreed with Plaintiff.



EMPLOYEE BENEFITS

REPRESENTATIVE CASES continued

Madoff Direct & Feeder Fund Litigation: Hartman v. Ivy Asset Mgt. L.L.C., No. 09-8278 (S.D.N.Y.)

Keller Rohrback successfully litigated this direct action on behalf of the trustees of seventeen employee benefit plans damaged by the Madoff Ponzi scheme. The action alleged that Ivy Asset Management and J.P. Jeanneret Associates, Inc. breached their fiduciary duties under ERISA by causing the plans to be invested directly or indirectly in Madoff funds. Keller Rohrback obtained a settlement of over \$219 million in this case and related actions, including claims brought by the United States Secretary of Labor and the New York Attorney General.

Griffith v. Providence Health & Servs., No. 14-1720 (W.D. Wash.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that the Providence Health & Services Cash Balance Retirement Plan was improperly claiming an exemption from ERISA as a “church plan.” In 2017, the Court granted final approval of a class settlement of \$350 million to the Plan and a guarantee that the Plan’s trust will have sufficient assets to pay benefits as they come due; and additional administrative protections and other equitable relief for Plan participants.

Hunter v. Berkshire Hathaway, Inc., No. 14-663 (N.D. Tex.)

Keller Rohrback was class counsel in a case under ERISA against Berkshire Hathaway Inc. Plaintiffs alleged that, when Berkshire Hathaway acquired a subsidiary (“Acme”) in 2000, Berkshire Hathaway made promises in a merger agreement that amended Acme’s pension and 401(k) plans, and that Berkshire Hathaway violated ERISA and those promises when it allegedly caused Acme to freeze accrual of pension benefits and decrease the employer’s matching contribution to the 401(k) plan. On May 26, 2020, the Court granted final approval of the parties’ Class Action Settlement Agreement, providing the classes an estimated \$10 million in value and resolving Plaintiffs’ ERISA claims with no admission of liability by Berkshire Hathaway.

Lann v. Trinity Health Corp., No. 14-2237 (D. Md.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that Trinity Health Corporation and Catholic Health East were improperly claiming an exemption from ERISA as “church plan.” In 2017, the Court granted final approval of a settlement providing for equitable relief, plus payment of over \$76 million to the Plan.

Spires v. Schools, No. 16-616 (D.S.C.)

Keller Rohrback and co-counsel represented participants and beneficiaries in the Piggly Wiggly Employee Stock Ownership Plan (“ESOP”). The complaint alleged that Defendants breached their fiduciary duties by doing nothing as the value of the Piggly Wiggly stock plummeted by nearly 90%. A settlement providing a payment of between \$7.675 million and \$8.65 million was approved by Judge Richard M. Gergel.

Braden v. Wal-Mart Stores, Inc., No. 08-3109 (W.D. Mo.)

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of Wal-Mart’s 401(k) plan who invested in retail class mutual funds that charged excessive fees to participants and paid hidden fees to the plan’s trustee and recordkeeper, Merrill Lynch. The complaint alleged that the revenue sharing and other fees were excessive in light of the size of the plan, and that these fees were not properly disclosed. Our attorneys secured the *first appellate victory* in a fee case of this kind when they obtained an order from the Eighth Circuit reversing dismissal and articulating the pleading standard for process-based breaches of ERISA, see *Braden v. Wal-Mart Stores Inc.*, 588 F.3d 585 (8th Cir. 2009). A settlement that included \$13.5 million along with injunctive relief was approved by Judge Gary A. Fenner.



EMPLOYEE BENEFITS

REPRESENTATIVE CASES continued

Beach v. JPMorgan Chase Bank, No. 17-563 (S.D.N.Y.)

Plaintiffs alleged that JPMorgan Chase Bank ("Chase") breached its fiduciary duties to the participants and beneficiaries of the JPMorgan Chase 401(k) Savings Plan ("Plan") in violation of ERISA by, among other things, failing to prudently and loyally manage the Plan's assets by selecting and retaining unduly expensive Core Funds and Target Date Funds as investment options in the Plan and by engaging in prohibited transactions as a result of conflicts of interest. On October 7, 2020, Judge Jesse M. Furman granted final approval of the \$9 million settlement of the action.

ERISA Indus. Comm. v. City of Seattle, No. 18-1188 (W.D. Wash.)

Keller Rohrback was co-counsel (along with the City Attorney) in defending a Seattle ordinance that mandates that large hotels pay their employees additional compensation to allow them to better afford health care. A nationwide employer association brought suit claiming that the ordinance is preempted by ERISA. The United States District Court granted the City's motion to dismiss and the district court's decision was upheld on appeal. On November 21, 2022, the U.S. Supreme Court denied a petition for certiorari, thereby ending efforts to invalidate the City ordinance.

Rollins v. Dignity Health, No. 13-1450 (N.D. Cal.)

Keller Rohrback served as co-counsel in this lawsuit alleging that the Dignity Health Pension Plan was improperly claiming an exemption from ERISA as a "church plan." In 2022, the Court granted final approval of a class settlement in excess of \$100 million to the Plan, additional minimum funding amounts paid into the Plan trust over several years, non-monetary changes, and certain equitable protections for Plan participants that are comparable to some of ERISA's key protections.

"The Court finds that . . . Keller Rohrback[] is experienced and qualified counsel who is generally able to conduct the litigation as lead counsel on behalf of the putative class. Keller Rohrback has significant experience in ERISA litigation, serving as co-lead counsel in the Enron ERISA litigation, the Lucent ERISA litigation, and the Provident ERISA litigation, and experience in complex class action litigation in other areas of law" Order at 4, *In re Williams Cos. ERISA Litig.*, No. 02-153 (N.D. Okla. Oct. 28, 2002) (Holmes, J.).

Hoffman v. United Airlines, Inc., 21-06395 (N.D. Ill.)

Keller Rohrback and co-counsel represent former United employees in this class action lawsuit that alleges United Airlines ("United") violated ERISA or Illinois state law with respect to promised severance benefits. Plaintiffs seek payment of benefits and all other relief and damages due them under ERISA on behalf of themselves and other similarly situated former employees of United. In the alternative, Plaintiffs assert claims on behalf of themselves and the class under state law for breach of contract and seek specific performance and all other available relief in law and equity.

ENVIRONMENTAL LITIGATION



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Attorneys in Keller Rohrback's Complex Litigation Group have successfully represented individuals, class members, municipalities, and nonprofit organizations in complex and critical environmental litigation. In cases involving oil spills, mishandled hazardous waste, contaminated consumer products, and industrial pollution, Keller Rohrback works to protect human health and the environment. The firm combines its unparalleled experience in consumer protection and its deep knowledge of environmental law, making Keller Rohrback a worldwide leader in litigation to safeguard our environment and the people and animals that rely on it.

REPRESENTATIVE CASES

PCB Litigation Against Monsanto Company on Behalf of State and Local Governments

Keller Rohrback has been retained by numerous state and local governments to pursue claims against Monsanto for the long-lasting and devastating impacts that Monsanto's polychlorinated biphenyls ("PCBs") have inflicted on fish, wildlife, ecosystems, and communities. Monsanto was the sole manufacturer of PCBs in the United States, selling over 1.4 billion pounds of these highly persistent and toxic chemicals. Although the manufacture of PCBs has been banned since the late 1970s, PCBs continue to contaminate land, water, and nearly all living things. By

pursuing these cases against the Monsanto defendants, Keller Rohrback is working to hold Monsanto responsible for the environmental contamination and degradation it has inflicted upon communities across the United States for generations.

Oregon v. Monsanto Co., No. 18-540 (Or. Cir. Ct., Multnomah Cnty.)

Oregon appointed Keller Rohrback to represent the State in this landmark case seeking to hold Monsanto responsible for the harm its Polychlorinated Biphenyls ("PCBs") have caused to Oregon's environment, including its waters and wildlife. Keller Rohrback, together with co-counsel Stoll Berne, filed the complaint in 2018. On December 15, 2022, Monsanto agreed to pay \$698 million to the State of Oregon to resolve the State's claims.

Delaware v. Monsanto Co., No. N21C-09-179 MMJ CCLD (Del. Super. Ct., New Castle Cnty.)

The State of Delaware hired Keller Rohrback to pursue claims against Monsanto sounding in nuisance, trespass, and unjust enrichment. Keller Rohrback and the State of Delaware's Complaint was filed on September 22, 2021 in the Superior Court of the State of Delaware. Defendants filed their Motion to Dismiss on December 17, 2021, and upon conclusion of briefing and oral argument, the Court granted Defendants' Motion. The State appealed the Superior Court's decision to the Delaware Supreme Court. The State's opening brief was filed on September 27, 2022. Briefing concluded in November, and oral argument on the appeal was heard on March 29, 2023. The parties now await the Delaware Supreme Court's order.

Maryland v. Monsanto Co., No. 24C21005251 (Md. Cir. Ct., Baltimore City)

Keller Rohrback filed a complaint on behalf of The State of Maryland against Monsanto in November 2021. In May 2022, the Court denied Monsanto's Motion to Dismiss and the case is in discovery.

ENVIRONMENTAL LITIGATION



OTHER REPRESENTATIVE CASES

City of Seattle v. Monsanto Co., No. 16-107 (W.D. Wash.)

Keller Rohrback represents the City of Seattle in its public nuisance case against Monsanto, whose PCBs contaminate the Lower Duwamish Waterway. Discovery, which closed last year, required review of hundreds of thousands of documents. Keller Rohrback, working closely with the City, took or defended over a dozen fact and 30(b)(6) depositions. Expert discovery is also complete and *Daubert* motions filed. The parties filed competing motions for summary judgment before Judge Jones and Magistrate Judge Peterson. Magistrate Judge Peterson has ruled in favor of the City of Seattle on its motion, however, Judge Jones has yet to rule on the Defendants' Motion for Summary Judgment at this time. At a recent Status Conference, Judge Jones vacated the trial schedule and ordered the parties to file a Status Report on October 27, 2023.

Andrews v. Plains All Am. Pipeline L.P., No. 15-4113 (C.D. Cal.)

Keller Rohrback serves as Co-Lead Counsel representing fisherman, fish processors, and others affected by the May 2015 spill from Plains All American's Line 901 pipeline in Santa Barbara County. The oil spill contaminated pristine beaches, closed critical fishing grounds, and damaged natural resources throughout the region. Keller Rohrback sought compensation for victims of the spill for their present and future damages and to hold Plains accountable for the harm it caused to the fishers and property owners. In May 2022 a settlement was reached on behalf of a Fisher Class for \$184 million and on behalf of a Property Class for \$46 million. The settlement has been preliminarily approved, and is pending final approval from the Court.

Resendez v. Precision Castparts Corp., No. 16-16164 (Or. Cir. Ct. Multnomah Cnty.)

Keller Rohrback represented a class of homeowners and residents in Multnomah and Clackamas County who sought relief from Precision Castparts Corp. for the company's heavy metal particulate air pollution that clouded their neighborhood and unreasonably interfered with their real property rights. Plaintiffs prevailed on the defendants' motions to dismiss and for summary judgment. In May 2022, the Court granted Final Approval of a Class Action Settlement, which included a \$12.5 million settlement fund for cash payments to class members, and millions of additional dollars in enhanced pollution controls at the Precision Castparts facilities in Southeast Portland.

Meeker v. Bullseye Glass Co., No. 16-7002 (Or. Cir. Ct., Multnomah Cnty.)

Keller Rohrback successfully negotiated a classwide settlement with Bullseye Glass Co. ("Bullseye") for contaminating a residential neighborhood in Portland, Oregon, by emitting hazardous levels of arsenic, cadmium, chromium, and other toxic materials from its glass-making facility for years. Despite using thousands of pounds a year of dangerous heavy metals, Bullseye Glass had used no pollution control technology for more than four decades. Using innovative air and soil monitoring, Keller Rohrback helped this neighborhood to protect itself and hold Bullseye accountable for the harm it caused. The final settlement approved by the Court included a two-year air monitoring program, ongoing use of pollution control devices by the defendant, and significant monetary payments to class members, including reimbursement for air emissions-related expenses.

ENVIRONMENTAL LITIGATION



OTHER REPRESENTATIVE CASES continued

Southern California Gas Leak Cases, No. JCCP 4861 (Cal. Super. Ct., Los Angeles Cnty.)

This action concerns one of the worst human-caused environmental disasters in this nation's history. These consolidated cases stem from the massive blowout at a natural gas storage well at the Aliso Canyon Natural Gas Storage Facility beginning in 2015. The blowout raged out of control for over 100 days, spewing huge volumes of natural gas, its constituents, and other toxic chemicals into the surrounding community. When the blowout was finally contained, it had released a volume of methane gas that caused a 25% increase in all of California's greenhouse gas emissions in 2015. Over 22,000 residents living within a 5-mile radius of the blowout were forced from their homes when their properties and schools were contaminated with a soup of toxic chemicals and known carcinogens. In April 2022, the Court granted final approval of a class action settlement to resolve the property-related claims of these residents pending before the Superior Court of California, County of Los Angeles. Keller Rohrback served on the Plaintiffs' Steering Committee for the Class Action Track for this action.

Clean Water Act Enforcement – General Magnaplate

In partnership with the non-profit Environmental Defense Center, one of the oldest environmental organizations in the United States, Keller Rohrback helped reach a final settlement with General Magnaplate California to control the significant pollutants the company discharged via stormwater into the fragile Santa Clara River. Under the settlement, General Magnaplate agreed to implement enhanced storm water management measures at its electroplating facility to ensure that storm water runoff does not contain high levels of pollutants that pose a threat to human health and the environment. These measures include installing effective treatment technology and repairing paved surfaces. In addition, General Magnaplate will contribute \$15,000 to the Rose Foundation for Communities and the Environment to be used to improve the water quality in the Santa Clara River watershed.

In re Chrysler-Dodge-Jeep EcoDiesel Mktg, Sales Pracs., & Prods. Liab. Litig., MDL No. 2777 (N.D. Cal.)

From the outset, Keller Rohrback played a major role in this multidistrict litigation, representing consumers nationwide who alleged that Fiat Chrysler used an emissions defeat device in over 100,000 Ram 1500 and Jeep Grand Cherokee diesel trucks and SUVs. Keller Rohrback Managing Partner Lynn Sarko was appointed by the Court to the Plaintiffs' Steering Committee leading this case, and Keller Rohrback attorneys took an active role in discovery and served on the negotiating team that achieved and implemented a settlement worth over \$307 million. The settlement, involving both Fiat Chrysler and supplier Bosch, provided owners and lessees of the affected vehicles with substantial cash payments in addition to government-approved emissions repairs and valuable extended warranty protection.

In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., and Prods. Liab. Litig., No. 3:15-md-02672 (N.D. Cal.)

Keller Rohrback filed the first multi-Plaintiff complaint against Volkswagen on September 20, 2015, two days after the defeat device scheme came to light. Keller Rohrback represented consumers nationwide who alleged they were damaged by Volkswagen's fraudulent use of an emissions "defeat device" in over 500,000 vehicles in the United States. Keller Rohrback Managing Partner Lynn Sarko served on the Plaintiffs' Steering Committee for this national litigation. Lynn Sarko and partner Gretchen Freeman Cappio served on the negotiating team for the \$15 billion class action settlement for 2.0-liter vehicles, the largest auto-related consumer class action in U.S. history. Keller Rohrback played a similar role in reaching and implementing similar settlements with Volkswagen and Bosch regarding approximately 100,000 3-liter vehicles.

ENVIRONMENTAL LITIGATION



OTHER REPRESENTATIVE CASES continued

In re Exxon Valdez, No. 89-95 (D. Alaska)

Keller Rohrback was trial counsel representing fishermen, landowners, and businesses located in Prince William Sound in their action against Exxon to recover damages caused by the Exxon Valdez oil spill. A federal jury awarded a \$5 billion judgment in favor of Keller Rohrback clients. At the time, it was the largest punitive damages verdict in U.S. history. Additional claims against the Alyeska Pipeline Service Company were settled for \$98 million. More than 25 years after the tragic spill, the Exxon Valdez spill is still considered one of the most devastating human-caused environmental disasters. In addition, Keller Rohrback Managing Partner Lynn Sarko was appointed to serve as the Administrator of the Exxon and Alyeska Qualified Settlement Funds.

Wishtoyo Found. v. Magic Mountain LLC, No. 12-5600 (C.D. Cal.)

Keller Rohrback worked with a team of environmental lawyers on behalf of Los Angeles-based clients who successfully negotiated a groundbreaking settlement with Six Flags Magic Mountain to address its stormwater pollution discharged to the Santa Clara River. The settlement significantly reduced the amount of heavy metals and other pollutants entering the Santa Clara from the amusement park by requiring the facility to install state-of-the-art technology, develop and implement a comprehensive site management plan, and fully comply with the Clean Water Act. Additional monetary payments made by Six Flags as a result of the case are being used to perform critical habitat restoration and mitigation projects along the Santa Clara River.

Mapleton Groundwater Litig. (Ruff v. Ensign-Bickford Indus.), No. 99-120B (D. Utah)

Keller Rohrback attorneys successfully litigated a series of groundwater contamination suits against multiple international Defendants accused of releasing hazardous chemicals into the watershed over six decades. The suits were brought on behalf of individuals and their families against Defendants who owned a former explosives plant in Mapleton, Utah. The Plaintiffs alleged that improper waste disposal caused contaminants to seep into the groundwater and that the chemicals caused property damage and non-Hodgkin's lymphoma cancers affecting numerous residents. The matter involved complex scientific issues related to hydrogeology, chemical migration pathways, aquifer dynamics, clean-up methods, and contaminant degradation. The litigation resolved prior to trial after lengthy evidentiary hearings at which Plaintiffs received favorable Daubert rulings.

GOVERNMENTS AND MUNICIPALITIES



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Dean N. Kawamoto
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Cari C. Laufenberg
Jeffrey Lewis
Daniel Mensher
Matthew Preusch
Erin Riley
Michael Woerner

Keller Rohrback has successfully represented government entities in a wide range of complex litigation. Whether fighting environmental contamination, combating antitrust activities, or recovering hundreds of millions of dollars from misleading investments, Keller Rohrback knows how to work effectively and collaboratively with and for government clients. Our unparalleled experience in consumer protection, antitrust and other areas of law—plus our hands-on, cooperative approach to litigation—have made our firm an effective partner for governments, sovereign nations and government-sponsored entities.

REPRESENTATIVE CASES

In re JUUL Labs, Inc., Mktg., Sales Pracs., and Prods. Liab. Litig., MDL No. 2913 (N.D. Cal.)

Keller Rohrback serves as Co-Lead Counsel in the JUUL MDL, in which it represents county governments, a sovereign tribe, and school districts bringing public nuisance claims against JUUL and Altria for creating the youth vaping crisis. Keller Rohrback also represents, along with co-counsel, the State of Alaska in similar claims against JUUL and Altria that are pending in Alaska state court. The government and school district plaintiffs allege that the JUUL and Altria defendants knowingly targeted youth in their marketing of addictive e-cigarettes, resulting in skyrocketing rates of youth vaping and nicotine addiction and the undoing of years of public health progress in combatting youth use of tobacco products. In December 2022, Keller Rohrback, along with its co-lead counsel in the JUUL MDL announced a settlement with JUUL on the eve of trial. The case against Altria proceeded to trial in April 2023. After Plaintiffs rested their case, a \$235 million settlement in principle was reached with Altria and

was announced on May 10, 2023. The scope of the MDL settlement is enormous, resolving 8,500 personal injury cases, over 1,400 county, city, and school district cases, and 32 tribal cases.

In re Nat'l. Prescription Opiate Litig., MDL No. 2804 (N.D. Ohio)

Keller Rohrback represents multiple government entities in the sprawling *In re National Prescription Opiate Litigation*, MDL pertaining to the well-publicized opioid epidemic that has ravaged the United States. Keller Rohrback has been responsible for the work of multiple critical experts, and has managed the litigation against key defendants, including Mallinckrodt, the manufacturer with the largest opioid market share. Keller Rohrback also helped manage discovery and played a key role in the work up of the claims against Walmart, one of three pharmacy defendants in the jury trial presided over by Honorable Dan Aaron Polster of the Northern District of Ohio on November 23, 2022. The jury found CVS Health, Walgreens, and Walmart, contributed to a “public nuisance” through the sale of prescription narcotics and were legally liable for contributing to the opioid epidemic in two Ohio counties. Some defendants in this litigation have settled, allowing billions of dollars in settlement funds to flow to municipalities across the country. Litigation against the remaining defendants is ongoing. Keller Rohrback also has been instrumental in the leadership and development of several statewide Memoranda of Understanding (MOU) that govern how MDL related settlement funds will be distributed.

GOVERNMENTS AND MUNICIPALITIES



REPRESENTATIVE CASES continued

In re Liquid Aluminum Sulfate Antitrust Litig., MDL No. 2687 (D.N.J.)

In 2016, Keller Rohrback filed numerous class action complaints in federal courts on behalf of several municipalities in Washington, California, and Arizona that purchase and use liquid aluminum sulfate (“Alum”) to treat and clean their waste water. The complaints contained claims against the major manufacturers of Alum who allegedly engaged in a conspiracy to artificially inflate the price of this essential chemical used in municipal water treatment. As a result of these antitrust violations, municipalities – and their taxpayers – had overpaid millions of dollars to the co-conspirators for the Alum they purchased during the long life of this conspiracy. In March 2020, the Court authorized the transfer of settlement funds to pay claims of the Settlement Class Members.

Republic of the Marshall Islands v. United States, No. 14-1885 (N.D. Cal.)

Keller Rohrback represented the Republic of the Marshall Islands (RMI) in an action for breach of the Treaty on the Non-Proliferation of Nuclear Weapons. We also represented the RMI in cases at the International Court of Justice against the United Kingdom, India, and Pakistan, for breach of treaty and violations of customary international law. For this ground-breaking work, Keller Rohrback and the RMI’s former Foreign Minister, Tony deBrum, were nominated for the 2016 Nobel Peace Prize.

Daisy Mountain Fire Dist. v. Microsoft Corp., MDL No. 1332 (D. Md.)

Keller Rohrback obtained a settlement in excess of \$4 million on behalf of a class of Arizona governmental entities that indirectly purchased operating systems and software from Microsoft at inflated rates because of Microsoft’s monopolistic practices. The settlement returned millions of dollars to local government entities at a time of severe budget crisis in the state.

Federal Home Loan Bank Litigation

Keller Rohrback has represented several Federal Home Loan Banks (“FHLBs”) in mortgage-backed securities litigation across the country against dozens of issuers, underwriters, and sponsors of these complex instruments. Representing these government-sponsored enterprises simultaneously in multiple state and federal courts has required us to approach coordinated, complex litigation by mastering the law of various jurisdictions and pressing similar claims, albeit under different governing law, in multiple fora at the same time. The FHLB complaints named more than 120 defendants and involved over 200 securities with a collective original face value of over \$13 billion. The relief sought by the FHLBs includes rescission and damages under state blue sky laws and the federal securities laws. We have recovered hundreds of millions of dollars on behalf of our clients to date.

Navajo Nation v. Urban Outfitters, Inc., No. 12-197 (D. N.M.)

Keller Rohrback represented the Navajo Nation against Urban Outfitters and its Anthropologie and Free People subsidiaries, alleging that these retailers infringed the Nation’s trademarks by marketing inauthentic jewelry, handbags, and clothing using the NAVAJO mark. A settlement resolved the Nation’s claims, and the parties agreed to enter a supply agreement that requires Urban Outfitters to purchase authentic goods from tribal artisans.

GOVERNMENTS AND MUNICIPALITIES



REPRESENTATIVE CASES continued

Social Media Litigation

Keller Rohrback has filed complaints on behalf of school districts in Washington, Arizona, Oregon, and California that allege that social media companies have substantially contributed to the mental health crisis America's youth are facing. The school districts allege that social media companies contributed to this crisis by, among other things, intentionally designing, marketing, and operating their exploitive social media platforms to target and hook youth users, despite research confirming the severe and wide-ranging effects of excessive and problematic social media use on youth mental health.

ERISA Indus. Comm. v. City of Seattle, No. 18-1188 (W.D. Wash.)

Keller Rohrback is co-counsel (along with the City Attorney) in defending a Seattle ordinance that mandates that large hotels pay specified amounts of money for employee health care. A nationwide employer association brought suit claiming that the ordinance is preempted by ERISA. The U.S. District Court granted the City's motion to dismiss. The district court's decision was recently upheld on appeal, and the Supreme Court recently denied a petition for certiorari of that decision.

King County v. Lexington Ins. Co., No. 15-2-3541-0 (Wash. Super. Ct. King Cnty.)

Keller Rohrback represented King County, Washington, in a multi-million-dollar insurance coverage and bad faith lawsuit arising from a disaster at the County's Brightwater Wastewater Treatment Facility. Our litigation returned millions of dollars to the taxpayers and allowed the County to upgrade its treatment facility to prevent future malfunctions.

Village of Rockton v. Sonoco Prods. Co., No. 14-50228 (N.D. Ill.)

Keller Rohrback represented the Village of Rockton in its efforts to make Sonoco Products Company, a paper and plastics manufacturing company, clean up the toxic mess it left when it abandoned its facility in the heart of the Village. Although the Illinois Environmental Protection Agency concluded that the levels of contamination at the site far exceeded state and federal laws and were threatening to spread to other sites in town and pollute the river, Sonoco refused to take any action. That changed, however, when Keller Rohrback began working on the case.

Using the experience and skills of the attorneys at Keller Rohrback, the Village took matters into its own hands and commenced legal action against Sonoco to protect the health and well-being of its dynamic community. As a result of Keller Rohrback's intervention, Sonoco has cleaned up the site and left the Village of Rockton a now safer and better place. Our firm is committed to making communities like Rockton clean and healthy places to live and visit.

Oregon v. Monsanto Co., No. 18-540 (Multnomah Cnty. Cir. Ct., Oregon)

Oregon appointed Keller Rohrback to represent the State in this landmark case seeking to hold Monsanto responsible for the harm its Polychlorinated Biphenyls ("PCBs") have caused to Oregon's environment, including its waters and wildlife. Keller Rohrback, together with co-counsel Stoll Berne, filed the complaint in 2018. On December 15, 2022, Monsanto agreed to pay \$698 million to the State of Oregon to resolve the State's claims.

GOVERNMENTS AND MUNICIPALITIES



REPRESENTATIVE CASES continued

Delaware v. Monsanto Co., No. N21C-09-179 MMJ CCLD (New Castle Cty. Superior Ct., DE)

The State of Delaware hired Keller Rohrback to pursue claims against Monsanto sounding in nuisance, trespass, and unjust enrichment. The complaint was filed in September 2021, and the case is currently pending before the Delaware Supreme Court. The State appealed the Superior Court's decision to the Delaware Supreme Court. The State's opening brief was filed on September 27, 2022. Briefing concluded in November, and oral argument on the appeal was heard on March 29, 2023. The parties now await the Delaware Supreme Court's order.

Maryland v. Monsanto Co., No. 24C21005251 (Baltimore City Cir. Ct., MD)

Keller Rohrback filed a complaint on behalf of The State of Maryland against Monsanto in November 2021. In May 2022, the Court denied Monsanto's Motion to Dismiss and the case is in discovery.

City of Seattle v. Monsanto Co., 16-107 (W.D. Wash.)

Keller Rohrback represents the City of Seattle in its public nuisance case against Monsanto, whose PCBs contaminate the Lower Duwamish Waterway. Discovery, which closed last year, required review of hundreds of thousands of documents. Keller Rohrback, working closely with the City, took or defended over a dozen fact and 30(b)(6) depositions. Expert discovery is also complete and *Daubert* motions filed. The parties filed competing motions for summary judgment before Judge Jones and Magistrate Judge Peterson. Magistrate Judge Peterson has ruled in favor of the City of Seattle on its motion, however, Judge Jones has yet to rule on the Defendants' Motion for Summary Judgment at this time. At a recent Status Conference, Judge Jones vacated the trial schedule and ordered the parties to file a Status Report on October 27, 2023.



INSURANCE COVERAGE

ATTORNEYS

Lynn Lincoln Sarko
Gretchen Freeman Cappio
Alison Chase
Benjamin Gould
Irene Hecht
Nathan Nanfelt

Keller Rohrback's insurance coverage lawyers have represented policyholders and insurers in state and federal courts for over 50 years. We have been at the forefront of policy interpretation and litigation to ensure that policyholders get the full benefit of the insurance coverage they purchased. Our litigation experience in this area includes coverage questions, breach of contract, insurance bad faith, negligent claims handling, violations of the Insurance Fair Conduct Act, and breach of the duty to defend. Our team has unmatched experience representing policyholders in cases involving business interruption coverage, dependent property coverage, home and property insurance, life and health insurance, professional insurance, and general and surplus insurance.

REPRESENTATIVE CASES

Merriman v. Am. Guarantee & Liab. Ins. Co., 198 Wn. App. 594, 396 P.3d 351, *rev. denied*, 189 Wn.2d 1038, 413 P.3d 565 (2017)

Keller Rohrback successfully litigated this action in the Washington Court of Appeals, establishing a policyholder's right to bring claims against insurance claim service providers. *Merriman* has been cited by other courts more than twenty times, including by the Washington Supreme Court, the Washington Court of Appeals, the Iowa Supreme Court, and the Ninth Circuit. The decision has been cited more than 60 times in litigation reporters and in secondary sources, including *Couch on Insurance*, *American Law Reports*, and *Corpus Juris Secundum*.

Glendale & 27th Invs., LLC v. Delos Ins. Co., 610 F. App'x 661 (9th Cir. 2015)

After Keller Rohrback's jury trial landed a punitive damages award against the insurer with a ratio of "roughly 3.5," *id.* at 663, the firm successfully defended an appeal seeking to overturn the punitive jury award as unconstitutional. The Ninth Circuit affirmed the jury's award of punitive damages, finding that plaintiff had presented evidence at trial, among other things, that the insurer "made intentional and material misrepresentations in the administration of [plaintiff's] claim." *id.* at 662.

Utica Mut. Ins. Co. v. Lifequotes of Am., Inc., No. 06-0228 (E.D. Wash.)

Keller Rohrback was awarded a series of significant class action judgments against defendant Lifequotes of America, Inc. in King County Superior Court in 2007. Facing an insolvent defendant, the class then purchased the claims and rights of defendant Lifequotes against its insurance company, Utica Mutual Insurance Company. Keller Rohrback continued to represent the class, who stepped into the shoes of the former defendant, on the new claims, and litigated against Utica Mutual in federal court in the Eastern District of Washington. The class pursued counterclaims against Utica Mutual for coverage, bad faith, and violations of the Washington Consumer Protection Act. Keller Rohrback's hard-fought and successful litigation against insurer Utica Mutual resulted in a \$44 million recovery for the class.

INSURANCE COVERAGE



REPRESENTATIVE CASES continued

The Charter Oak Fire Ins. Co., v. 21st Century Oncology Invs., LLC, No. 17-582-MSS-AEP (M.D. Fla.)

Keller Rohrback represents plaintiffs and a proposed class in a data breach action against healthcare provider 21st Century Oncology. Insurers sued the insured as well as the data breach plaintiffs for a declaration that there was no duty to defend and indemnify. After 21st Century declared bankruptcy, the data breach plaintiffs reached an agreement for relief from the automatic stay and an assignment of rights to a number of 21st Century's insurance policies. Keller Rohrback's clients then asserted counterclaims against the insurer, briefed cross motions for summary judgment involving unsettled law, and recently reached an agreement to settle.

Group Health Coop. v. Coon, 193 Wn.2d 841, 447 P.3d 139 (2019)

Keller Rohrback successfully represented the policyholder before the Washington Supreme Court, and prevailed in reaffirming the made-whole doctrine in favor of policyholders in insurance subrogation claims.



INTERNATIONAL LAW

ATTORNEYS

Lynn Lincoln Sarko
Laurie Ashton
Alison Chase
Juli Farris
Gary A. Gotto

Keller Rohrback has experience in international forums. Keller Rohrback clients included sovereign nations, state and local governments, sovereign Native American tribes, and quasi-governmental agencies where international agreements or other tort or statutory claims are at issue.

Keller Rohrback has been honored to represent sovereigns in litigation and arbitration matters involving governmental and business entities. The firm's attorneys have argued cases in the International Court of Justice and pursued a breach of treaty claim on behalf of a sovereign nation. Keller Rohrback is also investigating environmental contamination claims on behalf of a sovereign nation.

Keller Rohrback attorneys have also represented clients in international arbitration proceedings, including International Centre for Dispute Resolution and International Chamber of Commerce arbitrations, as well as ad hoc arbitrations conducted under the United Nations Commission on International Trade Law Arbitration Rules. Domestically, these international arbitrations have given rise to related litigation in U.S. courts, including confirmation and enforcement proceedings under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In addition, Keller Rohrback attorneys have represented private clients with international interests in civil litigation in U.S. courts, including state and federal courts in California, New York, Illinois, and Texas. Keller Rohrback attorneys have litigated trademark claims on foreign-registered trademarks in several western European countries and have also succeeded in obtaining rulings to conduct depositions and other discovery in Russia for litigation matters pending in the U.S. federal courts. The firm has also represented claimants in insolvency proceedings in Canada, proceeding under the Companies' Creditors Arrangement Act.



Keller Rohrback is a member firm of several international organizations: the Global Justice Network, a consortium of international counsel working together and across borders for the benefit of victims; the International Financial Litigation Network of attorneys, who handle cross-border litigation in the finance arena; and the Sovereign Wealth Fund Institute, a global organization of asset managers and service providers.

REPRESENTATIVE CASES

Republic of the Marshall Islands v. United States, No. 14-1885 (N.D. Cal.)

Keller Rohrback represented the Republic of the Marshall Islands (RMI) in an action for breach of the Treaty on the Non-Proliferation of Nuclear Weapons and also represented the RMI in cases at the International Court of Justice against the United Kingdom, India, and Pakistan, for breach of treaty and violations of customary international law. For this groundbreaking work, Keller Rohrback was nominated by the International Peace Bureau for the 2016 Nobel Peace Prize as part of the international legal team, together with the RMI's former Foreign Minister, Tony deBrum.

SECURITIES AND FINANCIAL FRAUD



ATTORNEYS

Lynn Lincoln Sarko
Derek Loeser
Alison Chase
Juli Farris
Laura Gerber
Matthew Gerend
Gary A. Gotto
Benjamin Gould
Dean N. Kawamoto
Ron Kilgard
David Ko
Eric Laliberte
Ryan McDevitt
David S. Preminger
Erin Riley
Havila C. Unrein
Michael Woerner

Keller Rohrback enjoys a national reputation for excellence in prosecuting securities and financial fraud matters. We represent a variety of investors ranging from classes of individuals to large institutions. Many of our cases reflect recent financial scandals: we are pursuing claims against a group of international banks for rigging LIBOR; we represent investors in connection with their purchases of billions of dollars of mortgage-backed securities; and we pursued claims on behalf of employee benefit plans in connection with the Madoff Ponzi scheme. While our experience is diverse, our approach is simple and straightforward: we master the factual and legal bases for our claims with a focus on providing clear and concise explanations of the financial fraud and why our clients are entitled to recover.

REPRESENTATIVE CASES

Federal Home Loan Bank Litigation

Keller Rohrback has played a prominent role in large securities fraud and other investment cases litigated across the country involving mortgage-backed securities. Keller Rohrback has been retained by several Federal Home Loan Banks (FHLBs) to pursue securities and common law claims against dozens of issuers, underwriters, and sponsors of mortgage-backed securities. The FHLB complaints named more than 120 defendants and involved over 200 securities with a collective original face value of \$13 billion. The relief sought by the FHLBs includes rescission and damages under state blue sky laws and the federal securities laws. We have recovered hundreds of millions of dollars on behalf of our clients to date.

In re the Bank of N.Y. Mellon (as Trustee), No. 651786/11 (N.Y. Sup. Ct.)

Keller Rohrback was a member of the three-firm steering committee addressing significant mortgage repurchase issues that impacted institutional investors. Keller Rohrback represented certificate holders who intervened in a proposed \$8.5 billion settlement initiated by Bank of New York Mellon, as Trustee of 530 Countrywide mortgage-backed securities trusts. Our firm played a lead role in discovery and the eight-week bench trial in New York contesting the fairness of the settlement. The objection we pursued and tried was the only objection the trial court sustained.

In re LIBOR-Based Fin. Instruments Antitrust Litig., No. 11-2262 (S.D.N.Y.)

Keller Rohrback represents institutional funds pursuing antitrust claims based on the manipulation of the London Interbank Offered Rate (LIBOR) by the international panel of banks entrusted to set that rate. Multiple government investigations have revealed that certain panel banks manipulated LIBOR to mislead the markets and investors about the state of their financial health. The case is in discovery.

Diebold v. Northern Tr. Invs., N.A., No. 09-1934 (N.D. Ill.)

Keller Rohrback was Class Counsel in this class action litigation against Northern Trust alleging that Northern Trust imprudently structured and managed its securities lending program by improperly investing cash collateral in long term debt, residential mortgage-backed securities, structured investment vehicles ("SIVs"), and other risky and illiquid assets. On August 7, 2015, Judge Susan E. Cox approved the allocation plan for a \$36 million settlement.

SECURITIES AND FINANCIAL FRAUD



REPRESENTATIVE CASES continued

Louisiana Firefighters' Ret. Sys. v. Northern Tr. Invs., N.A., No. 09-7203 (N.D. Ill.)

Keller Rohrback was Co-Lead Counsel in this securities lending litigation, a class action brought on behalf of four public retirement systems alleging that Northern Trust breached its fiduciary and contractual duties to investors when it imprudently structured and managed its securities lending program by improperly investing cash collateral in long-term debt, residential mortgage-backed securities, SIVs, and other risky and illiquid assets, rather than conservative, liquid investments. Plaintiffs allege that Northern Trust's imprudent management of the collateral pools caused Plaintiffs and other investors to suffer hundreds of millions of dollars in losses. On May 6, 2011, the Honorable Robert W. Gettleman denied in significant part Defendants' motion to dismiss. Plaintiffs also successfully defeated Defendants' third party complaint. The Court thereafter approved a partial settlement of \$24 million in cash, plus interest earned thereon, which represents settlement of the indirect lending claims of settlement class members.

In re Bank of N.Y. Mellon Corp. Forex Transactions Litig., No. 12-2335 (S.D.N.Y.)

Keller Rohrback served as Lead ERISA Counsel in this class action against the Bank of New York Mellon ("BNY Mellon") arising from its undisclosed charges for Standing Instruction Foreign Currency ("SI FX") transactions. Plaintiffs allege that between January 12, 1999 and January 17, 2012, BNY Mellon breached its fiduciary duties by failing to prudently and loyally manage the Plan's foreign currency transactions in the best interests of the participants, failing to disclose fully the details of the relevant SI FX transactions it was undertaking on behalf of the Plans, and engaging in prohibited transactions. In March 2015, a global resolution of the private and governmental enforcement actions was announced in which \$504 million will be paid back to BNY Mellon customers—\$335 million of which is directly attributable to funds received in the class litigation.

Madoff Direct & Feeder Fund Litigation: Hartman v. Ivy Asset Mgmt. LLC, No. 09-8278 (S.D.N.Y.)

Keller Rohrback successfully litigated this direct action on behalf of the trustees of seventeen employee benefit plans damaged by the Madoff Ponzi scheme. The action alleged that Ivy Asset Management and J.P. Jeanneret Associates, Inc. breached their fiduciary duties under ERISA by causing the plans to be invested directly or indirectly in Madoff funds. Keller Rohrback obtained a settlement of over \$219 million in this case and related actions, including claims brought by the United States Secretary of Labor and the New York Attorney General.

In re IKON Off. Sols., Inc. Sec. Litig., MDL No. 1318 (E.D. Pa.)

Keller Rohrback served as Co-Lead Counsel representing the City of Philadelphia and eight other lead Plaintiffs in this certified class action alleging securities fraud. Class counsel achieved the highest securities fraud settlement at that time in the Eastern District of Pennsylvania by settling with Defendant IKON Office Solutions, Inc. for \$111 million. The settlement was listed as one of the "largest settlements in class-action securities-fraud lawsuits since Congress reformed securities litigation in 1995" by *USA Today*.

In re Apple Comput., Inc. Derivative Litig., No. 06-4128 (N.D. Cal.)

Keller Rohrback served on the Management Committee in this federal derivative shareholder action against nominal Defendant Apple Computer, Inc. and current and former directors and officers of Apple. Plaintiffs pursued breach of fiduciary duty, unjust enrichment, and gross mismanagement claims arising from backdated stock options granted between 1993 and 2001, which diverted millions of dollars of corporate assets to Apple executives. We achieved a settlement that awarded \$14 million—one of the largest cash recoveries in a stock backdating case—and that required Apple to adopt a series of unique and industry-leading corporate enhancements.

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LAW OFFICES ♦ L.L.P.



DEREK LOESER

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PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Appeals
- Class Action & Consumer Litigation
- Data Privacy Litigation
- Employee Benefits & Retirement Security
- Employment Law
- Environmental Litigation
- Financial Products & Services
- Governments and Municipalities
- Institutional Investors
- Mortgage Put-Back Litigation
- Securities Fraud
- Whistleblower

Derek is a senior partner in Keller Rohrbach's nationally recognized Complex Litigation Group and a member of the firm's Executive Committee.

Derek's passion for holding large corporations accountable for wrongdoing has helped recover billions of dollars for consumers, retirees, governments and institutions. He has served in leadership roles in major complex cases across the country. Currently, he is co-lead counsel in *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, the MDL litigation against Facebook stemming from the Facebook Cambridge Analytica scandal.

Derek also serves as lead counsel for the Wells Fargo unauthorized account consumer class action. In this case, Derek and the Keller Rohrbach team achieved a \$142 million settlement requiring the bank to refund all improper fees and provide first-of-its kind credit damage reimbursement, among other relief, to Wells Fargo customers.

In addition to his class action work, Derek helps manage the Keller Rohrbach team representing state and local government entities in a number of matters involving significant public health crises. For example, Derek leads the Keller Rohrbach team litigating government cases against opioid manufacturers and distributors in *In re National Prescription Opiate Litigation*. In the Opioid MDL, Derek serves on the Expert and Law & Briefing Committees, and directs the litigation against a major generic opioid manufacturer. He also represents school districts and counties in litigation against the e-cigarette company, JUUL, for targeting and addicting youth. These cases are quintessential examples of the type of litigation Derek and the Keller Rohrbach team fervently pursue: corporate fraud and malfeasance causing serious harm to the public.

Some of Derek's other notable cases include mortgage-backed securities cases on behalf of the Federal Home Loan Banks of Chicago, Indianapolis and Boston; ERISA class cases on behalf of employees whose retirement savings were decimated by corporate fraud and abuse on the part of Enron, WorldCom, Countrywide, and Washington Mutual, among others. He has also litigated fraud, RICO, and antitrust cases against drug manufacturers, pharmacy benefit managers, and insurance companies for conspiring to drive up the cost of life-saving medications such as insulin.

Many of Derek's cases have required coordinating with state and federal agencies involved in litigation that parallels cases pursued by Keller Rohrbach, including state attorneys general, the Department of Justice, and the Department of Labor. In addition, Derek has extensive experience negotiating complex, multi-party settlements, and coordinating with the many parties and counsel necessary to accomplish this. He is also frequently asked to speak at national conferences about class actions, public health litigation, ERISA, and other complex litigation topics.

KELLER ROHRBACK

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Before joining Keller Rohrbach, Derek served as a law clerk for the Honorable Michael R. Hogan, U.S. District Court for the District of Oregon. He was also employed as a trial attorney in the Employment Litigation Section of the Civil Rights Division of the U.S. Department of Justice in Washington, D.C.

EDUCATION

Middlebury College

B.A., *summa cum laude*, 1989, American Literature (highest department honors), Stolley-Ryan American Literature Prize, Phi Beta Kappa

University of Washington School of Law

J.D., *with honors*, 1994

HONORS & AWARDS

Lawdragon, 500 Leading Plaintiff Financial Lawyers, 2023

Listed as Lawdragon 500 Leading Lawyers in America 2018, 2022 and 2023

Selected to Super Lawyers list in *Super Lawyers - Washington*, 2007-2012, 2014-2022

AV®, Peer Review Top-Rated by Martindale-Hubbell

Recipient of the 2010 Burton Award for Legal Achievement for the article, *The Continuing Applicability of Rule 23(b)(1) to ERISA Actions for Breach of Fiduciary Duty, Pension & Benefits Reporter*, Bureau of National Affairs, Inc. (Sept. 1, 2009)

Selected to Rising Stars list in Super Lawyers - Washington, 2005-2007

U.S. Department of Justice Award for Public Service, 1996

U.S. Department of Justice Achievement Award, 1996

U.S. Department of Justice Honors Program Hire, 1994

BAR & COURT ADMISSIONS

1994, Washington

1998, U.S. District Court for the Western District of Washington

1998, U.S. District Court for the Eastern District of Washington

1998, U.S. Court of Appeals for the Ninth Circuit

2002, U.S. District Court for the Eastern District of Michigan

2004, U.S. District Court for the Northern District of Illinois

2006, U.S. Court of Appeals for the Eleventh Circuit

2009, U.S. Court of Appeals for the Eighth Circuit

2010, United States Supreme Court

2010, U.S. Court of Appeals for the Fourth Circuit

2012, U.S. Court of Appeals for the Third Circuit

2013, U.S. Court of Appeals for the Second Circuit

2014, U.S. Court of Appeals for the First Circuit

2017, New York

PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member; Employment Benefits Committee Member*

National Employment Lawyers Association, *Member*

American Civil Liberties Union of Washington, *Cooperating counsel*

KELLER ROHRBACK

LAW OFFICES ♦ L. L. P.

PUBLICATIONS & PRESENTATIONS

Panelist, Law Seminars International - Health Care Class Actions: The Role of Class Actions as a Path to Recovery of Damages Related to the Opioid Crisis - *Class certification issues for human health impacts vs. financial impacts on government entities*, November, 2020.

Panelist, HarrisMartin's MDL Conference: JUUL and Capital One Data Breach Litigation – JUUL, E-Cigarettes & Vaping Litigation – An Overview of JUUL Legal Landscape: Case Filings, Judicial Rulings and MDL Submissions, Beverly Hills, CA, September, 2019.

Panelist, HarrisMartin's MDL Conference: Opioid, Equifax & Talcum Powder – *Opioid Litigation Landscape: Venues, Jurisdictional Hurdles, Defenses and Cause of Action*, St. Louis, MO, November, 2017.

Panelist, HarrisMartin's National Opioid Litigation Conference - *Current Landscape of Opioid Litigation*, Chicago, IL, October, 2017.

Speaker, *Trends in Auto Defect Litigation*, Seattle, WA, May, 2017.

Panelist, Law Seminars International - VW Diesel Emissions Litigation: A Case Study of the Interplay Between Government Regulatory Activity and Consumer Fraud Class Actions, May, 2016.

Speaker, *Class Action & Data Breach Litigation*, Santa Barbara, CA, March, 2016.

Speaker, *Fiduciary Challenges in a Low Return Environment*, Seattle, WA, December, 2014.

Speaker, *Post-Certification Motion Practice in Class Actions*, Seattle, WA, June, 2014.

Speaker, *Investment Litigation: Fees & Investments in Defined Contribution Plans*, ERISA Litigation, Washington, D.C., 2012.

Speaker, *Post-Certification: Motion Issues in Class Actions*, Litigating Class Actions, Seattle, WA, 2012.

Derek W. Loeser, Erin M. Riley & Benjamin B. Gould, 2010 *ERISA Employer Stock Cases: The Good, the Bad, and the In Between-Plaintiffs' Perspective*, Pension & Benefits Daily, Bureau of National Affairs, Inc. (Jan. 28, 2011).

Derek W. Loeser & Erin M. Riley, *The Case Against the Presumption of Prudence*, Pension & Benefits Daily, Bureau of National Affairs, Inc. (Sept. 10, 2010).

Speaker, ABA Mid-Winter Meeting, San Antonio, TX, 2010.

Speaker, 22nd Annual ERISA Litigation Conference - New York, NY, Nov. 2009.

Speaker, 22nd Annual ERISA Litigation Conference - Las Vegas, NV, Oct. 2009.

Derek W. Loeser & Benjamin B. Gould, *The Continuing Applicability of Rule 23(b)(1) to ERISA Actions for Breach of Fiduciary Duty*, Pension & Benefits Reporter, Bureau of National Affairs, Inc. (Sept. 1, 2009).

Panelist, HarrisMartin's National Opioid Litigation Conference - *Current Landscape of Opioid Litigation*, Chicago, IL, October, 2017.

Speaker, *Trends in Auto Defect Litigation*, Seattle, WA, May, 2017.

Panelist, Law Seminars International - VW Diesel Emissions Litigation: A Case Study of the Interplay Between Government Regulatory Activity and Consumer Fraud Class Actions, May, 2016.

Speaker, *Class Action & Data Breach Litigation*, Santa Barbara, CA, March, 2016.

Speaker, *Fiduciary Challenges in a Low Return Environment*, Seattle, WA, December, 2014.

Speaker, *Post-Certification Motion Practice in Class Actions*, Seattle, WA, June, 2014.

Speaker, *Investment Litigation: Fees & Investments in Defined Contribution Plans*, ERISA Litigation, Washington, D.C., 2012.

Speaker, *Post-Certification: Motion Issues in Class Actions*, Litigating Class Actions, Seattle, WA, 2012.

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ADELE DANIEL

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PRACTICE EMPHASIS

- Class Action and Consumer Litigation
- Data Privacy Litigation

EDUCATION

Carleton College

B.A, *magna cum laude*, 2014,
History

University of Michigan Law School

J.D., Order of the Coif, *magna cum laude*, 2017

BAR & COURT ADMISSIONS

2018, Washington

Adele Daniel always has the big picture in mind. As an attorney in our nationally recognized Complex Litigation Group, she takes the time to deeply understand the opposing side in order to forcefully rebut the opposition's arguments.

Adele graduated *magna cum laude* from University of Michigan Law School, where she served as an Articles Editor for the Michigan Law Review. Following her graduation, Adele clerked for Chief Judge Michael Mosman at the U.S. District Court for the District of Oregon. She then moved to Seattle to clerk for Judge Ronald Gould at the U.S. Court of Appeals for the Ninth Circuit.

Interested in using litigation to make a lasting impact for consumers, Adele joined Keller Rohrbach in 2019. As a member of the firm's automotive litigation team, Adele embraces the opportunity to represent deserving clients, and in so doing, deter corporations from future misconduct.

In her spare time, Adele heads to Washington's mountains and rivers for cycling, backpacking, and whitewater kayaking.

PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2022

KELLER ROHRBACK

LAW OFFICES ♦ L.L.P.



ERIC FIERRO

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PRACTICE EMPHASIS

- Class Actions
- Commercial Litigation
- Consumer Protection
- eDiscovery
- Financial Products and Services
- Intellectual Property
- Mass Personal Injury
- Securities
- Whistleblower

EDUCATION

Arizona State University

B.S., 2002, Justice Studies

New England School of Law

J.D., 2006, Senior Editor, *New England Journal of International and Comparative Law*

Eric Fierro bridges the gap between technology and the law. Eric practices in Keller Rohrback's nationally recognized Complex Litigation Group and oversees the firm's legal technology group, providing electronic discovery and litigation support to colleagues and clients on a wide array of cases. Whether he is helping to preserve significant amounts of data for institutional clients or walking an individual through the data collection process to increase accuracy and maximize privacy, Eric works closely with clients to understand their needs and provide solutions.

Eric has over 15 years of experience with legal technology. While attending law school in the evening, Eric worked full-time for the U.S. Attorney's Office for the District of Massachusetts where he provided technical support for all criminal and civil units, including the healthcare fraud, securities fraud, and other white collar crime units. Eric also worked as a summer law clerk for the computer crime and intellectual property unit at the U.S. Attorney's Office. Before joining Keller Rohrback, he was a managing consultant for Huron Consulting Group, providing consultative services for complex electronic discovery and document review matters.

When not at work, Eric enjoys spending time with his family, golfing, and rebuilding off-road vehicles in his garage.

BAR & COURT ADMISSIONS

2009, Arizona

2009, U.S. District Court for the District of Arizona

PROFESSIONAL & CIVIC INVOLVEMENT

Arizona State Bar Association, *Member*

PUBLICATIONS & PRESENTATIONS

Presenter, 2019 ASU-Arkfeld eDiscovery and Digital Evidence Conference, "Everyday Devices and the Internet of Things: Working with ESI in the Forest of Smart Device."

Presenter, 2018 Complex Litigation E-Discovery Forum, Plaintiff Offensive Review Workflows and Tips, September 2018.

Presenter, 2017 Complex Litigation E-Discovery Forum, Best Practice for Plaintiff Document Collection, September 2017.

Presenter, 2016 Complex Litigation E-Discovery Forum, Negotiating a State of the Art ESI Protocol, September 23, 2016.

Panelist, IPro Innovations for The Sedona Conference, The 2015 Federal Rule Amendments: Has Anything Really Changed? April 2016.

KELLER ROHRBACK

LAW OFFICES ♦ L. L. P.



MATTHEW GEREND

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PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Appeals
- Class Action & Consumer Litigation
- ERISA & Employee Benefits

EDUCATION

University of Wisconsin

B.A., with distinction, 2005,
Political Science, Phi Beta Kappa

Georgetown University Law Center

J.D., *cum laude*, 2010; Executive
Articles Editor, *Georgetown Journal
on Poverty Law and Policy*

Matthew Gerend practices in the firm's nationally recognized Complex Litigation Group, representing employees, benefit plans, and consumers in litigation to enforce antitrust laws and the Employee Retirement Income Security Act ("ERISA").

Matt has represented plaintiffs in federal courts across the country to redress harms stemming from breaches of fiduciary duties, investment fraud, anticompetitive conduct, and other misconduct that harms employees, benefit plans, and consumers.

Matt has also represented health plan members and health plans in litigation to hold pharmacy benefit managers and drug manufactures accountable for unfair, deceptive, and anticompetitive practices that artificially drive up the prices for critical medications, such as the EpiPen and the MS drug Copaxone.

Matt became interested in the laws protecting retirement and health benefits as a clerk with AARP Foundation Litigation, where he helped draft a number of amicus curiae briefs filed in the U.S. Supreme Court and U.S. Courts of Appeals regarding the proper interpretation and implementation of ERISA. During law school, Matt also worked as an intern with the Community Development Project at the Lawyers' Committee for Civil Rights Under Law.

Matt believes that lawyers have a unique ability to effect social change, an ethic that has guided his work representing individuals and benefit plans against those engaged in divisive and fraudulent practices.

BAR & COURT ADMISSIONS

2010, Washington

2011, U.S. District Court for the Western District of Washington

2012, U.S. Court of Appeals for the Third Circuit

2013, U.S. District Court for the Eastern District of Michigan

2014, U.S. Court of Appeals for the Sixth Circuit

2014, U.S. Court of Appeals for the Ninth Circuit

2015, U.S. Court of Appeals for the Seventh Circuit

2015, U.S. District Court for the District of Colorado

2016, U.S. Court of Appeals for the Fourth Circuit

2016, U.S. Court of Appeals for the Tenth Circuit

2016, Supreme Court of the United States

2018, U.S. Court of Appeals for the Second Circuit

2018, U.S. District Court for the Eastern District of Wisconsin



PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar Association, *Member*

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers – Washington*, 2014-2022

PUBLICATIONS & PRESENTATIONS

Contributing Author, *Zanglein et. al., ERISA Litigation* (Bloomberg BNA 2015).

Deborah M. Austin and Matthew M. Gerend, *The Scope and Potential of Section 3 as Currently Implemented*, 19 J. Affordable Housing & Commun. Dev. L. 89 (2009).

KELLER ROHRBACK

LAW OFFICES ♦ L.L.P.



BENJAMIN GOULD

CONTACT INFO

1201 Third Avenue, Suite 3200
Seattle, WA 98101
(206) 623-1900
bgould@kellerrohrback.com

PRACTICE EMPHASIS

- Appeals
- Class Actions
- Constitutional Law
- Data Privacy Litigation
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Institutional Investors

EDUCATION

Yale University

B.A., *summa cum laude*, 2002,
English, Phi Beta Kappa

Yale Law School

J.D., 2006, Editor, *Yale Law Journal*,
Editor-in-Chief, *Yale Journal of Law
and the Humanities*

Benjamin Gould makes the law work for his clients. Ben, a Seattle native, practices in Keller Rohrbach's nationally recognized Complex Litigation Group. His ability to clearly and efficiently communicate factual and legal issues to his clients and courts allows him to adeptly serve the interest of clients who have been harmed by others' misconduct.

Ben has extensive experience in appellate litigation and has active appeals pending in state and federal courts throughout the nation. He has secured successful results for his clients before the U.S. Courts of Appeals for the Second, Eighth, and Ninth Circuits and numerous state appellate courts. Ben also maintains an active practice outside the appellate arena. He has represented clients in cases involving pensions, securities, and consumer-protection law, among other subjects.

Before joining the firm, Ben worked as a Legal Fellow of the ACLU Drug Law Reform Project, litigating cases related to drug policy and civil rights. He also served as a clerk to two federal appellate judges: the Honorable Betty Binns Fletcher of the U.S. Court of Appeals for the Ninth Circuit and the Honorable Diana E. Murphy of the U.S. Court of Appeals for the Eighth Circuit.

BAR & COURT ADMISSIONS

2007, California
2010, District of Columbia
2010, U.S. Court of Appeals for the Ninth Circuit
2011, Washington
2011, U.S. District Court for the Western District of Washington
2012, U.S. District Court for the Eastern District of Washington
2012, U.S. Court of Appeals for the Third Circuit
2013, U.S. Court of Appeals for the Second Circuit
2013, U.S. Court of Appeals for the Sixth Circuit
2013, U.S. Court of Appeals for the Eighth Circuit
2013, U.S. Court of Appeals for the Eleventh Circuit
2014, U.S. Court of Appeals for the First Circuit
2015, U.S. Supreme Court

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L A W O F F I C E S ♦ L . L . P .

PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*; Appellate Law
Section

Washington State Bar Association, *Member*

Washington State Association for Justice, *Member*

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers* - Washington,
2016-2022

PUBLICATIONS & PRESENTATIONS

Benjamin Gould, "Alphabet Soup: Exploring Washington's Unique 'ABC Rule' on Attorney Fees From Collateral Litigation" in *Washington State Bar News*, Feb. 9, 2023.

Benjamin Gould, "On the Lawfulness of Awards to Class Representatives," *Cardozo Law Review* de novo, 2023.

Benjamin Gould, An Update on COVID-19 Coverage Litigation in Washington, in *Washington State Association for Justice: Trial News* (Nov. 2022)

Benjamin Gould, Washington's Flawed ABC Rule, 58 *Willamette L. Rev.* 251 (2022).

Benjamin Gould, "Inoculation Altercation: What Critics Misunderstand About the Washington Supreme Court Vaccination Order" in *Washington State Bar News*, Oct. 21, 2021.

Benjamin Gould, "Subject-Matter Jurisdiction in the Washington Supreme Court: Unsettling the Settled," in *NWSidebar*, November 2020.

Benjamin Gould, "Vaccine Law: An Overview of Current Law and a Look at the Future," in *NWLawyer*, November 2019.

Benjamin Gould, *Radical Jurisprudence*, 93 *Wash. L. Rev. Online* 49 (2018).

Speaker on Rule 23(f) and Class Action Appeals, American Bar Association 19th Annual National Institute on Class Actions, New Orleans, LA, 2015.

A Review of Antonin Scalia and Bryan A. Garner, *Reading Law* (2012), in *Trial News*, March 2014.

Derek W. Loeser & Benjamin Gould, *Point/Counterpoint: Is Rule 23(b)(1) Still Applicable to ERISA Class Actions?*, ERISA Compliance and Enforcement Library of the Bureau of National Affairs, Inc. (May 1, 2009).

Derek W. Loeser & Benjamin Gould, *The Continuing Applicability of Rule 23(b)(1) to ERISA Actions for Breach of Fiduciary Duty*, *Pension & Benefits Reporter*, Bureau of National Affairs, Inc. (Sept. 1, 2009).*

Derek W. Loeser, Erin M. Riley & Benjamin Gould, *2010 ERISA Employer Stock Cases: The Good, the Bad, and the In Between-Plaintiffs' Perspective*, *Pensions & Benefits Daily*, Bureau of National Affairs, Inc. (Jan. 28, 2011).

KELLER ROHRBACK

LAW OFFICES ♦ L. L. P.



CHRISTOPHER GRAVER

CONTACT INFO

3101 N Central Avenue, Ste. 1400
Phoenix, Arizona 85012-2600
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PRACTICE EMPHASIS

- Business Litigation
- Bankruptcy and Creditors' Rights

EDUCATION

St. John's College

B.A., 1976

University of New Mexico

J.D., *magna cum laude*, 1990
Order of the Coif

Chris is a member of Keller Rohrbach's Complex Litigation and Bankruptcy Groups.

He has represented debtors, creditors, Court-appointed committees, and asset purchasers in Chapter 11 reorganization proceedings and workouts. In recent years he has also focused on representing plaintiffs in ERISA class actions. Chris has wide-ranging experience in complex commercial matters, from corporate restructuring to breach of fiduciary duty, commercial real estate, contracts, patent infringement, and environmental insurance coverage.

Together with colleagues, Chris has represented clients as diverse as pension plan participants in class actions challenging their employers' asserted exemption from ERISA, the committee of victims of clergy sexual abuse in the Chapter 11 reorganization of a Catholic diocese, an American Indian business corporation in a commercial dispute, and a developer restructuring a portfolio of real property interests nationwide.

A graduate of the Great Books liberal arts program at St. John's College in Santa Fe, Chris earned his law degree from the University of New Mexico Law School *magna cum laude* in 1990. While his practice is centered in the Southwest, Chris represents clients in federal courts coast to coast.

BAR & COURT ADMISSIONS

1990, Arizona

1990, United States District Court for the District of Arizona

2004, United States Court of Appeals for the Ninth Circuit

2015, United States Court of Appeals for the Fifth Circuit

2015, United States Court of Appeals for the Tenth Circuit

2017, United States Supreme Court

PROFESSIONAL & CIVIC INVOLVEMENT

Arizona State Bar Association, *Member*

Maricopa County Bar Association, *Member*

PUBLICATIONS & PRESENTATIONS

Co-author, "Confirming the Catholics: The Diocese of Tucson Experience," Norton Bankruptcy Law Advisor, 2005.

Co-author, "Representing the Tort Claimants' Committee in the Chapter 11 Case Filed by the Roman Catholic Diocese of Tucson," prepared for the National Conference of Bankruptcy Judges, 2005.

"Decoding the Code," *AzBusiness Magazine*, 2005.

Speaker, Maricopa County Bar Association presentation, *New Bankruptcy Code: Changing the Way Creditors are Treated*, 2006.

KELLER ROHRBACK

LAW OFFICES ♦ L.L.P.



DAVID KO

CONTACT INFO

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(206) 623-1900
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PRACTICE EMPHASIS

- Class Actions
- Consumer Protection
- Data Privacy Litigation
- Employee Benefits and Retirement Security
- Financial Products and Services
- Governments & Municipalities
- Institutional Investors
- Securities

David is a partner in the firm's nationally recognized Complex Litigation Group where he litigates cases on behalf of plaintiffs in federal and state courts across the country in a wide variety of cases involving corporate wrongdoing. He has helped his clients—including government entities, retirement plans, institutional investors, and consumers—obtain multimillion-dollar recoveries against some of the largest corporations in the country. He has significant trial experience, having tried month-long trials in both federal and state court.

David is currently at the center of the firm's largest and most high-profile cases. He represents hundreds of government entities all over the country in *In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio)—seeking to hold manufacturers, distributors, and dispensers responsible for creating and fueling the opioid epidemic—and *In re JUUL Labs, Inc. Marketing, Sales Practices, & Products Liability Litigation*, MDL 2913 (N.D. Cal.), seeking to hold JUUL and Altria responsible for creating and fueling the youth vaping epidemic. He is also one of the lead attorneys in *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, MDL 2843 (N.D. Cal.), a class action on behalf of all Facebook U.S. users alleging Facebook discloses user information and data without consent.

Prior to joining the firm, David clerked for the Honorable Ricardo S. Martinez, Chief U.S. District Judge in the Western District of Washington. He is past President of the Korean American Bar Association of Washington, and a Fellow of the Washington Leadership Institute. While born in Seoul and extremely proud of his Korean heritage, David has spent most of his life in the Seattle area, where he currently lives with his wife and two young daughters and is an avid supporter of all Seattle sports teams.

EDUCATION

University of Washington

B.A., 2002, History and Political Science

Seattle University School of Law

J.D., *cum laude*, 2006; National Order of Barristers

University of Washington School of Law

LL.M., 2007 Taxation



BAR & COURT ADMISSIONS

2006, Washington

2010, U.S. District Court for the Western District of Washington

2010, U.S. District Court for North Dakota

2011, U.S. Court of Appeals for the Ninth Circuit

2016, U.S. District Court for the Eastern District of Michigan

2018, U.S. Court of Appeals for the Second Circuit

2018, U.S. District Court for the Eastern District of Washington

2019, U.S. District Court for Colorado

PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Korean American Bar Association, *Board Member*

Asian American Bar Association, *Member*

National Center for Employee Ownership, *Member*

PUBLICATIONS & PRESENTATIONS

Speaker, Washington County Administration Association Annual Conference, Opioid Litigation Settlement Updates (April 2023)

Speaker, Washington Association of Prosecuting Attorneys Spring Training Program, Opioid Litigation (Tacoma, WA, April 2023)

Speaker, Human Right to Health: Pathways and Responses, Opioid Abuse and Litigation: Legal and Policy Responses (Seattle, WA, November 2019)

Speaker, Washington State Society of Healthcare Attorneys Annual Conference, *Opioid Litigation on Behalf of Local Governments* (Seattle, WA, April 2018)

Speaker, Mass Torts Made Perfect, *National Costs of Opioid Crisis* (Las Vegas, NV, April 2018)

Speaker, National Center for Employee Ownership Annual Conference, *Fundamentals of the Repurchase Obligation* (Denver, CO, March 2017)

Speaker, National Business Institute, *Legal Ethics: Top Attorney-Client Mistakes* (Seattle, WA, December 2016)

Speaker, National Business Institute, *Title Law: Ethics* (Seattle, WA, April 2016)

HONORS & AWARDS

Lawdragon, 500 Leading Plaintiff Financial Lawyers, 2023

Selected to Super Lawyers list in *Super Lawyers - Washington* 2022

Selected to Rising Stars list in *Super Lawyers - Washington*, 2019-2020

National Trial Lawyers: Top 100 Civil Plaintiff Trial Lawyers in Washington

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BENJAMIN J. LANTZ

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PRACTICE EMPHASIS

- Banking
- Business & Finance
- Catastrophic Property Loss
- Commercial Litigation
- Employment Law
- Insurance Litigation
- Medical & Dental
- Personal Injury Wrongful Death
- Real Estate Litigation

EDUCATION

New England School of Law

J.D., *cum laude*, 1995

Boston College

B.A., 1992

Ben Lantz's practice focuses on plaintiff's personal injury cases including motor vehicle accidents, premises liability, product liability, wrongful death, and catastrophic property loss.

He brings a unique skill set to his plaintiff's personal injury practice. For over 25 years, Ben defended these claims for insurance companies, car manufactures, and government entities. Using this experience, Ben has developed deep insight into how insurance companies and defense counsel think, defend, and ultimately value cases. Armed with this knowledge, he understands what cases are worth pretrial and when it is necessary to let a jury determine the value of a client's claim.

Mr. Lantz began his career as a civil and criminal prosecutor with the Snohomish County Prosecutor's Office, where he obtained extensive trial experience. Since joining Keller Rohrbach L.L.P. in 1998, Ben has successfully represented financial institutions and corporations in complex commercial litigation matters. He also has successfully defended automotive product liability cases on behalf of Ford Motor Company, Honda Motor Co., Ltd., New Holland North America, Inc. and Toyota Motor Corporation.

BAR & COURT ADMISSIONS

1995, Washington

1997, U.S. District Court for the Western District of Washington

1999, U.S. District Court for the Eastern District of Washington

PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

HONORS & AWARDS

Selected to Rising Stars list in Super Lawyers - Washington, 2006, 2008.

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LAW OFFICES ♦ L. L. P.



CARI CAMPEN LAUFENBERG

CONTACT INFO

1201 Third Avenue, Suite 3200
Seattle, WA 98101
(206) 623-1900
claufenberg@kellerrohrback.com

PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Appeals
- Class Actions
- Consumer Protection
- Data Privacy Litigation
- Employee Benefits & Retirement Security
- Fiduciary Breach
- Financial Products & Services

EDUCATION

University of California, San Diego

B.A., 1993, Art History

University of Washington

M.A., 1998, Public Administration

University of Washington School of Law

J.D., 2003

As a partner in Keller Rohrbach's nationally recognized Complex Litigation Group, Cari Laufenberg maintains a national practice representing consumers, employees, and institutions in complex consumer and employee class actions involving corporate fraud, privacy and data breach issues, breach of fiduciary duty, and the Employee Retirement Income Security Act ("ERISA"). Since joining Keller Rohrbach, she has played a key role in obtaining multi-million-dollar recoveries for consumers, employees, and shareholders in many of the firm's largest and most complex cases, including cases involving Anthem Inc., Sony Pictures Entertainment Inc., Marsh McLennan Companies, Goodyear Tire & Rubber Co., and HealthSouth Corporation.

Cari has been appointed to numerous leadership positions in federal courts across the country. She currently serves as Co-Lead Counsel for over 76 million data breach victims in *In re T-Mobile Customer Data Security Breach Litigation* in the Western District of Missouri. Cari has also served as Co-Lead Counsel in *In re 21st Century Oncology Customer Data Security Breach Litigation* in the Middle District of Florida, and as Class Counsel in *Fox v. Iowa Health System* in the Western District of Wisconsin representing 1.4 million victims of the UnityPoint Health data breach. She has been appointed as a member of several leadership committees including: *In re Experian Data Breach Litigation* in the Central District of California and *In re VTech Data Breach Litigation* in the Northern District of Illinois, Eastern Division. Cari has also made key contributions in other significant data breach and data privacy actions in which Keller Rohrbach has had leadership positions including *In re Facebook, Inc. Consumer Privacy User Profile Litigation* in the Northern District of California, *In re Blackbaud Inc. Customer Data Security Breach Litigation* in the District of South Carolina, and *Corona v. Sony Pictures Entertainment, Inc.* in the Central District of California.

Over the past almost 20 years, Cari's background in nonprofit management and public administration has served her clients well. She is adept at organizing large complex cases, working collaboratively with other counsel, and developing a cogent strategy which achieves short-term goals and long-term successes. Before joining Keller Rohrbach in 2003, Cari served as a judicial extern for Judge Barbara Jacobs Rothstein of the U.S. District Court for the Western District of Washington. She is a frequent speaker at national conferences on class actions, identity theft and privacy, and other complex litigation topics.

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L A W O F F I C E S ♦ L . L . P .

BAR & COURT ADMISSIONS

2003, Washington

2004, U.S. District Court for the Western District of Washington

2006, U.S. District Court for the Eastern District of Michigan

2006, U.S. Court of Appeals for the Eleventh Circuit

2011, U.S. Court of Appeals for the Seventh Circuit

2011, U.S. Court of Appeals for the Ninth Circuit

2013, U.S. Court of Appeals for the Eighth Circuit

HONORS & AWARDS

Lawdragon, 500 Leading Plaintiff Financial Lawyers, 2023

National Trial Lawyers: Top 100 Civil Plaintiff Trial Lawyers in Washington

Named as the Best Lawyers® 2023 Litigation – ERISA
“Lawyer of the Year” in Seattle

Best Lawyers in America, Litigation - ERISA, 2022-2023

Selected to Super Lawyers list in *Super Lawyers - Washington*, 2022

Selected to Rising Stars list in *Super Lawyers - Washington*, 2008-2009, 2011

AV®, Peer Review Top-Rated by Martindale-Hubbell

PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

King County Washington Women Lawyers, *Member*;
Member of the Board of Directors (2003-2005)

Washington Women Lawyers, *Member*

The William L. Dwyer American Inn of Court, *Founding Student Member* (2002-2003)

Federal Bar Association, *Member*

American Association for Justice, *Member*

Washington State Association for Justice, *Member*

Northwest Immigrant Rights Project, *Volunteer Attorney*

National Association for Public Pension Attorneys, *Member*

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L A W O F F I C E S ♦ L . L . P .

PUBLICATIONS & PRESENTATIONS

Presenter, Capital One Data Breach Litigation, HarrisMartin's MDL Conference, Beverly Hills, CA, September 2019.

Presenter, Consumer Recovery of Damages for Security Breaches or Misuse of Consumer Information, Law Seminars International Artificial Intelligence & Privacy Conference, Seattle, WA, August 2019.

Presenter, Data Breach & Privacy Class Action Litigation, Law Seminars International Class Action Litigation Conference, Seattle, WA, May 2019.

Presenter, Facebook Breach – Is Anyone's Data Safe, HarrisMartin MDL Conference, Chicago, IL, May 2018.

Class Action Lawsuits and Settlements: Uncovering the Things You Need to Know, The Knowledge Group Online CLE, November 2018.

Presenter, Intel: The OEM Cases, HarrisMartin MDL Conference, Miami, FL, March 2018.

Presenter, *Legal Claims: Equifax and Other Data Breach Cases*, HarrisMartin's Equifax Data Breach Litigation Conference, Atlanta, GA, November 2017.

Tana Lin, Cari Laufenberg and Lisa A. Nowlin, Brief for American College of Obstetricians and Gynecologists as Amicus Curiae in Support of Respondent, *Coffey v. Public Hosp. Dist. No. 1, Skagit Cty. Wash. d/b/a Skagit Regional Health, et al.*, No. 75769-5) (Wash. Ct. App. Apr. 5, 2017).

Panelist, *Recent Settlements & Litigation Trends*, HB Litigation Conferences, Data Breach Litigation and Investigation Forum 2017, San Francisco, CA, January 2017.

Presenter, *Don't Be Spokeo'd: What You Need to Know in Litigating Data Breach Cases*, American Bar Association, Business Law Section Annual Meeting, Boston, MA, September 2016.

Panelist, *The Client's Perspective: ADR Users Share Insights Regarding What Mediators Do To Make the Process Succeed or Fail*, American Bar Association, 18th Annual Section of Dispute Resolution Spring Conference, New York, NY, April 2016.

KELLER ROHRBACK

LAW OFFICES ♦ L.L.P.



LYNN LINCOLN SARKO

CONTACT INFO

1201 Third Avenue, Suite 3200
Seattle, WA 98101
(206) 623-1900
lsarko@kellerrohrback.com

PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Appeals
- Class Actions
- Constitutional Law
- Commodities & Futures Contracts
- Consumer Protection
- Data Privacy Litigation
- Employment Law
- Environmental Litigation
- Employee Benefits & Retirement Security
- Financial Products & Services
- Government & Municipalities
- Institutional Investors
- Intellectual Property
- International Law
- Mass Personal Injury
- Securities & Financial Fraud
- Whistleblower

Managing Partner Lynn Sarko uses thoughtful innovation to solve

complex issues. Having led Keller Rohrback L.L.P.'s Complex Litigation Group since its inception over 30 years ago, Lynn's work has led to new developments in case law and significant, impactful settlements for his clients.

A dynamic leader with a tenacious dedication to justice, Lynn has been selected by courts across the nation to serve in key leadership roles in a wide variety of cutting-edge cases. Namely, he was appointed Co-Lead counsel for *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Practices & Antitrust Litigation*, MDL No. 2785 (D. Kan.), the nationwide class action against pharmaceutical company Mylan and others for anticompetitive and unfair business practices in its sale and marketing of the EpiPen Auto-Injector device. He was also selected to serve in a leadership position on behalf of governmental entities and other plaintiffs in the vast litigation regarding the nationwide prescription opioid epidemic, *In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio). The National Law Journal referred to this leadership team as a "Who's Who' in mass torts."

Some of Lynn's other remarkable successes include consumer protection cases aimed at holding automotive companies accountable for wrongdoing. One such case was *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.), for which Lynn was appointed to the Plaintiffs' Steering Committee—a group referred to as a "class action dream team." The case settled for over \$17 billion. Lynn was also appointed to the Plaintiffs' Steering Committee for *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2777 (N.D. Cal.), which settled for \$307.5 million, including required emissions modifications for 100,000 eligible vehicles. In addition to consumer protection cases, Lynn has also served in leadership positions for cases involving financial fraud and breaches of fiduciary duty. He was selected to lead teams of attorneys representing plaintiffs in the litigations against Enron, Worldcom, and Madoff—three of the biggest financial frauds of our time.

Lynn is widely renowned within the legal community and beyond for his diplomacy and fearless devotion to justice. He was a member of the legal team nominated for the 2016 Nobel Peace Prize for seeking enforcement of the Nuclear Non-Proliferation Treaty on behalf of the Republic of the Marshall Islands. He was also honored to receive the Trial Lawyers for Public Justice Trial Lawyer of the Year Award for his work on the Exxon Valdez Oil Spill trial team, and he was one of four Washington lawyers recognized as one of the 500 "Leading Lawyers in America" by Lawdragon. He is also AV-rated by Martindale-Hubbell and has been consecutively named to the Washington Super Lawyers list for 21 years.

Lynn holds a BBA and an MBA in accounting and finance from the University of Wisconsin, where he also served as an accounting instructor. He graduated with his J.D. from the University of Wisconsin Law school, where he was Editor-

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L A W O F F I C E S ♦ L . L . P .

in-Chief of the Wisconsin Law Review and received the faculty award given to the most outstanding member of the graduating class.

Prior to joining Keller Rohrbach, Lynn was an Assistant United States Attorney for the District of Columbia, Criminal Division, an associate at the Washington D.C. office of Arnold & Porter, and law clerk to the Honorable Jerome Farris, United States Court of Appeals for the Ninth Circuit, in Seattle.

EDUCATION

University of Wisconsin

B.B.A., 1977

University of Wisconsin

M.B.A., 1978, *Beta Alpha Psi*

University of Wisconsin

J.D., 1981, *Order of the Coif*; Editor-in-Chief, *Wisconsin Law Review*; Salmon Dalberg Award (outstanding graduate)

BAR & COURT ADMISSIONS

1981, Wisconsin

1981, U.S. Court of Appeals for the Ninth Circuit

1983, District of Columbia Court of Appeals

1984, District of Columbia

1984, U.S. District Court for the District of Columbia

1984, United States Supreme Court

1984, U.S. Court of Appeals for the Seventh Circuit

1984, U.S. Court of Appeals for the Fourth Circuit

1984, U.S. Court of Appeals for the Tenth Circuit

1984, U.S. Tax Court

1986, Washington

1986, U.S. District Court for the Western District of Washington

1988, U.S. District Court for the Eastern District of Wisconsin

1989, U.S. District Court for the Eastern District of Washington

1996, U.S. District Court for the Western District of Wisconsin

1997, U.S. District Court for the District of Colorado

2001, U.S. Court of Appeals for the Third Circuit

2002, U.S. District Court for the Eastern District of Michigan

2003, U.S. Court of Appeals for the Fifth Circuit

2003, U.S. Court of Appeals for the Eleventh Circuit

2004, U.S. District Court for the Northern District of Illinois

2008, U.S. Court of Appeals for the Eighth Circuit

2009, U.S. Court of Appeals for the Sixth Circuit

2010, U.S. District Court for North Dakota

2013, U.S. Court of Appeals for the Second Circuit

2016, U.S. District Court for the Central District of Illinois

2016, U.S. District Court for the Southern District of Illinois

2018, U.S. Court of Appeals for the First Circuit

2019, Arizona

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LAW OFFICES ♦ L.L.P.

HONORS & AWARDS

Lawdragon, 500 Leading Plaintiff Financial Lawyers, 2023
Law360 Titans of The Plaintiffs Bar honoree, 2023

American Antitrust Institute - Antitrust Enforcement Award Honoree, in the category of "Outstanding Antitrust Litigation Achievement in Private Law Practice" for work in *In re EpiPen Marketing, Sales Practices, and Antitrust Litigation*, 2022

Selected to Super Lawyers list in *Super Lawyers - Washington*, 1999-2022

National Trial Lawyers: Top 100 Civil Plaintiff Trial Lawyers in Washington

Lawdragon, 500 Leading Lawyers in America, 2018 2022 and 2023

Fellow of the American Bar Foundation

Avvo Top Tax Lawyer, Washington CEO Magazine

Trial Lawyer of the Year, Trial Lawyers for Public Justice
Salmon Dalberg Award

Fellow of the American Bar Foundation

SELECTED PUBLICATIONS & PRESENTATIONS

Presenter, Colorado County Attorneys Association Virtual Summer Conference, Statewide Opioid Litigation Update, June 11, 2021.

Thomson/West Webinar, "Stock Drop and Roll: Key Supreme Court Rulings and New Standards in ERISA 'Stock Drop' Cases," July 24, 2014

14th Annual Pension Law, Governance and Solvency Conference, 2013

Canadian Institute's 14th Annual Advanced Forum on Pension Law, Governance and Solvency, 2013

ERISA Litigation & Regulatory Compliance Congress, 2013

American Conference Institute's 6th National Forum on ERISA Litigation, 2013

25th Annual ERISA Litigation Conference, 2012

American Conference Institute's 5th National Forum on ERISA Litigation, 2012

PROFESSIONAL & CIVIC INVOLVEMENT

American Bar Association, *Member*

Bar Association of The District of Columbia, *Member*

Federal Bar Association, *Member*

King County Bar Association, *Member*

State Bar of Wisconsin, *Member*

Trial Lawyers for Public Justice, *Member*

Washington State Bar Association, *Member*

Washington State Trial Lawyers Association, *Member*

American Association for Justice, *Member*

The Association of Trial Lawyers of America, *Member*

American Academy of Trial Counsel, *Fellow*

Editorial Board, *Washington State Securities Law Deskbook*

Fellow, American Bar Foundation

Human Rights Watch Committee

Washington Athletic Club, *Member*

KELLER ROHRBACK

LAW OFFICES ♦ L.L.P.



CHRIS SPRINGER

CONTACT INFO

801 Garden Street, Suite 301
Santa Barbara, CA 93101
(805) 456-1496
cspringer@kellerrohrback.com

PRACTICE EMPHASIS

- Antitrust and Trade Regulation
- Appeals
- Class Action & Consumer Litigation
- Consumer Protection
- Data Privacy Litigation
- Employee Benefits & Retirement Security

EDUCATION

Dartmouth College

B.A., *cum laude*, 2000

U.C. Berkeley School of Law

J.D., 2008

Chris Springer is dedicated to working to help people who have been harmed by the unlawful conduct of large corporations and other entities.

He is a partner in Keller Rohrbach's nationally recognized Complex Litigation Group and practices in the firm's Santa Barbara office. He is experienced in cases involving consumer protection, data security, environmental protection, disability access, employment rights, and ERISA.

Before joining Keller Rohrbach, Chris worked in the field of software development and testing. His practice now focuses on data-privacy and other consumer-protection litigation. Since joining Keller Rohrbach, he helped obtain a multimillion-dollar recovery in *Corona v. Sony Pictures Entertainment, Inc.*, No. 14-9600 (C.D. Cal.), which involved the theft and disclosure of medical, financial, and employment information. He is also actively involved in other data privacy matters, including *In re 21st Century Oncology Customer Data Security Breach Litigation*, which involves the unauthorized disclosure of personal and medical information.

BAR & COURT ADMISSIONS

2013, California
2017, U.S. District Court for the Central District of California
2017, U.S. District Court for the Northern District of California

PROFESSIONAL & CIVIC INVOLVEMENT

California State Bar Association, *Member*
Santa Barbara Bar Association, *Member*
American Bar Association, *Member*

HONORS & AWARDS

American Jurisprudence Award, Civil Procedure

KELLER ROHRBACK

LAW OFFICES ♦ L.L.P.



EMMA WRIGHT

CONTACT INFO

1201 Third Avenue, Suite 3200
Seattle, WA 98101
(206) 623-1900
ewright@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action and Consumer Litigation
- Data Privacy Litigation

EDUCATION

Loyola Marymount University

B.A., 2015, Political Science

Seattle University School of Law

J.D., *magna cum laude*, 2020
Editor-in-Chief, Seattle University
Law Review

Emma's fierce intelligence and attention to detail allows her to delve into the legal intricacies of every case. Emma brings great enthusiasm to Keller Rohrback's nationally recognized Complex Litigation Group—a practice for which she is well suited, as each case is unique and intellectually demanding.

Having aspired to be an attorney since childhood, Emma was initially drawn to litigation when she took a civil procedure course in law school and learned just how complex and rule-intensive litigation is. In addition, Emma sees complex litigation as an avenue with which to hold large corporations accountable, which connects to her personal dedication to equity.

In 2020, Emma graduated *magna cum laude* with her J.D. from Seattle University School of Law, where she served as Editor-in-Chief of the Seattle University Law Review, on the Moot Court Board, and as a research assistant to her civil procedure professor. During law school, she also externed for Judge John C. Coughenour of the Western District of Washington.

Drawn to the firm's culture of collaboration and commitment to social justice, Emma first worked at Keller Rohrback as a summer associate in 2018 and 2019, eventually returning to the firm full-time as an associate attorney in 2020. She is excited to rejoin the team working on *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, which the firm filed when Emma was a 1L summer associate.

In her spare time, Emma enjoys skiing, traveling, and spending time with her dog, Winter.

BAR & COURT ADMISSIONS

2020, Washington

KELLER ROHRBACK

LAW OFFICES ♦ L.L.P.

SEATTLE (HQ)

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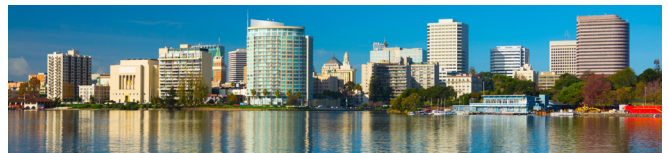
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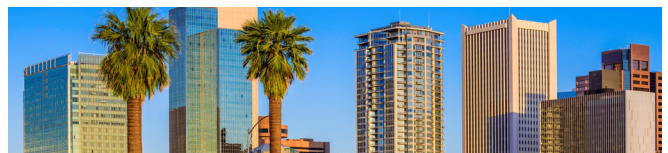
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Exhibit D

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Plaintiffs' Co-Lead Counsel

Additional counsel listed on signature page

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

MDL No. 2843
Case No. 18-md-02843-VC

This document relates to:

ALL ACTIONS

**DECLARATION OF MICHAEL S. ETKIN
IN SUPPORT OF PLAINTIFFS' NOTICE
OF MOTION AND MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

Judge: Hon. Vince Chhabria
Courtroom: 4, 17th Floor
Hearing Date: September 7, 2023
Hearing Time: 1:00 p.m.

I, Michael S. Etkin, declare as follows:

1. I am a Partner of the law firm Lowenstein Sandler LLP (“Lowenstein”). This Declaration is made in Support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards and is submitted in support of the time and expenses reported by Lowenstein Sandler LLP. I have personal knowledge of the matters set forth herein and could competently testify thereto.

2. I was hired by Co-Lead Counsel for Plaintiffs to serve as bankruptcy counsel and advocate for named Plaintiffs and the Settlement Class in the Cambridge Analytica LLC and SCL USA, Inc. bankruptcy cases before Judge Lane in the Southern District of New York (“Bankruptcy Actions”). *See* Pretrial Order No. 7: Bankruptcy Counsel, ECF No. 119 (granting request to retain Michael S. Etkin); ECF No. 117 (letter to Judge Chhabria requesting same). I and Lowenstein played a meaningful role in protecting the interests of the Plaintiffs and the Settlement Class and advancing the litigation through various work assignments and projects, including but not limited to the following:

- Researched and drafted motions for limited relief from the automatic stay in order to serve document preservation subpoenas on the debtors in the Bankruptcy Actions and for examination and the production of documents pursuant to Bankruptcy Rule 2004;
- Researched and drafted a class proof of claim and numerous individual proofs of claim and supporting materials to be filed by named Plaintiffs and Settlement Class members in the Bankruptcy Actions;
- Researched and drafted a document preservation motion and other document requests and represented the interests of the Plaintiffs and Settlement Class in

connection with negotiating confidentiality agreement, non-disclosure agreement, and protective order;

- Represented the interests of the Plaintiffs and Settlement Class in connection with discovery related to the debtors in the Bankruptcy Actions, including taking deposition and review of document production; and
- Coordinated and communicated with the Chapter 7 Trustee, Debtor's Counsel, and the administrators in the U.K. insolvency proceeding in the appointment of a responsible person for the Debtors and fact investigation.

Lowenstein's Time and Lodestar

3. Lowenstein: The individuals of Lowenstein Sandler LLP who worked on this matter are listed in **Exhibit A**, along with years in practice, hourly rates, hours spent from August 16, 2018 through May 31, 2023, and total lodestar. I hereby attest that the billing rates used on the attached **Exhibit A** are consistent with the Court's Pretrial Order No. 9: Protocol for Common Benefit Work and Expenses. *See* ECF No. 121 at 5). Further detail regarding the litigation and bankruptcy experience of Michael Etkin and the Lowenstein bankruptcy practice can be found in Lowenstein's resume attached hereto as **Exhibit C**.

4. The detailed descriptions of the time spent by the attorneys and other professionals of Lowenstein in the Bankruptcy Actions and this litigation were prepared from contemporaneous, daily time records prepared and maintained by Lowenstein and submitted to Co-Lead Counsel pursuant to the comprehensive time and expense billing protocol and reporting forms disseminated by Co-Lead Counsel pursuant to the Court's Order. *See* ECF No. 121; ECF No. 121-1. Detailed time records, consisting of contemporaneous logs, with separate entries for

the hours spent on specific tasks, indicating who performed the work and giving a description of the task, are available for the Court's review should the Court desire such records.

Lowenstein's Total Hours and Total Lodestar

5. Lowenstein performed its services in connection with the Bankruptcy Actions primarily on a contingent basis. Pursuant to the engagement agreement in this matter, my firm was paid a \$50,000 retainer and reimbursed reasonable expenses by Plaintiffs' Counsel. Aside from the \$50,000 retainer and reimbursed reasonable expenses, Lowenstein has received no compensation for its efforts during the course of this litigation.

6. The total number of hours expended on this litigation by Lowenstein as authorized by the Co-Lead Counsel, from August 16, 2018 through May 31, 2023 is 701.8 hours. After deduction of the \$50,000 retainer, the unreimbursed lodestar for Lowenstein Sandler LLP is \$678,494.50.

7. Lowenstein bases its rates upon the experience and skill of the attorney or paralegal performing the work. Lowenstein sets rates through periodic review of the rates charged by other law firms involved in similar complex bankruptcy cases and litigation, after a thorough review of costs, prevailing rates, and other market indicia, and are subject to annual review and increases. These rates are the same as or less than rates used by Lowenstein in comparable bankruptcy cases and litigation, and are the same as, comparable to, or less than rates submitted by Lowenstein and accepted by other courts in other complex class actions for purposes of determining a reasonable fee under the lodestar method.

8. Before submitting this declaration, I reviewed Lowenstein's time reports to ensure that the lodestar did not include hours that were excessive, redundant, or otherwise unnecessary.

Lowenstein's Costs and Expenses

9. Attached hereto as **Exhibit B** is an itemized description of expenses/charges (“expenses”) totaling \$10,683.97, which were reasonable and necessary in relation to this litigation and submitted to Co-Lead Counsel pursuant to its comprehensive time and expense billing protocol and the Court’s Order. See Pretrial Order No. 9: Protocol for Common Benefit Work and Expenses, ECF No. 121 at 3-4. The expenses pertaining to this litigation are reflected in the books and records of Lowenstein. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses incurred in this litigation.

10. All of the \$10,683.97 in expenses incurred by Lowenstein Sandler, LLP have been reimbursed by Co-Lead Counsel.

11. These costs are attributable to ordinary and necessary costs, including filing fees, postage, transcript charges, telecommunications, computerized legal research, and printing and duplication services, among other categories.

12. I have reviewed these costs to ensure that they are not excessive or unnecessary.

Lowenstein's Experience

13. I and my firm have extensive experience in bankruptcy litigation and representing the interests of class action plaintiffs in a bankruptcy context, as set forth in my and my firm’s current resume, a true and correct copy of which is attached hereto as **Exhibit C**.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and to the best of my knowledge.

Executed this 18th day of June, 2023 at Roseland, NJ

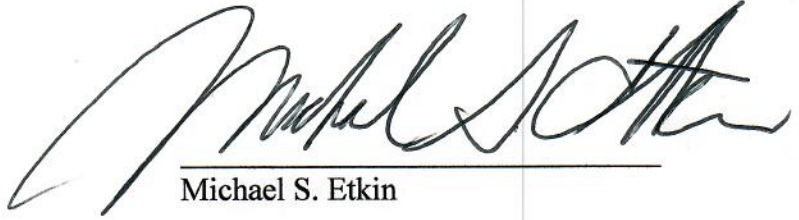

Michael S. Etkin

EXHIBIT A**LOWENSTEIN SANDLER LLP
STATEMENT OF TOTAL TIME****AUGUST 16, 2018 – MAY 31, 2023**

Timekeeper	Position	Admission	Billing Rate	Time Spent	Fees Total
Etkin, Michael S.	Partner	1979	\$1,365.00	207.4	\$283,101.00
Fulfree, Nicole	Partner	2014	\$980.00	331.8	\$325,164.00
Papandrea, Michael T.	Counsel	2015	\$910.00	112.2	\$102,102.00
Schneider, John P.	Associate	2011	\$690.00	4.5	\$3,105.00
Claussen, Diane	Paralegal		\$340.00	0.3	\$102.00
Jacome, Ruth	Paralegal		\$230.00	1.1	\$253.00
Jara, Gabriel	Paralegal		\$330.00	2.2	\$726.00
Lawler, Elizabeth B.	Paralegal		\$320.00	26.0	\$8,384.00
Pagano, Jamie J.	Paralegal		\$365.00	6.0	\$2,190.00
Suhail, Aneela	Paralegal		\$305.00	4.5	\$1,372.50
Michaud, Zoraida	Admin. Staff		\$355.00	5.8	\$2,059.00

Sub Total:	701.8	\$728,494.50
Less Retainer:		(\$50,000.00)
Total:		\$678,494.50

EXHIBIT B**PERIODIC EXPENSE REPORT****AUGUST 16, 2018 – MAY 31, 2023**

Actual and necessary disbursements incurred by Lowenstein Sandler LLP and fully reimbursed by Co-Lead Counsel

Expense Category	Amount
Printing and Duplicating Services – Internal	\$297.84
Filing fees	\$200.00
Meals	\$93.00
Miscellaneous	\$25.00
Bulk rate/special postage	\$67.60
Computerized legal research & searches	\$5,529.38
Telecommunications	\$412.65
Transcript charges	\$3,527.14
Travel	\$531.36
Total Disbursements	<u>\$10,683.97</u>

Exhibit C



Michael S. Etkin

Partner, Bankruptcy & Restructuring Department, Business Litigation

E-mail: metkin@lowenstein.com

T: 973.597.2312

A senior bankruptcy practitioner and seasoned commercial litigator, Mickey has extensive experience in complex business reorganizations, investor litigation in a bankruptcy context, and high-stakes Chapter 11 issues. Mickey is consistently recognized by *Chambers USA* as a "a strong lawyer," "brilliant," "outstanding," "very plugged in," and "instrumental in providing tactical advice," noting his skill in "anticipating all the key issues that are likely to arise." Clients commend his "technical knowledge, attention to detail, and honest and straightforward legal advice."

A key member of the firm's successful bankruptcy and complex business litigation practices, Mickey represents debtors, trustees, creditors, and investors in many noteworthy bankruptcies and bankruptcy-related litigation. He currently represents institutional investors in many significant complex Chapter 11 and Chapter 15 proceedings, such as Pacific Gas & Electric, Celsius Network, Allied Systems, Mallinckrodt, SandRidge Energy, American Addiction Centers, Aegean Marine Petroleum, Windstream, Odebrecht, and McDermott International, among others. He represents important consumer interests in bankruptcy cases involving issues of privacy, product liability, and lending practices.

In addition, Mickey represents major energy companies in connection with bankruptcy proceedings involving their customers and counterparties. He has been invited to speak before financial institutions, bar association groups, and credit associations on issues relating to the energy industry, including the rights of counterparties to derivatives and other energy-related contracts in a bankruptcy context. He chairs the Bankruptcy and Creditors' Rights Group of the International Energy Credit Association.

Mickey also routinely speaks at programs on the rights of securities fraud claimants and class action plaintiffs in a Chapter 11 context, and on the interplay between bankruptcy law and product liability litigation.



BANKRUPTCY & RESTRUCTURING DEPARTMENT

Lowenstein's bankruptcy lawyers are in demand by business leaders, credit managers, financial advisors, institutional investors and restructuring professionals seeking a resourceful, aggressive, well-connected law firm. We understand how to reach a negotiated resolution yet have a strong track record at trial. We represent debtors, creditors' committees, individual and institutional stakeholders, and trustees in Chapter 11 proceedings throughout the United States.

A reorganization may be the most practical and promising strategy for a troubled company. We advise on prepackaged and prenegotiated plans, which implement quick restructurings that might otherwise take years to complete. We also counsel debtors, creditors, and financial institutions in nonjudicial debt restructurings or workouts involving public and privately held companies.

In some instances, a business is not in distress but wishes to retire debt at a discount, restructure operations, or recapitalize. As a bankruptcy law firm, our attorneys work with companies seeking creative techniques to achieve specific business goals to deal with these issues.

A company's fiscal difficulty affects various other parties, such as those who have provided loans, supplied goods and services, or invested capital. We represent official and unofficial creditors' committees and equity committees in diverse Chapter 11 and other insolvency matters. We collaborate with commercial and investment banks, savings institutions, mutual funds, pension funds, and other financial firms in their management of troubled credit, or claims against companies in distress. Our attorneys also advise clients who are interested in buying assets from Chapter 11 debtors. We structure and secure bankruptcy court approval of debtor-in-possession financing, represent lenders in exploring and establishing these and other financing opportunities and represent asset purchasers.

When appropriate, we consult with the firm's corporate and tax groups to structure transactions that minimize future complications and liability, and to avoid the domino effect that one bad deal can have on a company's overall well-being. We also advise on the significant bankruptcy aspects of various transactions, including commercial finance transactions, as well as on mergers, acquisitions, and divestitures of solvent, insolvent, and other highly leveraged companies. Our bankruptcy attorneys are involved in large and complex commercial, industrial, and residential real estate insolvencies, and they assist companies in emerging from bankruptcy with controlled environmental liabilities.

We also prosecute and defend all types of litigation related to bankruptcy proceedings. We are noted for representing the interests of shareholders, investors, and consumers in class action and other litigation against corporate defendants that are in bankruptcy.

Whether defrauded institutional investors, individual investors, state, local, and union employee pension and benefit funds, investment managers, or consumers in some of the largest and most significant Chapter 11 cases, we understand the nuances and pitfalls facing such claimants in a bankruptcy context. Such representation helps protect a class of creditors that generally receives little or no recovery in Chapter 11 reorganizations or liquidations throughout the country including the most active jurisdictions.

Exhibit E

Derek W. Loeser (admitted *pro hac vice*)
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lweaver@bfalaw.com

Plaintiffs' Co-Lead Counsel

Additional counsel listed on signature page

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

MDL No. 2843
Case No. 18-md-02843-VC

This document relates to:

ALL ACTIONS

**DECLARATION OF JILL DESSALINES
IN SUPPORT OF PLAINTIFFS' NOTICE
OF MOTION AND MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

Judge: Hon. Vince Chhabria
Courtroom: 4, 17th Floor
Hearing Date: September 7, 2023
Hearing Time: 1:00 p.m.

I, Jill Dessalines, declare as follows:

I. INTRODUCTION

1. I was retained by Bleichmar Fonti & Auld LLP and Keller Rohrback L.L.P. (“Lead Counsel”) to review, analyze and evaluate time records in connection with *In Re: Facebook, Inc. Consumer Privacy User Profile Litigation*, MDL No. 2843, Case No. 18-md-02843-VC-JSC (N.D. Cal.) (“Lawsuit”) and opine on the reasonableness of the amount of time spent in prosecuting the Lawsuit. I submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards. I have personal knowledge of the information it contains, and, if called as a witness, I could and would testify competently to that information. My initial compensation for this service was a flat fee that was agreed to and paid before I commenced any work on this matter. I was subsequently compensated with a second flat fee for conducting additional analysis. My compensation is in no way dependent on the opinions I express nor on the Court’s determination of how much to award in attorneys’ fees.

II. MY BACKGROUND AND EXPERTISE

2. I am admitted to practice law in the State of California and have been an active member in good standing continuously since 1986. I graduated from Howard University School of Communications with a B.A. with honors, and graduated from Georgetown University Law Center with a J.D. in 1985. My C.V. is attached as Exhibit A.

3. For the first 12 years of my practice, I represented large corporate clients in products liability, real estate, banking, employment and complex business litigation. Through that experience, I learned how to efficiently and effectively litigate cases from inception through trial, in keeping with the budgetary and case management requirements of my corporate clientele.

4. In 1997 I began working in McKesson Corporation’s Law Department as an in-house counsel, and for the next 17 years rose through the ranks from Senior Counsel, to Assistant General Counsel, to Vice President and ultimately to Senior Vice President. During that time I was responsible for the management of hundreds of litigation and anticipated litigation matters involving billions of dollars in controversy in a wide variety of matters including products liability, mass tort, patent

infringement, class actions, trade secret, privacy, employment, and other business litigation. I was responsible for managing the defense of several large MDL matters primarily involving cases alleging pharmaceutical products liability, and I also managed the prosecution of several large patent infringement cases in which McKesson was plaintiff. In addition, I ran the Law Department's E-Discovery Group, as well as the General Counsel's Technology Organization, both of which familiarized me with large case data collection, review, processing and analysis.

5. One of my responsibilities throughout my tenure at McKesson Corporation was the supervision of outside counsel in litigation matters that I managed. This supervision generally included devising high level strategy for each matter; negotiating fee agreements and overseeing case budgets; monitoring and enforcing adherence to case management and billing policies; reviewing, editing and approving work product; reviewing, analyzing and approving or rejecting and negotiating monthly bills for outside counsel fees and costs; serving as liaison between outside counsel and McKesson business executives; accompanying and counseling McKesson employees at depositions and hearings; and serving as client representative at mediations, settlement conferences, arbitrations and trials.

6. For example, I managed the Fen-Phen pharmaceutical products liability litigation, which at the time was the largest MDL in history. In that case, I managed a National Coordinating Counsel team as well as all the local counsel in the jurisdictions of the coordinated cases. I also managed the Vioxx and Oxycontin MDLs and many other mass tort cases involving thousands of plaintiffs, dozens of counsel and billions of dollars in controversy, as well as many large plaintiff patent infringement cases, multi-defendant patent infringement cases and class actions. While the number of billers in these cases and many others varied depended on the particular matter, it was not unusual for me to review the time entries of 10 – 20 billers on one matter.

7. Due to my earlier experience litigating and trying cases, I understand how to efficiently prosecute or defend a case, how to staff matters utilizing the most appropriate resource for each particular task, and in what sequence and to what degree to pursue strategic case objectives in order to deliver optimum results for reasonable costs.

8. I performed the task of reviewing and analyzing monthly fee bills on an almost daily basis for 17 years. Through that experience, I became skilled at assessing how much time should be spent on litigation tasks ranging from pre-filing investigation through pleadings, discovery, dispositive motions, class certification, mediation and settlement process, pre-trial proceedings and trial. I also honed my ability to determine the appropriate number and experience levels of lawyers and legal support to efficiently staff a matter; as well as how each task should be allocated among staff members for best and most efficient results.

9. While I developed several techniques for assessing the reasonableness of outside counsel time that had general applicability across all cases I managed, I also considered the specific facts and circumstances of each matter in determining the issue of reasonableness. Some of the factors that influenced my assessment were the complexity of the legal or factual issues presented, the novelty of the claims or defenses, the activities of the opposing counsel, the pace of the case scheduling order, the number of witnesses and documents, the amount in controversy, and the degree to which the goals of the litigation were effectively attained.

III. MY METHODOLOGY

10. In order to understand the underlying facts, major claims and defenses, the degree of adversarial activity and the case schedule I reviewed the documents described in Exhibit B. I also reviewed the experience level and role of each biller as described in Exhibit C.¹

11. I prepared a timeline of case activities in order to determine if the sequencing of time spent and the duration of each task category were reasonable, efficient and appropriate.

12. I reviewed the time entries comprising the time billed by Lead Counsel from March 2018 through May 2023 organized in spreadsheets containing 97,997 individual time entries. I reviewed these time entries sequentially, sorted by task category and by biller.

¹ I was not asked to review the experience level or roles of billers whose time was submitted by other firms in this action. The time they submitted was minimal by comparison to the time submitted by Lead Counsel. My analysis of time submitted by other firms in this action is limited to whether each billing entry appears to have been appropriate, efficient, and effective, and not redundant or otherwise something that should not be included. That analysis is below in ¶ 27.

13. I reviewed the total hours billed by Lead Counsel in the Lawsuit², and evaluated the ratio between time spent by partners, associates, and support staff in the task groupings identified in Exhibit D and referred to below in Paragraph 16. This was one of the factors that permitted me to assess whether the staffing was appropriate to drive efficiency and reasonable billing practices.

14. I analyzed each time entry from all task categories in several ways, including total time spent by biller, time spent for each task, time billed in task category groups compared to total time billed, and evaluated these time entries for redundancies, appropriateness, efficiency and effectiveness in achieving case goals.

15. In my experience, task categories can vary by matter, and the assignment of time within them can vary because similar tasks can appropriately be classified differently by different billers. The task categories used by Lead Counsel included the following: 1. Lead Counsel Calls/Meetings, 2. Participating Counsel Calls/Meetings, 3. Lead Counsel Duties, 4. Case Management, 5. MDL Status Conferences; 6. Court Appearances, 7. Research, 8. Discovery, 9. Document Review, 10. Litigation Strategy; 11. Depositions, 12. Pleadings and Motions, 13. Experts, 14. Settlement, 15. Trial Preparation, and 16. Trial. Due to the overlap in many of these categories such as Lead Counsel Duties and Litigation Strategy, or Document Review, Discovery and Depositions, evaluating the proportionality of these task categories to total billing was not a useful analysis, because tasks were subject to more than one billing category with the result that similar tasks could be classified differently by different billers.

16. Instead, I grouped these pre-existing task categories and analyzed them as follows: Group 1 - Lead Counsel Calls/Meetings, Participating Counsel Calls/Meetings, Lead Counsel Duties, Case Management and Litigation Strategy; Group 2 – MDL Status Conferences and Court Appearances; Group 3 – Research (which was primarily investigative in nature), Discovery, Document Review and Depositions; Group 4 – Pleadings and Motions; Group 5 – Experts, Trial Preparation and Trial and Group 6 – Settlement. The task groupings I used are attached as Exhibit D.

² Similarly, due to the relatively small number of billing entries by the firms referenced in ¶ 27, I did not need to divide my analysis by task groups identified in Exhibit D.

17. In my experience, the amount of time devoted to discovery in a complex case is usually somewhere in the range of 50 – 70% of total time billed. Discovery in this case accounted for 79.7% of total time billed. My review of the case documents identified in Exhibit B revealed that the discovery practice in this case was highly unusual because of the number of discovery disputes and the extent to which defendant sought to prevent disclosure of information sought. For this reason, the ratios that I typically employ to determine how much time was spent on any given task category as compared to total time billed was not a useful analysis, as it was so heavily skewed toward the discovery effort.

18. Over the course of the 17 years that I reviewed outside counsel fee bills, I focused on several factors that tended to negatively impact efficiency and reasonableness, including but not limited to the following: a) Inappropriate staffing; b) Excessive time spent on tasks; c) Administrative tasks and overhead billed as legal tasks; d) Improper sequencing of tasks; e) Insufficient description of tasks performed; f) Time billed for researching rudimentary legal knowledge that should already be known by an experienced legal professional (such as the amount of advance notice for a standard court filing required under the local rules); and g) Travel time devoid of legal work, except when the need to travel is caused by factors outside of counsel's control, such as the client choosing to use non-local counsel or multiple counsel in different locations.

19. Of all of these factors, I have found that appropriate staffing is most important to the efficiency and reasonableness of time billed. Lean, appropriately-led and deployed staffing drives efficiency. Appropriate staffing requires the core leadership team to have a clear strategy that guides implementation of the sequenced litigation goals, provides the facility to pivot based on the fluid needs of the litigation and creates a cadence and composition of team meetings and other group endeavors to permit timely and efficient utilization and sharing of information. The team should employ a mix of partners and associates/support staff that permits the partners to both manage the disciplined implementation of workstreams by associates and support staff, as well as to actively pursue the goals of the litigation themselves. There should be clear lines of responsibility for the workstreams, and the tasks assigned to team members should be appropriate for their level of expertise and billing rates. For these reasons, I pay special attention to the composition of the core team, the wider team, the

workstreams, the frequency and duration of team meetings, and the number of attendees at depositions, mediations and court appearances.

20. Following my review of time entries and my analysis of those entries I found inappropriate, I calculated the ratio between this questioned time and total time billed to assess the degree of inappropriate time billed by Lead Counsel. In my experience, a typical ratio acceptable by large corporate consumers of legal services is in the range of 10%, meaning that a reduction of that amount is considered fairly standard and not an indication of overbilling by outside counsel. This ratio may also indicate the degree of the efficiency and efficacy by outside counsel, because it shows the extent to which time was spent executing on litigation strategy without undue extraneous activity.

21. I did not use AI or other software programs designed to analyze time entries in my review or analysis, although I made significant use of the sorting, sum and averaging functions of the excel spreadsheets reviewed. In my experience, evaluating the appropriateness and reasonableness of time devoted to litigation matters is not solely performed by reliance on mathematical calculations, though they can be useful in informing opinions about how a case was prosecuted or defended. Rather, the entirety of the litigation environment must be considered, including any constraints arising from court orders, adversary behavior, the number of documents and witnesses, the complexity of legal issues, and the degree to which counsel achieved a favorable result, among other factors. Consequently, while my methodology reflects the use of some mathematical calculations, I also considered nuances gleaned from the specific litigation environment in this matter, as informed by my experience.

IV. FINDINGS

22. Lead Counsel submitted time of 96 billers in the Lawsuit, which included 36 dedicated document reviewers. The core team billers for Lead Counsel are Co-Lead Counsel Lesley Weaver and Derek Loeser and their partners and associates. The core billers from Ms. Weaver's firm, Bleichmar Fonti & Auld, are Ms. Weaver, Anne Davis, Joshua Samra, and Matthew Melamed. The core billers from Mr. Loeser's firm, Keller Rohrback, are Mr. Loeser, Cari Laufenberg, Christopher Springer, Emma Wright, David Ko, Benjamin Gould, and Adele Daniel. Each of these partners or associates billed more than 2,000 hours during the litigation.

23. Lead Counsel expended 149,179.4 total hours prosecuting the Lawsuit; which included 5,869.1 hours (3.9% of total hours)³ in Group 1 tasks (Lead Counsel Calls/Meetings, Participating Counsel Calls/Meetings, Lead Counsel Duties, Case Management and Litigation Strategy); 1,241.9 hours (.83% of total hours) in Group 2 tasks (MDL Status Conferences and Court Appearances); 118,946.1 hours (79.7% of total hours) in Group 3 tasks (Research, Discovery, Document Review and Depositions); 15,951.4 hours (10.6% of total hours) in Group 4 tasks (Pleadings and Motions); 794.2 hours (.53% of total hours) in Group 5 tasks (Experts, Trial Preparation and Trial) and 6,376.7 hours (4.2% of total hours) in Group 6 tasks (Settlement).

24. Of the total time Lead Counsel billed, 24.4% was billed by partners and 75.6% by associates and support staff. In Group 1, 65.7% of time billed was by partners and 34.3% by associates and support staff. In Group 2, 85.6% of time billed was by partners and 14.4% by associates and support staff. In Group 3, 15.6% of time billed was by partners and 84.4% by associates and support staff. In Group 4, 52.3% of time billed was by partners and 47.7% by associates and support staff. In Group 5, 77.3% of time billed was by partners and 22.7% by associates and support staff. In Group 6, 62.0% of time billed was by partners and 38.0% by associates and support staff.

25. Lead Counsel obtained a total of 2,135,905 documents consisting of 10,010,281 pages. Of this total, Lead Counsel reviewed and analyzed 732,376 documents, an average of 14.6 documents per biller, per hour. The average file size of each document per biller reviewed was 59.61Kb.

26. The total time I suggested that Lead Counsel exclude equaled 560 hours. The total time I suggested that Lead Counsel exclude was .37% of total time billed. Of the time that I suggest Lead Counsel exclude, 20.8% was billed by partners and 79.1% by associates and support staff. The minimal amount of time I suggested be deleted fell into the following categories: administrative tasks, excessive time, insufficient description, presumed knowledge and duplication.

27. I also reviewed the time of five law firms (Schonbrun Seplow Harris Hoffman & Zeldes LLP, Gustafson Gluek PLLC, Motley Rice LLC, and Cohen Milstein Sellers & Toll PLLC) whom the Court approved to perform limited work of representing their clients as Named Plaintiffs. An additional

³ Percentages total less than 100 because statistics were calculated only to one-tenth.

law firm, Lowenstein Sandler LLP, performed bankruptcy work, also with the approval of the Court. These firms billed a total of 778.55 hours in this Lawsuit. I determined that 29.3 of these hours were inappropriate and recommended their deletion, reflecting 3.7% of total time billed by these firms. The total time from these five firms accounted for .52% of Lead Counsel time and did not impact my statistical analysis above.

V. CONCLUSIONS

28. Based on my review and analysis of the above-described time records, the experience level and expertise of the billers attached as Exhibit C and the list of case documents attached here as Exhibit B, I have reached the opinion that this Lawsuit was prosecuted with a very high degree of efficiency and with reasonable amounts of time spent on its overall prosecution.

29. When assessing the factors impacting the manner in which Lead Counsel deployed resources in prosecuting the Lawsuit, I noted that the Court limited the number of law firms directly supporting the litigation to the two Lead Counsel firms, with the narrow exceptions identified above. In my experience, a multidistrict litigation of this complexity would sometimes have three or four law firms fulfilling that role, along with a steering and/or executive committee comprised of multiple firms supporting lead counsel. The impact of this limitation was significant and multifaceted. Because Lead Counsel were required to handle a large number of workstreams with a relatively small number of billers, they were forced to be efficient due to reduced opportunities to devote excessive time to litigation tasks. On the other hand, this resource compression also required regular substantive team meetings to coordinate the implementation of strategic decisions and to guide workstreams. The fact that there were a relatively small number of core billers meant that several billers were required to attend court hearings, mediations, meetings (both internal and with opposing counsel), and depositions in order to contribute their knowledge of the workstreams for which they were responsible. More billers responsible for fewer workstreams would have resulted in fewer billers attending these case events, but would also likely have resulted in a lower level of efficiency.

30. Taking into account these facts, as well as the other aspects in the litigation environment mentioned above, I reached the opinion that the number of meetings, their average length, and multiple

billers attending certain hearings, mediations and depositions was reasonable and necessary to the efficient prosecution of the Lawsuit.

31. I have reached the opinion that the travel time billed by Lead Counsel in connection with the Lawsuit was reasonable. While under normal circumstances I would suggest the deletion of travel time devoid of legal work, here the appointment of two lawyers from different cities required this travel (which, in any event, was minimal for a case of this magnitude and length). Travel time spent going to and from court hearings and mediations was also reasonable in light of the fact that Lead Counsel came from two different cities, and travel to team meetings and strategy sessions was also reasonable for the reasons set out in Paragraphs 28 and 29.

32. I have reached the opinion that the ratio of partner time to associate and support staff time across all task categories was reasonable and appropriate. Utilization of the proper level of expertise was a key driver of efficient case management and significantly impacted the reasonableness of Lead Counsel's hours. Partner time accounted for 24.4% of total time billed, with associates and support staff accounting for 75.6%, which is an optimal proportion for deployment of legal talent. In addition, the fact that only 20.9% of the time I suggested be deleted was partner time; while 79.1% was for associate and support staff time, indicates that the core leadership team operated with a high degree of efficiency.

33. The fact that I suggested the deletion of a mere .37% of Lead Counsel time demonstrates the extreme efficiency with which this case was prosecuted. As stated earlier, an edit rate of 10% is fairly standard in my experience, so less than 1% of edited time, out of nearly 98,000 time entries, is significant.

34. I have reached the opinion that Lead Counsel achieved the goals of the Lawsuit to an exceptional degree.

* * *

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

Executed this 19 day of June, 2023.

Jill Dessalines

Jill Dessalines

4870-0985-5594, v. 4

EXHIBIT A

JILL DESSALINES
(510) 938-1896
jill.dessalines@gmail.com

PROFESSIONAL SUMMARY:

Over the course of my 37 year legal career, I have tried complex cases for Fortune 100 corporate clients, navigated the law firm environment from first year lawyer to Managing Shareholder, moved in-house to a Fortune 7 corporation and there managed multi-billion dollar matters, devised high-level strategy in class actions, privacy, patent, mass tort, regulatory and commercial litigation and rose to the rank of Senior Vice President by earning the trust and respect of my colleagues and cross-functional partners.

Throughout my journey, I have sponsored and mentored countless others, and use my strategic skills and experience to coach clients on how to successfully navigate their law firm and in-house environments and develop and maintain corporate business relationships.

I leverage my deep knowledge of litigation strategy, business motivations and outside counsel management to advise others on how to best position their matters for maximum effect. Based on my extensive experience creating and managing legal fees, I also assist others in assessing the reasonableness of attorney's fees.

EDUCATION:

Georgetown University Law Center - Washington, D.C.

J.D., May 1985

Howard University, School of Communications - Washington, D.C.

B.A., *cum laude*, May 1981

Major: Broadcast Management

EXPERIENCE:

Strategic Advice for Successful Lawyers

President – 2016 to present

Provide consulting services to corporate legal departments, law firms, general counsel and other legal executives on how to effectively develop business, navigate environments and take their careers to the next level.

12 Stones Developments Corporation

Board Chair – 2018 to present

Board leader to real estate development corporation focused on the provision of workforce housing in Nashville, Tennessee

Prometheus Partners

Chief Litigation Strategist – 2014 to present

Master litigation strategist providing insight and advice on critical litigation issues.

McKesson Corporation - San Francisco, California

Senior Vice President - 2014;

Vice President and Chief Counsel, Corporate Affairs – 2012 to 2014

Chief Litigation Counsel - McKesson Technologies, Inc. - 2008 to 2012

Assistant General Counsel - 2000 to 2012

Senior Counsel – 1997 to 1999

Supervised outside counsel and advised senior executives on multimillion dollar litigation on a nationwide basis for world's largest healthcare supply, information and care management company. Worked with external auditors in preparation and updating of public company reports. Implemented litigation policy on healthcare regulatory, customer and supplier disputes, intellectual property, privacy, trade secret, employment and other complex business litigation. Founder of company-wide intellectual property committee responsible for devising comprehensive strategy and developing portfolio consistent with overall IP policy. Lead e-discovery group, created and oversaw strategic technology program for General Counsel Organization. Managed staff of 10 direct reports, including attorneys.

The Law Office of Robert H. Alexander, Jr., p.c. - Oklahoma City, Oklahoma

Managing Director - 1993 to 1996

Represented exclusively Fortune 500 corporate clientele in manufacturers' product liability defense, wrongful termination defense and general business litigation. Supervised and trained all junior attorneys in firm. Responsible for management of firm support staff and integrally involved in every aspect of law firm management including budgeting, establishment and implementation of firm office and labor policies and long-term business planning.

Cox, Castle & Nicholson - Los Angeles, California

Senior Associate - 1988 to 1993

Represented real estate developers, contractors, brokers, investors and lenders in matters of general business litigation, construction defect litigation, developer and contractor liability, lender liability and remedies and enforcement of real property contracts before state and federal courts.

Barton, Klugman & Oetting - Los Angeles, California

Associate - 1986 to 1988

Represented banking institutions, insurance carriers, conducted general business litigation and attorney malpractice defense.

Friedemann, Stone, LaScala, Keto & Fingal - Orange, California

Associate - 1985 to 1986

Conducted real estate, investment securities and general business litigation before state and federal courts; provided real estate transactional services.

PROFESSIONAL LICENSES:

Washington, D.C. 1985 (inactive); California 1986; Oklahoma 1993 (inactive)

PUBLICATIONS:

“Adapt or Die: Law Firms in Tomorrow’s Economy” (5-part series), Law 360, October 28, 2016 to November 3, 2016

“My Milkshake is Better Than Yours: Disruption and the Mid-Size Law Firm” (2-part series), Law 360, May 24/25, 2017

“Bucking Tradition: NewLaw and the Coming Millennials” Law 360, June 26, 2017

“The Power of Self-Investment and the Myth of Meritocracy, LinkedIn, June 26, 2017

“Solotasking: It’s Time to Slow Down” LinkedIn, December 19, 2017

“Everybody’s Talking At Me” LinkedIn, April 4, 2018

“Strength + Passion = Purpose: How To Craft Your Narrative” LinkedIn, October 11, 2018

“Knowing When to Leave” LinkedIn, May 11, 2019

“How to Manage in a Crisis” LinkedIn, March 26, 2020

“Training People How to Treat You” LinkedIn, December 19, 2020

“Is it Really the Great Resignation, Or are People Minding their Own Business?” LinkedIn, October 18, 2021

SPEAKING ENGAGEMENTS:

Business Development for Women Lawyers – AmLaw 100 Presentation; April/ May 2023

How to Meet the Challenges of Each Phase of Your Career, BWLLC, July 2022

How to Remain Seen and Engaged in a Virtual Environment, BWLNC, May 2022

Hybrid Networking Panel, California Minority Counsel Program, September 2021

Leadership Panel Discussion; The Belonging Project July 2021

Business Development Habits to Maximize Client Relationships; DF Alliance: Leadership Symposium, October 2020

Managing in a Crisis - AmLaw 100 Firm; March 2020

Managing Multiple Projects Successfully - AmLaw 100 Firm; March 2020

Creating Your Career Roadmap and Business Plan - AmLaw 100 Firm; January 2020
How to Negotiate Compensation - AmLaw 100 Firm; October 2019
Establishing Good Business Development Habits - AmLaw 100 Firm; September 2019
How to Ask for Business - AmLaw 100 Firm; September 2019
Effective Management of In-House Counsel - AmLaw 100 Firm; July 2019
Deciphering Corporate Power Dynamics - AmLaw 100 Firm; June 2019
Perfecting Your Elevator Pitch; Why Your Narrative Matters – Panel Discussion, Kerwin Associates September 2018
The Matrix Client Development Technique: Deepening Your Client Relationships – AmLaw 100 Firm; September 2018
How to Negotiate Credits – AmLaw 100 Firm; August 2018
How to Close the Deal – AmLaw 100 Firm; July 2018
Making the Impactful Pitch – AmLaw 100 Firm; June 2018
Engaging in High Payoff Activities – AmLaw 100 Firm; May 2018
Panel Discussion on Executive Coaching; Put me In Coach - Association of Corporate Counsel – General Counsel Readiness Review; – May 2018
Optimizing your Firm Resources for Business Development – AmLaw 100 Firm; April 2018
How to Build and Grow Client Relationships – AmLaw 100 Firm; March 2018
Understanding Your Corporate Clients’ Reality – AmLaw 200 Firm; May 2018
Business Development Coach for Annual Conference Attendees – California Minority Counsel Program; October 2017
Disruptive Innovation in the Legal Industry – AmLaw 200 Firm; January 2017
ABA Section of Litigation – The New Reality of Litigation Management; October 2016

LITIGATION HISTORY:

The Police Retirement System of St. Louis, etc. v. Granite Construction Inc., etc., U.S.D.C. – ND California, Case No. 3:19-cv-04744-WHA - expert consultant on reasonableness of attorney’s fees in securities class action
In reL Facebook, Inc. Consumer Privacy User Profile Litigation, U.S.D.C. – ND California, MDL No. 2843, Case No. 18-md-02843-VC-JSC – expert consultation on reasonableness of attorney’s fees in privacy class action

PROFESSIONAL AND COMMUNITY ORGANIZATIONS AND AWARDS:

American Bar Association – Co-Chair Litigation Mgt., Corporate Counsel Committee
Bar Association of San Francisco – Corporate Counsel Section Co-Chair 2011 – 2014; Board 2002 – 2005; Judiciary Chair 2000 – 2002
Black Women Lawyers of Northern California – Past President 2006 - 2008
United Negro College Fund - Executive Board 1999 – 2010
Allen E. Broussard Scholarship Foundation - Board of Directors 1998 – 2014
Big Brothers / Big Sisters of the East Bay - Board of Directors 1999 - 2002
California Diversity Council 2012 Multicultural Leadership Award - 2012
Named One of California’s Top 10 In-House Counsel by Daily Journal - 2012

EXHIBIT B

Documents Reviewed by Jill Dessalines

Application for Lead Counsel submissions by Weaver and Loeser

Motion to Dismiss

Second Amended Complaint

Case Management Schedules

Motion for Limited Discovery

Discovery Orders 1 – 13

Joint Stipulation on ESI Protocol

Pretrial Orders 4, 8, 11, 13, 20, 30, 33, 36, 37, 41, 42

Special Master Orders re discovery disputes

Deposition Schedules with Number and Identity of Deponents

Selected Discovery Letters regarding disputes

Various Motions to Compel

Order following 4-6-21 Discovery Conference

Order following 6-23-21 Discovery Conference

Order following 3-9-22 Discovery Conference

Order following 5-17-22 Discovery Conference

Motion for Sanctions briefing

Order for Sanctions

Motion for Preliminary Approval of Settlement briefing

Order Certifying Settlement Class; Preliminary Approval

EXHIBIT C

In Re: Facebook, Inc. Consumer Privacy User Profile Litigation
Class Counsel Timekeepers

Professional	Firm	Prof Type	Year of First Bar Admission	Years of Practice as of 2023	Billing Rate	Total Time Billed	Total Lodestar
Aldridge, Emily	BFA	Associate	2014	9	\$ 625.00	607.00	\$ 379,375.00
Bard, Robert J.	KR	Discovery Analyst	1982	41	\$ 480.00	576.70	\$ 276,816.00
Bertero, Anthony	BFA	Staff Associate	2012	11	\$ 450.00	3,344.00	\$ 1,504,800.00
Bleichmar, Javier	BFA	Partner	1999	24	\$ 1,150.00	148.40	\$ 170,660.00
Bradley, Vera L.	KR	Discovery Analyst	2017	6	\$ 475.00	513.10	\$ 243,722.50
Cibulka, Britt	BFA	Special Projects Associate	2002	20	\$ 470.00	74.30	\$ 34,921.00
Coleman, Timothy	BFA	Staff Associate	1992	30	\$ 470.00	797.30	\$ 374,731.00
Cullen, Mark	KR	Discovery Analyst	2014	9	\$ 475.00	246.00	\$ 116,850.00
Culpepper, DeAnna	KR	Paralegal	n/a	4	\$ 260.00	1,544.50	\$ 401,570.00
Curran, Whitney	KR	Discovery Analyst	2004	19	\$ 480.00	1,752.40	\$ 841,152.00
Daniel, Adele A.	KR	Attorney	2018	5	\$ 650.00	2,490.80	\$ 1,619,020.00
Dao, William	KR	Discovery Analyst	2016	7	\$ 480.00	1,525.20	\$ 732,096.00
Davis, Anne	BFA	Partner	2009	14	\$ 895.00	6,105.20	\$ 5,464,154.00
Dillman, Jason	KR	Paralegal	n/a	23	\$ 425.00	436.90	\$ 185,682.50
Erickson, Karyn	BFA	Staff Associate	2008	15	\$ 460.00	2,095.50	\$ 963,930.00
Evans, John	KR	Paralegal	n/a	14	\$ 330.00	1,844.90	\$ 608,817.00
Fay, Alexandra V.	KR	Discovery Analyst	2021	2	\$ 475.00	431.30	\$ 204,867.50
Fierro, Eric	KR	Partner	2009	14	\$ 875.00	968.00	\$ 847,000.00
Fonti, Joseph	BFA	Partner	2000	23	\$ 1,150.00	154.60	\$ 177,790.00
Garfield, Christopher	KR	Discovery Analyst	2005	18	\$ 480.00	4,495.70	\$ 2,157,936.00
Garland, David	KR	Discovery Analyst	2002	21	\$ 475.00	2,026.70	\$ 962,682.50
Geisheimer, Ann	KR	Discovery Analyst	2001	22	\$ 475.00	1,652.90	\$ 785,127.50
Gerend, Matthew M.	KR	Partner	2010	13	\$ 795.00	151.60	\$ 120,522.00
Gonzalez, Sandy	BFA	Associate	2020	3	\$ 665.00	61.80	\$ 41,097.00
Gotto, Alex	KR	Paralegal	n/a	8	\$ 330.00	262.20	\$ 86,526.00
Gotto, Maxwell	KR	Paralegal	n/a	5	\$ 305.00	294.20	\$ 89,731.00
Gould, Benjamin B.	KR	Partner	2007	16	\$ 895.00	2,503.60	\$ 2,240,722.00
Graver, Christopher T.	KR	Partner	1990	33	\$ 1,095.00	131.10	\$ 143,554.50
Guglielmelli, Joseph	BFA	Staff Associate	1982	40	\$ 495.00	668.80	\$ 331,056.00
Horowitz, Amy	BFA	Staff Associate	2004	18	\$ 395.00	165.80	\$ 65,491.00

In Re: Facebook, Inc. Consumer Privacy User Profile Litigation
Class Counsel Timekeepers

Professional	Firm	Prof Type	Year of First Bar Admission	Years of Practice as of 2023	Billing Rate	Total Time Billed	Total Lodestar
Jones, Kris C.	KR	Discovery Analyst	2007	16	\$ 475.00	987.90	\$ 469,252.50
Kilner, Paige	KR	Paralegal	n/a	11	\$ 350.00	52.70	\$ 18,445.00
King, Kevin	BFA	Staff Associate	2009	13	\$ 395.00	148.80	\$ 58,776.00
Kish, Charles M.	KR	Discovery Analyst	1997	26	\$ 480.00	222.90	\$ 106,992.00
Ko, David	KR	Partner	2006	17	\$ 895.00	2,672.20	\$ 2,391,619.00
Koo, Jooyoung	BFA	Projects Associate	2013	10	\$ 525.00	148.60	\$ 78,015.00
Korkhov, Tanya X.	KR	Attorney	2001	22	\$ 660.00	243.90	\$ 160,974.00
Korkhov, Tanya X.	KR	Attorney	2001	22	\$ 440.00	185.00	\$ 81,400.00
Kruse, Jordan	KR	Discovery Analyst	2011	12	\$ 475.00	555.70	\$ 263,957.50
LaDuca, Kimberly W.	KR	Attorney	2014	7	\$ 400.00	55.30	\$ 22,120.00
Lantz, Benjamin J.	KR	Partner	1995	28	\$ 475.00	711.00	\$ 337,725.00
Laufenberg, Cari Campen	KR	Partner	2003	20	\$ 1,095.00	5,170.50	\$ 5,661,697.50
Law, Julie	BFA	Paralegal	n/a	7	\$ 385.00	486.50	\$ 187,302.50
Lee, Zachary	BFA	Staff Associate	1997	25	\$ 425.00	4,476.10	\$ 1,902,342.50
Lenaburg, Harry J.	KR	Discovery Analyst	1979	44	\$ 475.00	1,274.20	\$ 605,245.00
Loeser, Derek W.	KR	Partner	1994	29	\$ 1,200.00	3,887.10	\$ 4,664,520.00
Long, Vanessa	KR	Discovery Analyst	2017	6	\$ 475.00	953.50	\$ 452,912.50
Mai, Luan	KR	Discovery Analyst	2013	10	\$ 415.00	277.30	\$ 115,079.50
Mankowski, Andrew	KR	Discovery Analyst	1993	30	\$ 475.00	3,871.00	\$ 1,838,725.00
Markham, Cynthia	BFA	Staff Associate	2013	12	\$ 435.00	957.60	\$ 416,556.00
Matteson, Eric N.	KR	Discovery Analyst	2012	11	\$ 480.00	538.70	\$ 258,576.00
McAdoo, Lori	KR	Paralegal	n/a	27	\$ 395.00	801.80	\$ 316,711.00
Melamed, Matthew	BFA	Partner	2008	15	\$ 895.00	3,681.90	\$ 3,295,300.50
Mensher, Ian J.	KR	Attorney	2007	16	\$ 595.00	174.90	\$ 104,065.50
Mittenthal, Robert	KR	Paralegal	n/a	41	\$ 425.00	1,015.20	\$ 431,460.00
Montgomery, Matthew	BFA	Of Counsel	1996	26	\$ 740.00	1,293.80	\$ 957,412.00
Moody, Janelle	BFA	Projects Associate	2003	20	\$ 525.00	5,850.30	\$ 3,071,407.50
Moran, Renee	KR	Paralegal	n/a	9	\$ 260.00	65.30	\$ 16,978.00
Morowitz, Rachel E.	KR	Attorney	2018	5	\$ 525.00	74.60	\$ 39,165.00

In Re: Facebook, Inc. Consumer Privacy User Profile Litigation
Class Counsel Timekeepers

Professional	Firm	Prof Type	Year of First Bar Admission	Years of Practice as of 2023	Billing Rate	Total Time Billed	Total Lodestar
Myhr, Elizabeth	KR	Paralegal	n/a	12	\$ 255.00	89.80	\$ 22,899.00
Onaga, Naomi	BFA	Staff Associate	2003	20	\$ 425.00	3,891.30	\$ 1,653,802.50
Ornelas, Angelica	BFA	Associate	2012	11	\$ 760.00	1,384.00	\$ 1,051,840.00
Pacheco, Tessa	KR	Discovery Analyst	2015	8	\$ 475.00	2,788.50	\$ 1,324,537.50
Parrilla, Cavin	KR	Paralegal	n/a	11	\$ 330.00	307.90	\$ 101,607.00
Patrikios, Peter	BFA	Projects Associate	2007	16	\$ 525.00	568.80	\$ 298,620.00
Perez, Gayle C.	KR	Discovery Analyst	2005	18	\$ 475.00	75.90	\$ 36,052.50
Riel, Edward	BFA	Staff Associate	2003	20	\$ 460.00	3,091.20	\$ 1,421,952.00
Robertson, Kelsey	BFA	Paralegal	n/a	7	\$ 350.00	474.20	\$ 165,970.00
Saas, Hildja	KR	Discovery Analyst	2006	17	\$ 440.00	1,776.10	\$ 781,484.00
Sakthivel, Ravi K.	KR	Discovery Analyst	2005	18	\$ 475.00	1,137.20	\$ 540,170.00
Samra, Joshua	BFA	Associate	2016	7	\$ 665.00	5,907.50	\$ 3,928,487.50
Sarko, Lynn Lincoln	KR	Partner	1981	42	\$ 1,320.00	438.40	\$ 578,688.00
Scown, S.L.	KR	Paralegal	n/a	3	\$ 295.00	72.30	\$ 21,328.50
Simnowitz, Sara	BFA	Special Counsel	2002	21	\$ 860.00	1,759.70	\$ 1,513,342.00
Smith, Tyrone	KR	Discovery Analyst	2008	15	\$ 480.00	2,466.00	\$ 1,183,680.00
Springer, Christopher L.	KR	Partner	2013	10	\$ 695.00	4,849.40	\$ 3,370,333.00
Strakosch, Margaret	BFA	Projects Associate	2018	15	\$ 525.00	3,614.70	\$ 1,897,717.50
Strosky, Beth M.	KR	Attorney	2001	22	\$ 475.00	219.90	\$ 104,452.50
Sullivan, Kasey	BFA	Projects Associate	2000	23	\$ 525.00	3,171.60	\$ 1,665,090.00
Sum, Sylvia	BFA	Staff Associate	2000	23	\$ 470.00	3,084.70	\$ 1,449,809.00
Tamondong, Cesar	BFA	Paralegal	n/a	19	\$ 350.00	201.00	\$ 70,350.00
Tate, Ken L.	KR	Discovery Analyst	2014	9	\$ 475.00	208.00	\$ 98,800.00
Teller, Ralph	KR	Discovery Analyst	1980	43	\$ 475.00	3,130.70	\$ 1,487,082.50
Terlap, Michael F.	KR	Paralegal	n/a	1	\$ 320.00	129.00	\$ 41,280.00
Tiezazu, Y. Tizzy	KR	Paralegal	n/a	6	\$ 305.00	491.20	\$ 149,816.00
Trimble, Lynne	KR	Discovery Analyst	1995	28	\$ 480.00	4,885.40	\$ 2,344,992.00
Tsurudome, Glen	BFA	Staff Associate	2005	18	\$ 495.00	2,764.50	\$ 1,368,427.50
Tuato'o, Jennifer	KR	Paralegal	n/a	24	\$ 425.00	4,204.70	\$ 1,786,997.50

In Re: Facebook, Inc. Consumer Privacy User Profile Litigation
Class Counsel Timekeepers

Professional	Firm	Prof Type	Year of First Bar Admission	Years of Practice as of 2023	Billing Rate	Total Time Billed	Total Lodestar
Tunkkari, Katja	KR	Paralegal	n/a	4	\$ 330.00	2,102.10	\$ 693,693.00
Ulmer, Daniel	BFA	Projects Associate	2011	12	\$ 395.00	1,360.40	\$ 537,358.00
Wax, David	BFA	Staff Associate	2006	17	\$ 460.00	85.50	\$ 39,330.00
Weaver, Lesley	BFA	Partner	1997	26	\$ 1,150.00	4,814.40	\$ 5,536,560.00
Weiler, Matthew	BFA	Associate	2004	19	\$ 655.00	835.90	\$ 547,514.50
Williams, Franklyn	BFA	Senior Projects Associate	2007	16	\$ 545.00	656.80	\$ 357,956.00
Willott, Brenna L.	KR	Discovery Analyst	2012	11	\$ 480.00	445.90	\$ 214,032.00
Wilson, S. Carolyn	KR	Discovery Analyst	2014	9	\$ 440.00	130.90	\$ 57,596.00
Wright, Emma M.	KR	Attorney	2020	3	\$ 595.00	2,659.10	\$ 1,582,164.50
						149,179.40	\$ 90,522,944.00

4879-5953-3419, v. 1

EXHIBIT D

Task Groups

Task Group 1 = Lead Counsel Calls/Meetings, Participating Counsel Calls/Meetings,
Lead Counsel Duties, Case Management, Litigation Strategy

Task Group 2 = MDL Status Conferences, Court Appearances

Task Group 3 = Research, Discovery, Document Review, Depositions

Task Group 4 = Pleadings and Motions

Task Group 5 = Experts, Trial Preparation, Trial

Task Group 6 = Settlement

Exhibit F

Derek W. Loeser (admitted *pro hac vice*)
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Tel.: (206) 623-1900
Fax: (206) 623-3384
dloeser@kellerrohrback.com

Lesley E. Weaver (SBN 191305)
BLEICHMAR FONTI & AULD LLP
1330 Broadway, Suite 630
Oakland, California 94612
Tel.: (415) 445-4003
Fax: (415) 445-4020
lweaver@bfalaw.com

Plaintiffs' Co-Lead Counsel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

MDL No. 2843
Case No. 18-md-02843-VC

This document relates to:

ALL ACTIONS

**DECLARATION OF WILLIAM B.
RUBENSTEIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

Judge: Hon. Vince Chhabria
Courtroom: 4, 17th Floor
Hearing Date: September 7, 2023
Hearing Time: 1:00 p.m.

1. I am the Bruce Bromley Professor of Law at Harvard Law School and have been recognized as a leading national expert on class action law and practice. Class Counsel¹ seek a fee

¹ The Settlement Agreement states that “‘Class Counsel’ means Derek W. Loeser of Keller Rohrback L.L.P. and Lesley E. Weaver of Bleichmar Fonti & Auld LLP” Class Action Settlement Agreement and Release, *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 3:18-MD-02843-VC (N.D. Cal. Dec. 22, 2022), ECF No. 1096-2 at 8 [hereinafter “Settlement Agreement”]; *see also* Order Certifying Settlement Class; Granting Preliminary Approval of Class Action Settlement Pursuant to Federal Rule of Civil Procedure 23(e)(1); and Approving Form and Content of Class Notice, *In re: Facebook, Inc. Consumer Privacy User*

of \$181.25 million, which constitutes 25% of the \$725 million settlement fund. Class Counsel have retained me to assist the Court in reviewing whether this request is reasonable in the context of this litigation. After setting forth my qualifications to serve as an expert (Part I, *infra*), I provide the Court with empirical and qualitative evidence, all of which would enable the Court to find that Class Counsel's requested fee is well deserved. Specifically:

- **Empirical evidence provides support for the conclusion that Class Counsel's lodestar reflects reasonable billing rates** (Part II, *infra*). For purposes of this Declaration, my research assistants compiled a database of all billing rates explicitly approved by courts overseeing class action settlements in the Northern District of California in 2022 (344 rates from 33 cases). The billing rates Class Counsel employ for partners and partnership-track attorneys are slightly above (3.8% higher than) those approved rates. This is impressive in that the majority of cases in this comparison set were less complex matters (such as wage-and-hour cases) and only two resulted in settlements greater than \$100 million. The reasonableness of Class Counsel's rates is generally consistent across other categories of billers (staff attorneys and paralegals), with Class Counsel's blended hourly rate for all professionals (\$609) falling 18.2% below the median and 16.5% below the average of the comparison set.
- **Empirical evidence and qualitative analysis provide support for the conclusion that Class Counsel's lodestar reflects a reasonable quantity of hours** (Part III, *infra*). My research assistants undertook a similar empirical evaluation of the number of hours Class Counsel billed, comparing that total to hours billed in seven settlements of roughly this magnitude (\$525 million–\$925 million) in a database of over 1,000 class action cases that I maintain.² The total hours in this case is somewhat above the median of the comparison set, but 24% below the average. In light of the discovery challenges that Class Counsel faced in litigating this case, these data provide support for the conclusion that Class Counsel's lodestar does not reflect churning or lodestar padding. A qualitative assessment of the time spent provides further context for that conclusion.
- **Qualitative evidence concerning the risks Class Counsel took and the results they achieved provide support for the conclusion that they are entitled to a lodestar multiplier – and empirical evidence shows that the multiplier sought is lower than average multipliers in cases of this magnitude** (Part IV, *infra*). Class Counsel bore a significant risk by taking on a non-cookie cutter, relatively novel, significantly complex

Profile Litigation, No. 3:18-MD-02843-VC (N.D. Cal. Mar. 29, 2023) (confirming appointment of Class Counsel), ECF No. 1130 at 3.

² For an explanation of the database, see ¶ 10, *infra*.

case against an enormously well-funded adversary that employed one of the world's largest law firms to vigorously contest the claims. Class Counsel, two relatively small law firms, invested tens of millions of dollars of their own time and money pursuing the class's claims without any promise that the investment would pay off. While shouldering significant risk, Class Counsel delivered for the class, securing the largest data privacy settlement in U.S. history, a \$725 million common fund, which will deliver monetary relief to any class member who steps forward to follow the simple, straightforward claiming process. Class Counsel's 25% fee request is almost exactly twice their lodestar; a 2 multiplier is slightly higher than the norm for all cases (1.5-level) but well below the norm for large fund cases (3-level) such as this.

2. The requested 25% fee here is consistent with the Ninth Circuit's 25% benchmark, but percentage awards tend to decrease as fund sizes increase;³ in cases of this magnitude, empirical evidence shows that the average percentage is somewhere between 12–18%.⁴ However, such a percentage comparison recedes in importance in light of the lodestar cross-check and a series of qualitative factors required by the Ninth Circuit's jurisprudence. All of these data points are more insightful, as comparing percentages across cases provides little information about the quantity of Class Counsel's efforts and proposed profit (which are captured by the lodestar cross-check and its resulting multiplier) and provides no information about the particular risks Class Counsel shouldered or the strength of the settlement they secured for the class (which are captured by the Ninth Circuit's multi-factor test).⁵ As applied here, the full record of the case provides strong support for the Court to find that Class Counsel's requested 25% award is reasonable.

³ See 5 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* §§ 15:80 to 15:81 (6th ed. & Supp. 2023) [hereinafter "*Newberg and Rubenstein on Class Actions*"].

⁴ *Id.* at § 15:81.

⁵ For these reasons, I have long argued that simply comparing percentages across cases without reference to the lodestar multiplier, and other qualitative factors, is a relatively meaningless exercise. See, e.g., *id.* at § 15:86 ("It is true in the abstract that a 25% award in one case and a 25% award in another case are both 25%, such that the percentage method ensures some level of consistency. But again, since that 25% figure, standing alone, provides so little information about the fee's relationship to profit, it is a rather meaningless form of consistency.").

I.
BACKGROUND AND QUALIFICATIONS⁶

3. I am the Bruce Bromley Professor of Law at Harvard Law School. I graduated from Yale College, *magna cum laude*, in 1982 and from Harvard Law School, *magna cum laude*, in 1986. I clerked for the Hon. Stanley Sporkin in the U.S. District Court for the District of Columbia following my graduation from law school. Before joining the Harvard faculty as a tenured professor in 2007, I was a law professor at the UCLA School of Law for a decade, and an adjunct faculty member at Harvard, Yale, and Stanford Law Schools while a public interest lawyer during the preceding decade. I am admitted to practice law in the Commonwealth of Massachusetts, the State of California, the Commonwealth of Pennsylvania (inactive), the District of Columbia (inactive), the U.S. Supreme Court, six U.S. Courts of Appeals, and four U.S. District Courts.

4. My principal area of scholarship is complex civil litigation, with a special emphasis on class action law. I am the author, co-author, or editor of five books and more than a dozen scholarly articles, as well as many shorter publications (a fuller bibliography appears in my appended c.v.). Much of this work concerns various aspects of class action law. Since 2008, I have been the sole author of the leading national treatise on class action law, *Newberg on Class Actions*. Between 2008 and 2017, I re-wrote the entire multi-volume treatise from scratch as its Fifth Edition and, subsequently, produced the treatise's Sixth Edition – *Newberg and Rubenstein on Class Actions* – which was published in 2022. As part of this effort, I wrote and published a 692-page volume (volume 5 of the Sixth Edition) on attorney's fees, costs, and incentive awards;

⁶ My full c.v. is attached as Exhibit A.

this is the most sustained scholarly treatment of class action attorney's fees and has been cited in numerous federal court fee decisions. For five years (2007–2011), I published a regular column entitled "Expert's Corner" in the publication *Class Action Attorney Fee Digest*. My work has been excerpted in casebooks on complex litigation, as noted on my c.v.

5. My expertise in complex litigation has been recognized by judges, scholars, and lawyers in private practice throughout the country for whom I regularly provide consulting advice and educational training programs. Since 2010, the Judicial Panel on Multidistrict Litigation (JPML) has annually invited me to give a presentation on the current state of class action law at its MDL Transferee Judges Conference, and I have often spoken on the topic of attorney's fees to the MDL judges. The Federal Judicial Center invited me to participate as a panelist (on the topic of class action settlement approval) at its March 2018 judicial workshop celebrating the 50th anniversary of the JPML, *Managing Multidistrict and Other Complex Litigation Workshop*. The Ninth Circuit invited me to moderate a panel on class action law at the 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop. The American Law Institute selected me to serve as an Adviser on a Restatement-like project developing the *Principles of the Law of Aggregate Litigation*. In 2007, I was the co-chair of the Class Action Subcommittee of the Mass Torts Committee of the ABA's Litigation Section. I am on the Advisory Board of the publication *Class Action Law Monitor*. I have often presented continuing legal education programs on class action law at law firms and conferences.

6. My teaching focuses on procedure and complex litigation. I regularly teach the basic civil procedure course to first-year law students, and I have taught a variety of advanced courses on complex litigation, remedies, and federal litigation. I have received honors for my

teaching activities, including: the Albert M. Sacks-Paul A. Freund Award for Teaching Excellence, as the best teacher at Harvard Law School during the 2011–2012 school year; the Rutter Award for Excellence in Teaching, as the best teacher at UCLA School of Law during the 2001–2002 school year; and the John Bingham Hurlbut Award for Excellence in Teaching, as the best teacher at Stanford Law School during the 1996–1997 school year.

7. My academic work on class action law follows a significant career as a litigator. For nearly eight years, I worked as a staff attorney and project director at the national office of the American Civil Liberties Union (ACLU) in New York City. In those capacities, I litigated dozens of cases on behalf of plaintiffs pursuing civil rights matters in state and federal courts throughout the United States. I also oversaw and coordinated hundreds of additional cases being litigated by ACLU affiliates and cooperating attorneys in courts around the country. I therefore have personally initiated and pursued complex litigation, including class actions.

8. I have been retained as an expert witness in about 100 cases and as an expert consultant in about another 30 or so cases. These cases have been in state and federal courts throughout the United States, most have been class actions and other complex matters, and many have been MDL proceedings. I have been retained to testify as an expert witness on issues ranging from the propriety of class certification, to the reasonableness of settlements and fees, to the preclusive effect of class action judgments. I have been retained by counsel for plaintiffs, for defendants, and for objectors.

9. Courts have appointed me to serve as an expert in complex fee matters:

- In 2015, the United States Court of Appeals for the Second Circuit appointed me to argue for affirmance of a district court order that significantly reduced class counsel's

fee request in a large, complex securities class action, a task I completed successfully when the Circuit summarily affirmed the decision on appeal.⁷

- In 2017, the United States District Court for the Eastern District of Pennsylvania appointed me to serve as an expert witness on certain attorney's fees issues in the National Football League (NFL) Players' Concussion Injury Litigation (MDL 2323). In my final report to the Court, I recommended, *inter alia*, that the Court should cap individual retainer agreements at 22%, a recommendation that the Court adopted.⁸
- In 2018, the United States District Court for the Northern District of Ohio appointed me to serve as an expert consultant to the Court on complex class action and common benefit fees issues in the National Prescription Opiate Litigation (MDL 2804).
- The United States District Courts for the Southern District of New York and the Eastern District of Pennsylvania have both appointed me to serve as a mediator to resolve complex matters in class action cases, including fee issues.

10. One of the functions I can provide as an expert witness is to present empirical evidence of class action practices from other cases. As part of my scholarly work on class action law, I have created and maintain a database containing data on over 1,000 class action lawsuits. Specifically, my research assistants coded the data from case reports appearing in the journal, *Class Action Attorney Fee Digest* (CAAFD). CAAFD was published monthly from January 2007 to September 2011 for a total of 57 issues, and reported on 1,187 unique court-approved state and federal class actions. For each case, a CAAFD case abstract describes the awarding court and judge, the subject matter of the dispute, the settlement/judgment benefits, the attorney fee and expense awards (both as requested by plaintiff's counsel and as approved by the court), the case filing and attorney fee award dates, any named plaintiff awards, and miscellaneous data on case

⁷ See *In re IndyMac Mortg.-Backed Sec. Litig.*, 94 F. Supp. 3d 517 (S.D.N.Y. 2015), *aff'd sub nom. DeValerio v. Olinski*, 673 F. App'x 87 (2d Cir. 2016).

⁸ *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1658808, at *1 (E.D. Pa. Apr. 5, 2018) ("I adopt the conclusions of Professor Rubenstein and order that IRPAs' fees be capped at 22% plus reasonable costs.").

and settlement/judgment administration. In creating the database from the CAAFD reports, my research team cross-checked the accuracy of a subset of federal reports against source documents from PACER; we found only one error – an understatement of the settlement benefit value by 2% – in 726 data fields, or fewer than 0.15% of fields. I am therefore confident about the accuracy of the data in my database and use it regularly as a source for my scholarship and expert witness work.

11. Courts have often relied on my expert witness testimony in fee matters.⁹

12. I have been retained in this case to provide an opinion concerning the issues set forth in the first paragraph, above. I am being compensated for providing this expert opinion. I

⁹ See, e.g., *In re Genetically Modified Rice Litig.*, 764 F.3d 864, 872 (8th Cir. 2014); *Benson v. DoubleDown Interactive, LLC*, No. 18-CV-0525-RSL, 2023 WL 3761929, at *2 (W.D. Wash. June 1, 2023); *In re Zetia (Ezetimibe) Antitrust Litig.*, No. 2:18-MD-2836, 2022 WL 18108387, at *7 (E.D. Va. Nov. 8, 2022); *Reed v. Light & Wonder, Inc.*, No. 18-CV-565-RSL, 2022 WL 3348217, at *1-2 (W.D. Wash. Aug. 12, 2022); *City of Westland Police & Fire Ret. Sys. v. MetLife, Inc.*, No. 12-CV-0256 (LAK), 2021 WL 2453972 (S.D.N.Y. June 15, 2021); *In re Facebook Biometric Info. Priv. Litig.*, No. 15-CV-03747-JD, 2021 WL 757025, at *10-*12 (N.D. Cal. Feb. 26, 2021); *Kater v. Churchill Downs Inc.*, No. 15-CV-00612-RSL, 2021 WL 511203, at *1-*2 (W.D. Wash. Feb. 11, 2021); *Wilson v. Playtika Ltd.*, No. 18-CV-5277-RSL, 2021 WL 512230, at *1-*2 (W.D. Wash. Feb. 11, 2021); *Wilson v. Huuuge, Inc.*, No. 18-CV-5276-RSL, 2021 WL 512229, at *1-*2 (W.D. Wash. Feb. 11, 2021); *Amador v. Baca*, No. 210CV01649SVWJEM, 2020 WL 5628938, at *13 (C.D. Cal. Aug. 11, 2020); *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *10 (S.D. Ill. Dec. 16, 2018); *Krakauer v. Dish Network, L.L.C.*, No. 1:14-CV-333, 2018 WL 6305785, at *5 (M.D.N.C. Dec. 3, 2018); *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1658808, at *4 (E.D. Pa. Apr. 5, 2018); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 3175924, at *3 (N.D. Cal. July 21, 2017); *Aranda v. Caribbean Cruise Line, Inc.*, No. 1:12-cv-04069, 2017 WL 1369741, at *5 (N.D. Ill. Apr. 10, 2017), *aff'd sub nom. Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792 (7th Cir. 2018); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730, at *9 (N.D. Cal. Sept. 2, 2015); *Asghari v. Volkswagen Grp. of Am., Inc.*, No. 13-CV-02529 MMM, 2015 WL 12732462, at *44 (C.D. Cal. May 29, 2015); *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-md-2591-JWL, 2015 WL 2165341, at *5 (D. Kan. May 8, 2015); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1172 (C.D. Cal. 2010); *Commonwealth Care All v. Astrazeneca Pharm. L.P.*, No. CIV.A. 05-0269 BLS 2, 2013 WL 6268236, at *2 (Mass. Super. Aug. 5, 2013).

was paid a flat fee in advance of rendering my opinion, so my compensation is in no way contingent upon the content of my opinion.

13. In analyzing these issues, I have discussed the case with the counsel who retained me. I have also reviewed documents from this litigation, a list of which is attached as Exhibit B. At Class Counsel's request, I also read a draft of Professor Brian Fitzpatrick's expert declaration in this matter. Finally, I have reviewed the case law and scholarship relevant to the issues herein.

* * *

14. The Ninth Circuit has articulated the legal standard for a fee petition as follows:

Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method. . . . The factors in a court's fairness assessment will naturally vary from case to case, but courts generally must weigh: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement.¹⁰

This Declaration will focus solely on the lodestar cross-check, as Class Counsel have retained another expert – Professor Fitzpatrick – to opine on the reasonableness of Class Counsel's requested percentage. Applying Ninth Circuit fees law, the following sections consider the reasonableness of Class Counsel's proposed rates (Part II, *infra*); their hours (Part III, *infra*); and their proposed multiplier, in quantitative and qualitative (risks and results) terms (Part IV, *infra*).

¹⁰ *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942, 946 (9th Cir. 2011) (citing *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)).

II.
EVIDENCE SUPPORTING THE REASONABLENESS OF THE
HOURLY RATES CLASS COUNSEL EMPLOY

15. The *Manual for Complex Litigation* states:

What constitutes a reasonable hourly rate varies according to geographic area and the attorney's experience, reputation, practice, qualifications, and customary charge. The rate should reflect what the attorney would normally command in the relevant marketplace.¹¹

Applying these principles, the following subsections analyze the rates Class Counsel propose for their (1) partners and partnership-track attorneys, (2) staff attorneys, and (3) paralegals, and then (4) a concluding subsection analyzes the blended, or average, hourly rate across the entire lodestar.

A.
Partner and Partnership-Track Hourly Rates

16. For purposes of this Declaration, I directed my research assistants to create a database of hourly rates recently approved by judges in the Northern District of California overseeing class action fee petitions, so as to have an empirical basis by which to assess the reasonableness of Class Counsel's proposed rates. Using the Federal Judicial Center's database listing all civil cases terminated in a given year,¹² my research assistants identified (a) all class actions resulting in damages (b) terminated in the Northern District in 2022 with (c) judicially-approved settlements. They then reviewed the order granting approval of class counsel's fees to see if the court had explicitly approved hourly billing rates and whether those approved rates were

¹¹ *Manual for Complex Litigation (Fourth)*, § 14.122 (2004) (citing *Blum v. Stenson*, 465 U.S. 886, 895 (1984) (“[R]easonable fees’ . . . are to be calculated according to the prevailing market rates in the relevant community”); *Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167 (3d Cir. 1973)).

¹² *Civil Cases Filed, Terminated, and Pending from SY 1988 to Present*, Federal Judicial Center, <https://www.fjc.gov/research/idb/civil-cases-filed-terminated-and-pending-sy-1988-present>.

attributable to specific billers identified in the underlying fee petition. This process yielded 33 total cases, listed in Exhibit C; no case meeting these criteria was excluded. My team then reviewed Class Counsel's lodestar submissions in each of the 33 cases and extracted 344 individual hourly rates of partnership-track attorneys (partner, associate) to employ in our analysis.¹³ We adjusted all these rates to 2023 dollars using the U.S. Bureau of Labor Statistics' Producer Price Index-Office of Lawyers (PPI-OL) index.¹⁴ My research assistants also tracked down the year of first admission to the bar for each of the 344 identified attorneys.¹⁵

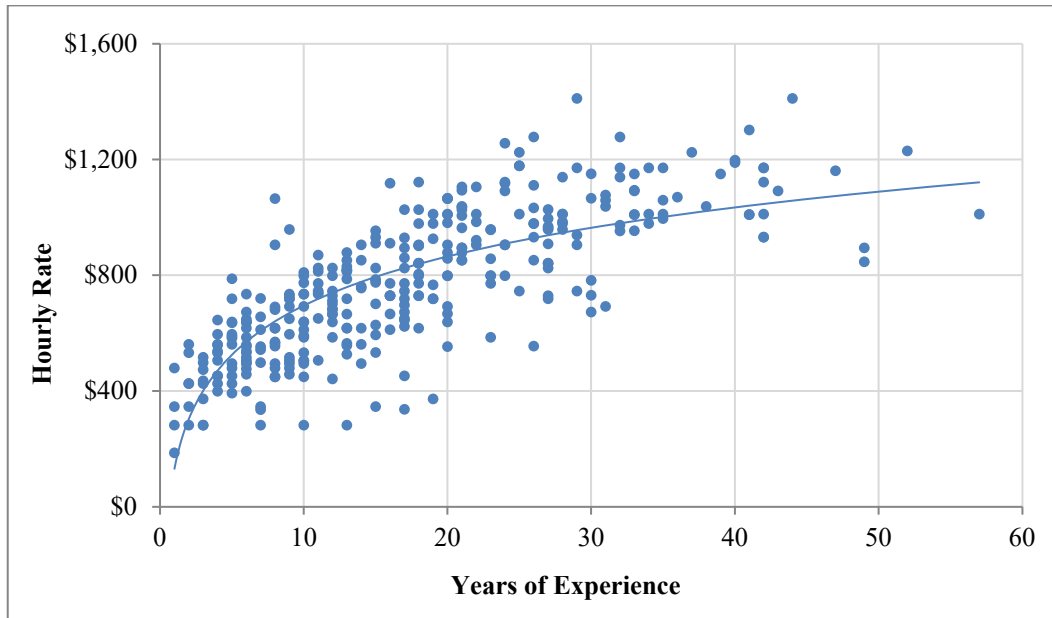
17. Once each timekeeper's experience level had been identified and all of the dollar amounts had been set to 2023 levels, we plotted the rates, with the x-axis representing the number of years since the timekeeper's admission to the bar and the y-axis representing the timekeeper's hourly rate. The resulting scatter plot, set forth below in Graph 1, provides a snapshot of judicially-approved hourly rates in 2022 Northern District of California class actions, with the blue line sketching the trend of rates across experience levels.

¹³ This dataset does not include staff attorneys or "counsel" attorneys. The reasonableness of Class Counsel's staff attorneys and "counsel" attorneys are assessed separately in ¶¶ 22-23, *infra*.

¹⁴ This price database can be accessed here: <https://www.bls.gov/ppi/databases/>. To specifically access the PPI-OL, first click on "One Screen" in the "Industry Data" row below "PPI Databases." Then select "541110 Offices of lawyers" as the industry and "541110541110 Offices of lawyers" as the product.

¹⁵ The 33 cases actually yielded rates for 355 partnership-track attorneys, but we discarded 11 of the data points because we were not able to find the year of bar admission for those attorneys.

GRAPH 1
JUDICIALLY-APPROVED HOURLY RATES IN 2022 N.D. CAL. CLASS ACTIONS

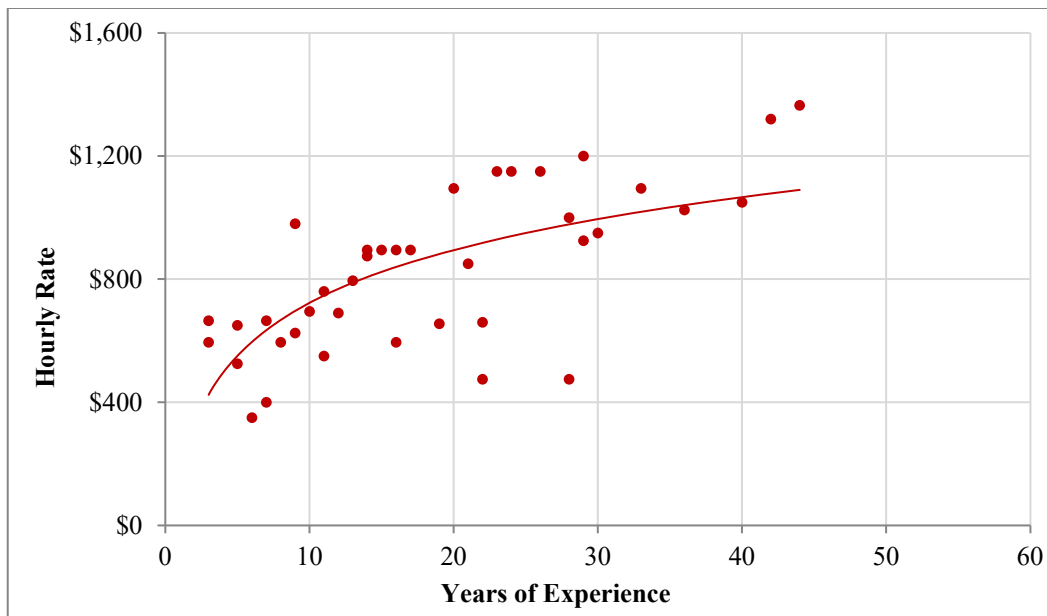


18. I next directed my research assistants to plot, in the same manner, the rates employed by Class Counsel in their lodestar submission. Specifically, for each of the 39 partnership-track lawyers in their lodestar,¹⁶ Class Counsel supplied us with the name, year of first admission to the bar, and proposed hourly rate.¹⁷ We plotted these rates onto the same type of x-y axis that we had employed for the Northern District of California comparison set. The resulting scatter plot, set forth below in Graph 2, provides a snapshot of Class Counsel’s billing rates, with the red line sketching the trend of Class Counsel’s rates across experience levels.

¹⁶ One firm labeled its staff as “partner” or “attorney”; our analysis assumed the latter were on a partnership track, an assumption Class Counsel confirmed.

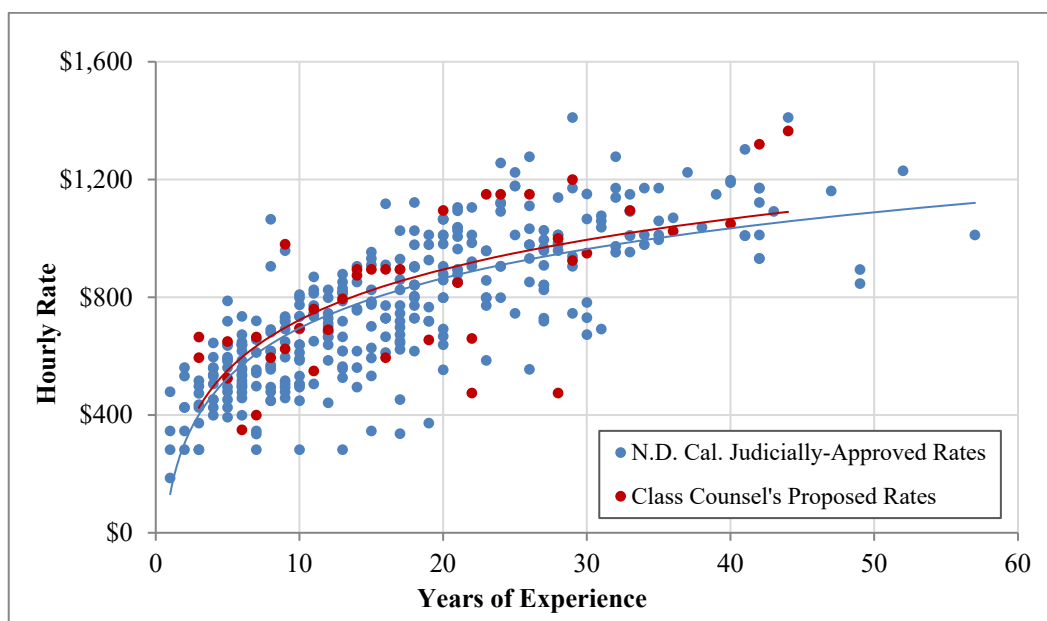
¹⁷ Class Counsel utilize their rates as of 2023 for all time spent on the litigation. This approach comports with Supreme Court precedent authorizing the use of current rates as “an appropriate adjustment for delay in payment.” *Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989).

GRAPH 2
CLASS COUNSEL'S PROPOSED HOURLY RATES



19. Finally, we aggregated Graphs 1 and 2 onto a single scatterplot, Graph 3, with Northern District judicially approved rates in blue and Class Counsel's proposed rates in red.

GRAPH 3
CLASS COUNSEL'S PROPOSED HOURLY RATES COMPARED TO JUDICIALLY APPROVED HOURLY RATES IN 2022 N.D. CAL. CLASS ACTIONS



20. As is visually evident in Graph 3, the two trend lines almost precisely track one another. When the differences between the trend lines are compared,¹⁸ Class Counsel's trend line is on average 3.8% above the trend line for rates approved in the Northern District. That Class Counsel are charging rates at the norm is, if anything, surprising and impressive. As evidenced by the Court's selection of them to lead this MDL, these firms are among the leading class action law firms in the United States, and the lawyers who worked on this case possess years of experience, have track records of success, and can be counted among the elite of the profession generally and this area of law specifically. By contrast, the 2022 comparison set encompasses smaller class actions (only two cases exceeded \$100 million in recovery) litigated by more local attorneys specializing in discrete areas (particularly wage-and-hour).

21. In sum, this empirical evidence demonstrates that the rates Class Counsel employ in their lodestar submission are in line with rates approved by Northern District judges overseeing class actions that terminated in 2022.

B. ***Staff Attorney Rates***

22. Separately from the comparison of partnership-track attorneys, we compared Class Counsel's proposed rates for staff attorneys to those charged by other firms for such attorneys.¹⁹

¹⁸ We compared the distance between the two trend lines at the 39 points for which Class Counsel have a timekeeper and took the average of those 39 comparisons.

¹⁹ While firms all have specific nomenclature for various types of attorneys, the term "staff attorney" generally applies to lawyers (a) on the firm's payroll; (b) typically paid full benefits like any other lawyer on payroll; and (c) typically housed at the firm (with the firm therefore bearing some overhead expenses). These characteristics distinguish staff attorneys from contract attorneys (sometimes hired and paid through agencies, typically not provided benefits, and often housed off-site); at the same time, staff attorneys differ from firm associates in that they are generally not on a partnership track. Given the central characteristics defining staff attorneys, most courts have

We undertook this analysis separately because staff attorney rates tend not to fluctuate with years of admission to the bar in the same manner that partnership-track attorney rates do, perhaps because their careers are less linear in nature.²⁰ Accordingly, we consider the reasonableness of staff attorney rates solely on a case-by-case basis, looking at the weighted average hourly rate for staff attorneys (adjusted to 2023 dollars) in each of the four cases in our N.D. Cal. 2022 comparison set that had such attorneys in their lodestar submissions.²¹ The average rate (in 2023 dollars) in the four comparison cases – consisting of 15 timekeepers – ranged from a low of \$438 to a high of \$636, with a median rate of \$453. This is reflected in Graph 4, below, with the weighted average hourly rate in this case (\$475) highlighted in red.

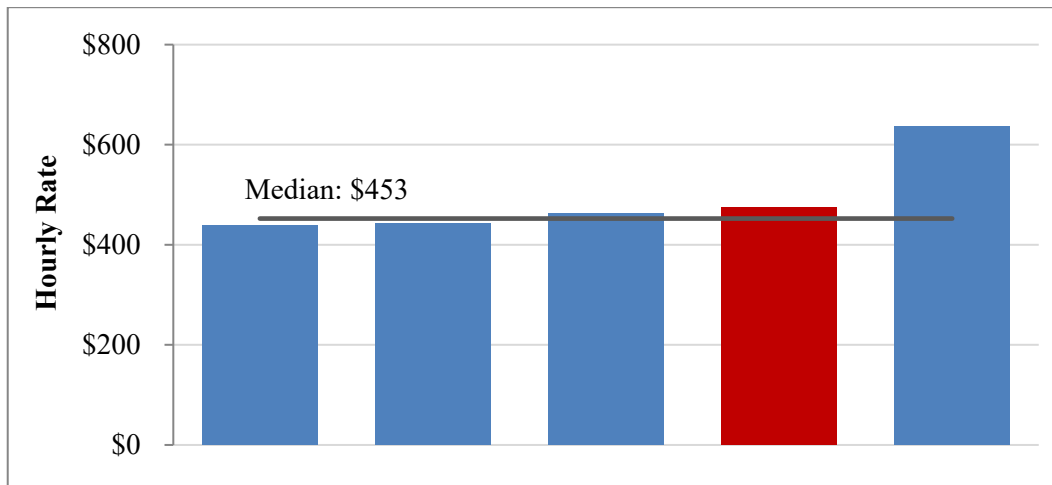
permitted class counsel to include their time in the lodestar cross-check calculation, as opposed to shifting these costs to the expense ledger. *See, e.g., Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983, at *15 (N.D. Cal. Dec. 18, 2018), *aff'd sub nom. Hefler v. Pekoc*, 802 F. App'x 285 (9th Cir. 2020) (“Because the staff attorneys have lower billing rates . . . this results in a lower lodestar, which factors into the Court’s cross-check.”); *In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 377–78 (S.D.N.Y. 2013) (including staff attorneys in lodestar calculation).

In this case, Class Counsel confirmed that the timekeepers they label as “Staff Associate,” “Special Projects Associate,” “Senior Projects Associate,” “Projects Associate,” and “Discovery Analyst” fit the definition of “staff attorney” in the prior paragraph, and we accordingly classified them as such in this analysis.

²⁰ For example, in one case from our comparison set, two staff attorneys billed at \$415 per hour, despite one having 11 years of experience and the other having 19 years of experience. *See Vianu et al. v. AT&T Mobility LLC*, No. 3:19-cv-03602 (N.D. Cal. Aug. 15, 2022), ECF No. 153-1 at 22.

²¹ We calculated the average hourly rate by dividing the total dollar amount billed for staff attorneys in a case by the total number of hours billed for staff attorneys.

GRAPH 4
CLASS COUNSEL’S AVERAGE STAFF ATTORNEY RATE COMPARED TO
AVERAGE STAFF ATTORNEY RATES IN 2022 N.D. CAL. CLASS ACTIONS



23. As is visually evident, the staff attorney rates proposed by Class Counsel are in line with rates judges approved in other Northern District class actions terminated in 2022. Class Counsel’s average rate for staff attorneys (\$475) is 5.0% above the median (\$453) and 4.0% below the mean (\$495) of the four cases in the comparison group.²²

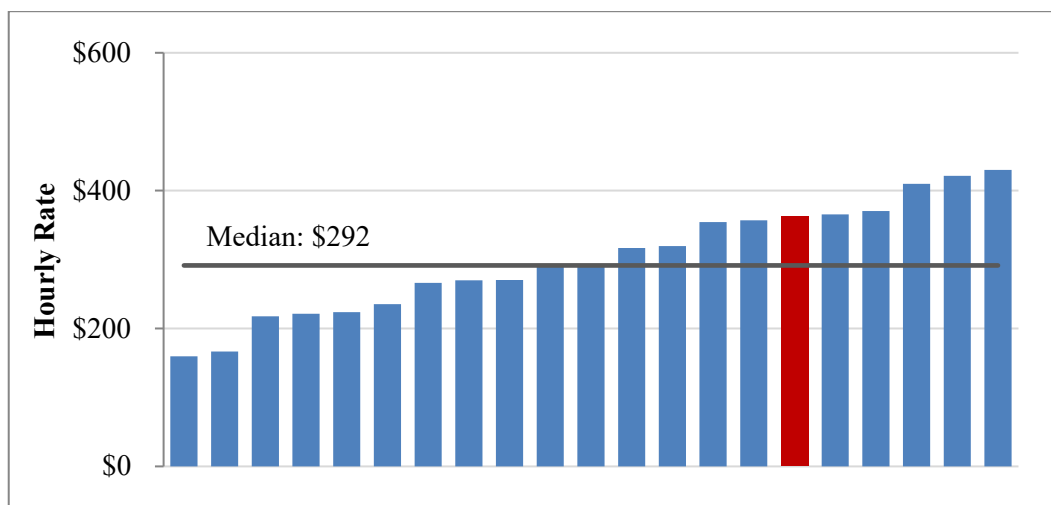
C. *Paralegal Rates*

24. My research assistants also collected information on the rates charged for paralegal work in the Northern District dataset described above. The weighted average hourly rates for

²² In this case, Class Counsel denominated a total of three lawyers as “counsel” in their lodestar submission. On the assumption that “counsel,” like staff attorneys, generally refer to lawyers not presently on a linear partnership track, we compared Class Counsel’s proposed rates for its three “counsel” against the rates of 24 lawyers identified as “counsel” appearing in 12 cases in the comparison set. Class Counsel’s weighted average hourly rate for “counsel” (\$813) was 2.7% higher than the median (\$792) and 5.1% higher than the mean (\$773). Those differences are immaterial as Class Counsel’s three “counsel” generated only about 3% of their total lodestar, and adjusting their lodestar to the average rate for “counsel” in the comparison set would accordingly have no impact on the lodestar multiplier.

paralegals in the comparison set (again calculated by dividing the total dollar amount billed for paralegals in a case by the total number of hours billed for paralegals, and again adjusted to 2023 dollars) ranged from a low of \$160 to a high of \$430, with the median case having a rate of \$292. This is reflected in Graph 5, below, with the weighted average hourly rate in this case (\$363) highlighted in red.

GRAPH 5
CLASS COUNSEL’S AVERAGE PARALEGAL RATE COMPARED TO
AVERAGE PARALEGAL RATES IN 2022 N.D. CAL. CLASS ACTIONS



25. As Graph 5 demonstrates, Class Counsel’s average rate for paralegal work (\$363) is at the higher end of the range of paralegal rates approved by Northern District judges in 2022 – it exceeds the rate in the median case (\$292) by 24.4% and the average across all of the comparison cases (\$298) by 21.7%. However, if we exclude the less complex wage-and-hour cases from the comparison set, Class Counsel’s average paralegal rate draws far closer to the norm, exceeding the rate in the median case (\$354) by 2.3%, and the average rate across all of the cases (\$328) by 10.5%. Perhaps most importantly, Class Counsel’s above-average paralegal rates are immaterial:

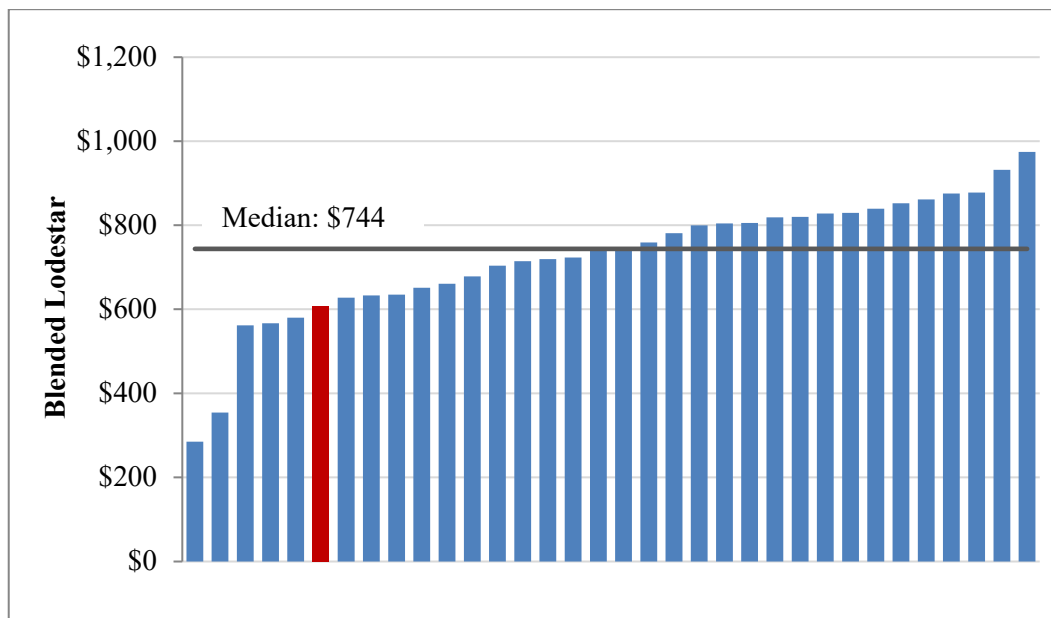
if Class Counsel billed all paralegal time at the comparison set's \$298 mean rates, their lodestar would drop by 1.1%, and their lodestar multiplier would increase from 1.99 to 2.01.

D.
Total Blended Hourly Rate

26. In addition to assessing the hourly rates of each lawyer, we also reviewed Class Counsel's blended hourly rate for the entire case. The blended hourly rate is calculated by taking the total lodestar and dividing it by the total number of hours worked by all of the timekeepers (partners, counsel, associates, staff attorneys, and paralegals) in the case. The resulting number provides the average billing rate of an hour expended on the case.

27. Graph 6, below, compares Class Counsel's blended rate to the blended rates in the 33 comparison cases. The blended rate in the comparison cases ranged from a low of \$285 to a high of \$974, with the median case having a rate of \$744. This is reflected in Graph 6, below, with the blended rate in this case (\$609) highlighted in red.

GRAPH 6
CLASS COUNSEL’S BLENDED HOURLY RATE COMPARED TO
BLENDED HOURLY RATES IN 2022 N.D. CAL. CLASS ACTIONS



28. As evident in Graph 6, Class Counsel’s \$609 rate falls 18.2% below the median case’s blended rate (\$744) and 16.5% below the average of all the comparison cases (\$728). This finding not only reflects the reasonableness of Class Counsel’s proposed rates, but it also demonstrates that work was appropriately delegated to more cost-effective labor when appropriate.

* * *

29. In sum, empirical evidence supports the conclusion that Class Counsel’s proposed hourly rates for partnership-track attorneys and staff attorneys are consistent with rates approved by courts in this District in class actions terminated in 2022; their paralegals rates are higher, but immaterially so, and their total blended hourly rate is well below average. The Court could find that these are very impressive metrics for the level of lawyering required for a case of this magnitude, duration, and complexity.

III. EVIDENCE SUPPORTING THE REASONABLENESS OF THE TOTAL HOURS CLASS COUNSEL BILL

30. Counsel are entitled to be compensated for reasonable time spent at all points in the litigation. Courts are cautioned to avoid engaging in an “*ex post facto* determination of whether attorney hours were necessary to the relief obtained.”²³ The issue “is not whether hindsight vindicates an attorney’s time expenditures, but whether, at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures.”²⁴

31. Class Counsel did not provide me – nor did I ask to see – a breakdown of each hour expended, as such a fine-grained lodestar audit is not required for purposes of the lodestar cross-check.²⁵ That said, Class Counsel did inform me that they commissioned a lodestar audit to be undertaken by another expert. Given that a lodestar audit has been performed elsewhere in this case, even though such a detailed review is not necessary for cross-check purposes, my own review is more general: I examine the hours that Class Counsel billed in two ways: *first*, by a quantitative comparison to the hours expended in similarly large cases (§§ 32-33, *infra*); and *second*, by a qualitative analysis of the tasks undertaken (§ 34, *infra*).

²³ *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992).

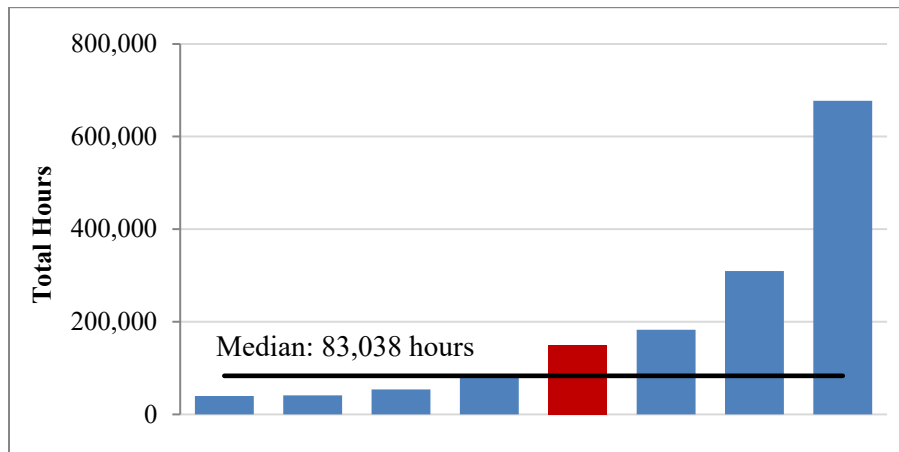
²⁴ *Id.*; accord *League of Residential Neighborhood Advocates v. City of Los Angeles*, 633 F. Supp. 2d 1119, 1133 (C.D. Cal. 2009) (noting that litigant’s brief quoted language from *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992), and approving time expended).

²⁵ See *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, 768 F. App’x 651, 654 (9th Cir. 2019) (“[When conducting a lodestar cross-check,] the district court may rely on attorney fee summaries rather than actual billing records.”) (citation omitted); *Hefler*, 2018 WL 6619983, at *14 (noting, in context of lodestar crosscheck, that “trial courts need not, and indeed should not, become green-eyeshade accountants . . . [r]ather, the Court seeks to do rough justice, not to achieve auditing perfection”) (cleaned up).

32. *Quantitative Assessment.* Only two cases in our 2022 Northern District dataset described above exceeded \$100 million in recovery; on the assumption that there's a positive relationship between time and reward, the cases in that dataset do not therefore helpfully address the question of how many hours it might take to achieve a \$725 million recovery. Accordingly, I directed my research assistants to gather data from our own database (*see* ¶ 10, *supra*) of the hours expended in cases with settlements of comparable size. Our dataset contained seven cases with settlement sizes ranging from \$525 million to \$925 million (in 2023 dollars), all of which we use in our analysis.²⁶ The hours in these cases ranged from 39,347 to 677,000, depicted in Graph 7 below.

²⁶ In undertaking a similar analysis of another settlement in the Northern District recently – *In re Twitter Inc. Securities Litigation*, No. 4:16-cv-05314-JST (SK) (N.D. Cal. Oct. 13, 2022), ECF No. 662-7 at 31 – I had included another case, with very few total hours, on this list. Upon closer review of that case in preparation of this Declaration, we learned that it was a claims-made settlement and the approximately \$600 million value attributed to it was the parties' report of its potential total, not the amount in a true common fund. I therefore chose to exclude it in this analysis. Were we to include that case here, Class Counsel's total would still fall amidst the pack of the comparably sized settlements, having the sixth highest number of hours, with the median of the other eight cases falling between the fourth and fifth cases; and Class Counsel's total would be just 10% below the mean.

GRAPH 7
CLASS COUNSEL’S TOTAL HOURS COMPARED TO
TOTAL HOURS IN CLASS SETTLEMENTS OF SIMILAR SIZE



33. As seen in Graph 7, Class Counsel’s total hours (represented by the red bar) fall amidst the pack of the comparably sized settlements, just one step above the median. Class Counsel’s lodestar encompasses 149,929 hours, which is 24% below the average of 198,038 hours across the seven comparison cases.²⁷ Class Counsel’s total hours are accordingly in the normal

²⁷ Class Counsel’s total hours encompass approximately 2,600 hours that they billed to their adversary in their sanctions motion, Joint Declaration of Derek K. Loeser and Lesley E. Weaver Regarding Fees and Costs Incurred Due to Sanctionable Misconduct, *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 3:18-MD-02843-VC (N.D. Cal. Nov. 18, 2022), ECF No. 1080 at 11-14. Given the Court’s order granting in part the motion for sanctions, see Sanctions Order, *supra* note 29, Class Counsel have been compensated for some of this time. However, in making the sanctions award, this Court noted that the “only way to award sanctions here is with a rough-but-conservative estimate,” *id.* at 51, which means that extracting a precise number of hours from the lodestar cross-check data in this petition – on the grounds that they have already been compensated – would be, at best, an inexact science. Moreover, since even the full 2,600 hours billed in the sanctions motion amount to less than 2% of the 149,929 hours in the lodestar cross-check submission, extracting some portion of the former from the latter would have such an immaterial an impact on the empirical conclusions described in the text as to not be worth the exercise.

range for a litigation of this size²⁸ and, to the extent the total falls above the median case in my database, much of the excess is likely attributable (in whole or part) to what this Court characterized in its sanctions decision as the “sustained, concerted, bad-faith effort [by Facebook and Gibson Dunn] to throw obstacle after obstacle in front of the plaintiffs.”²⁹

34. *Qualitative Assessment.* Class Counsel moved for appointment as lead counsel in this MDL on June 21, 2018, exactly five years before the deadline for the present fee petition. Over those five years, Class Counsel have cumulatively logged 149,929 hours of time, or the equivalent of about 14 lawyers working close to full time³⁰ on the case throughout its duration. At first blush, 14 lawyers working full time for five years seems like a large number, but a closer

²⁸ Even excluding the high outlier case at the far right of the graph, the average of the remaining comparison cases is 118,211, with Class Counsel’s hours sitting roughly the same amount above that average (27%) as it sits below that average (24%) with the outlier case included.

²⁹ Order Granting in Part Plaintiffs’ Motion for Sanctions, *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 3:18-MD-02843-VC (N.D. Cal. Feb. 9, 2023), ECF No. 1104 at 2 [hereinafter “Sanctions Order”]. While the total hours for which Class Counsel sought sanctions is relatively low, the Defendant’s litigation tactics required an enormous commitment of hours by Class Counsel separate and apart from the few that fell into the sanctionable category. See Plaintiffs’ Corrected Notice of Motion, Motion, and Memorandum in Support of Motion for Sanctions, *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 3:18-MD-02843-VC (N.D. Cal. Sept. 15, 2022), ECF No. 1050-1 at 9-10 (“Plaintiffs are not seeking to recover all of the fees and costs that they incurred as a result of the discovery abuse. Plaintiffs are also not seeking to recover all of the fees incurred through each discrete course of misconduct. Rather, Plaintiffs focus on particular periods when the misconduct prejudiced Plaintiffs the most.”).

³⁰ The total number of hours (149,929) divided by 5 years (29,986 hours/year) and 14 lawyers equates to about 2,142 hours/year for each lawyer. Roughly speaking, 2,200 hours/year may be considered as one lawyer working “full time.” The National Association for Law Placement (NALP)’s most recent data available online, published in May 2016, reflect the hours billed by firms in 2013 and 2014. *Update on Associate Hours Worked*, NALP (May 2016), <https://www.nalp.org/0516research>. Those data show that, for lawyers at the largest firms (700+ lawyers), about 2/3 worked more than 2,200 hours/year, and the average number of hours worked in 2014 was 2,199. These data are a good referent in that Class Counsel litigated this case against a large law firm similar to those included in the NALP study.

examination of the work Class Counsel have undertaken in litigating this case – particularly the extraordinarily intensive discovery process – provides context that enables the Court to find that this number of hours is reasonable. Given the uniquely protracted and challenging discovery process in this case, it is helpful to begin a qualitative analysis by reviewing that process and then to step back and review Class Counsel’s work across the full arc of the litigation.

The Scope of Discovery

As to the scope of discovery, Class Counsel inform me that they:

- collected, reviewed, and produced more than 21,000 documents from Named Plaintiffs;
- provided more than 1,800 pages of responses to Facebook’s interrogatories, requests for production, and requests for admission;
- procured more than 1.3 million documents from Facebook (comprising many millions of pages and structured data tables, some containing many thousands or more of lines);
- procured more than 1,300 pages of written discovery responses from Facebook;
- procured more than 430,000 documents from third parties in response to document subpoenas;
- prepared for and defended the depositions of the eight Named Plaintiffs (now Settlement Class Representatives), resulting in more than 49 hours and more than 2,000 transcribed pages of on-the-record testimony;
- prepared for and took the depositions of 34 current or former Facebook employees, 13 witnesses designated by Facebook pursuant to Rule 30(b)(6), and an additional witness designated by PricewaterhouseCoopers pursuant to Rule 30(b)(6), resulting in more than 300 hours and more than 13,200 transcribed pages of on-the-record testimony; and
- participated in more than 100 hours of discovery mediations, preceded by the submission of more than 200 pages of written submissions to the Court-appointed discovery mediators.

The Scope of Discovery Disputes

As to the discovery-related disputes, Class Counsel inform me that they:

- participated in more than 100 separate meet and confer sessions with Facebook and scores more sessions with over 50 third parties that Plaintiffs subpoenaed for document production;

- filed more than 60 discovery-related motions and responded to roughly 70 discovery-related motions;
- submitted approximately 2,200 pages of filings, including nearly 300 pages of dispositive and substantive discovery briefs, accompanied by more than 20,000 pages of exhibits; and
- participated in approximately 60 hearings, comprising more than 100 hours, before this Court, then-Magistrate Judge Corley, and Special Master Garrie.

The Results of Discovery Disputes

Much, if not all, of the above-cited work redounded to the class's benefit as Class Counsel report that they filed 11 successful motions to compel and successfully defeated two filed by the Defendant. Specifically, Class Counsel report that they:

- successfully moved to compel production of documents related to the App Developer Investigation;
- successfully moved to compel the production of additional Named Plaintiff data;
- successfully moved to compel production of Mark Zuckerberg's personal notebooks;
- successfully moved to compel production of the custodial files of Mark Zuckerberg and Sheryl Sandberg;
- successfully moved to compel the depositions of individuals deposed in earlier, related investigations;
- successfully moved to compel the production of an internal "secret sauce" memorandum;
- successfully moved to compel the production of additional financial documents;
- successfully moved to compel Facebook to provide additional time for Rule 30(b)(6) depositions;
- successfully moved to compel additional information about the production of documents from Facebook's internal "Quip" and "Task" systems;³¹

³¹ Class Counsel report that the order resolving this motion was entered shortly before the Court entered a stay pursuant to the Parties' agreement in principle to settle the case, but that, if the stay

- successfully opposed Facebook's motion to compel the depositions of individual plaintiffs who had withdrawn as Named Plaintiffs;
- successfully opposed Facebook's appeal of discovery orders compelling the production of documents related to the App Developer Investigation and Named Plaintiffs data; and
- submitted extensive briefing in support of sanctions against Facebook and its counsel, comprising of more than 100 pages of briefs accompanied by more than 9,000 pages of declarations and exhibits, which ultimately led the Court to condemn Facebook's and its counsel's conduct and order sanctions of nearly \$1 million.³²

Overall Arc of Litigation

Stepping back to review the larger arc of the entire litigation, Class Counsel's work encompassed a large series of tasks. They inform me that they:

- undertook an extensive factual investigation of allegations that, starting in 2007, Facebook had shared user data without users' authorization, with third-party applications in numerous ways, including communicating with more than 500 current and former Facebook users about their practices concerning personal information and expectations of privacy on Facebook, analyzing extensive media coverage of Facebook's potential misuse of users' data, and scouring public reports and dockets for information about Facebook's data-sharing practices;
- linked that factual investigation to novel claims by researching relevant legal precedents and their application in a new factual context under state and federal law;
- screened potential clients and secured retention of the Class Representatives and numerous other plaintiffs;
- served limited discovery regarding Facebook's relationships and interactions with Aleksandr Kogan and the ThisIsYourLife app, evaluated the responses, and drafted allegations based on them;

had not been entered, Facebook may have been compelled to produce additional documents based on the information they returned.

³² Class Counsel report that they also separately moved for sanctions based on the behavior of Facebook's counsel and designee at a Rule 30(b)(6) deposition but that the motion became moot when Facebook agreed to the relief Class Counsel sought, which included monetary payment and additional time to conduct Rule 30(b)(6) depositions.

- reviewed the complaints filed by other plaintiffs whose cases were consolidated into this MDL;
- prepared and filed a consolidated amended complaint informed by their investigation, by responses to limited discovery, and by allegations in other consolidated cases, while ensuring compliance with the pleading standards of Rule 8 and Rule 12, as interpreted by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007);
- responded to Facebook’s initial motion to dismiss and subsequently prepared and filed an amended consolidated complaint in response to issues identified by the Court during a more than four-and-a-half-hour-long hearing;
- successfully opposed, in substantial part, Facebook’s motion to dismiss the case, including in full for claims for violations of the Video Privacy Protection Act, negligence, and gross negligence; and in part for claims of public disclosure of private facts, intrusion into private affairs, violation of the California constitutional right to privacy, deceit by concealment, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and violations of the Stored Communications Act;
- successfully moved to relate nine separate actions to this litigation;
- identified and worked extensively with consulting experts who assisted with technical and damages analyses;
- engaged in numerous rounds of mediation to produce a settlement, including at least three direct settlement mediations and multiple teleconferences before achieving a settlement in principle, and at least four direct settlement mediations to address issues that remained unresolved after reaching a settlement in principle;
- helped to memorialize and document the settlement terms in a final settlement agreement, including releases of liability, class action notices, and claim forms;
- shepherded the settlement agreement through preliminary approval; and
- obtained preliminary, and are now seeking final, approval of the settlement.

35. In sum, the range and depth of Class Counsel’s efforts set forth in the prior paragraphs add important context to the number of hours they expended. Combined with the data showing that the total number of hours is in the normal range for cases of this magnitude, these empirical and qualitative assessments enable the Court to find that the total hours Class Counsel

expended achieving this landmark settlement was reasonable. That conclusion finds further support in the fact that Class Counsel report that their hours were carefully audited by an independent expert prior to submission. These factors (the *ex post* audit, the reasonableness of the total hours compared to other cases of this magnitude, and the contextual analysis), combined with the fact that this litigation was bitterly hard fought across a number of years, provide significant support for the conclusion – particularly for cross-check purposes – that Class Counsel have neither churned artificial hours nor padded their lodestar.

IV. EVIDENCE SUPPORTING THE REASONABLENESS OF THE PROPOSED MULTIPLIER

36. Class Counsel’s fee request is about 1.99 times higher than their lodestar, as Class Counsel seek fees of \$181,250,000 against a lodestar of \$91,234,005.50.³³

37. Class action attorneys, like all contingent fee lawyers, are generally entitled to a fee greater than their lodestar. Class action attorneys serve a critical social function in pursuing legal claims worth less than the cost of litigation (so-called “negative value claims”),³⁴ a function captured by the title “private attorneys general.”³⁵ Fees are what incentivize an attorney to set up an entire legal practice around the pursuit of such negative value claims. Yet if the contingent fee

³³ Class Counsel received \$800,217.38 in fees from the Defendant pursuant to their sanctions motion. See Sanctions Order, *supra* note 29, at 52. That was a lodestar-based award with no multiplier. Thus, if that amount is deducted from what Class Counsel now seek from the class *and* from Class Counsel’s total lodestar, the multiplier resulting from the new calculation (\$180,449,783/\$90,433,788) would be 2.00, or immateriality different.

³⁴ For a discussion, see William B. Rubenstein, *Why Enable Litigation: A Positive Externalities Theory of the Small Claims Class Action*, 74 U.M.K.C. L. Rev. 709 (2006).

³⁵ For a discussion, see William B. Rubenstein, *On What a “Private Attorney General” Is – And Why It Matters*, 57 Vand. L. Rev. 2129 (2004).

attorney were paid at only her hourly rate, she would have no incentive to invest her time and money in a client's case – she would take the far less risky path of representing clients who could presently pay her on an hourly basis, as most corporate counsel are paid.

38. The California Supreme Court summarized this by quoting two commentators:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.³⁶

A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.³⁷

39. The Ninth Circuit has similarly embraced the multiplied fee, noting that:

[C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases. This mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases. In common fund cases, attorneys whose compensation depends on their winning the case must make up in compensation in the cases they win for the lack of compensation in the cases they lose.³⁸

40. As the lodestar cross-check has long been a part of class action fee jurisprudence, there is significant empirical evidence showing that the average percentage fee award embodies a

³⁶ *Ketchum v. Moses*, 17 P.3d 735, 742 (Cal. 2001) (quoting Richard A. Posner, *Economic Analysis of Law* 534, 567 (4th ed. 1992)).

³⁷ *Id.* (quoting John Leubsdorf, *The Contingency Factor in Attorney Fee Awards*, 90 Yale L.J. 473, 480 (1981)).

³⁸ *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (internal quotation marks and citations omitted).

positive lodestar multiplier. In the five studies with pertinent data, set forth in Table 1, below, the average lodestar multiplier ranged from 1.42 to 3.89.

TABLE 1
EMPIRICAL DATA ON LODESTAR MULTIPLIERS IN ALL CASES

	YEARS STUDIED	NUMBER OF CASES	AVERAGE MULTIPLIER
Rubenstein & Krishna ³⁹	2006–2011	790	1.42
Eisenberg, Miller & Germano ⁴⁰	2009–2013	294	1.48
Fitzpatrick ⁴¹	2006–2007	204	1.65
Eisenberg & Miller ⁴²	1993–2008	368	1.81
Logan, Moore & Moshman ⁴³	1973–2003	1,120	3.89

³⁹ See Newberg and Rubenstein on Class Actions, *supra* note 3, at § 15:89 (citing William B. Rubenstein et al., *Class Action Fee Awards 2006–2011: An Empirical Study*).

⁴⁰ See Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys’ Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 965 tbl. 12 (2017) [hereinafter “Eisenberg & Miller III”].

⁴¹ See Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 833–34 (2010). This average encompasses cases using both a percentage method with a lodestar cross-check and pure lodestar cases.

⁴² See Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 272 tbl.14 (2010) [hereinafter “Eisenberg & Miller II”]. This multiplier dataset excludes cases with a multiplier of 1, but appears to include cases with multipliers both below and above 1.

⁴³ See Stuart J. Logan, Beverly C. Moore & Jack Moshman, *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 167, 167 (2003) [hereinafter “Logan, Moore & Moshman”]. This multiplier dataset appears to include cases that utilized a percentage-of-the-fund method for calculating fees (without a lodestar cross-check), as well as those using a lodestar method and mixed methods. *Id.* at 169 (table headings).

41. What these data show is that across decades of class action practice, in thousands of cases throughout the United States, in the average case, the percentage-of-the-fund method yielded an award to class counsel of about 1.5 times their normal hourly rates.

42. All of the empirical studies with pertinent data⁴⁴ also show that multipliers tend to rise as the size of the class's fund increases.⁴⁵ Thus, in Table 2, below, I present the data on the average lodestar multiplier in cases with larger common funds.⁴⁶ The average multiplier in these larger-fund cases across the four studies is 3.20 (the average of the four numbers listed in the last column below), although, as the dollar figures in the second column show, the largest funds cases in the empirical studies are generally far more modest in size than this one.

⁴⁴ Professor Fitzpatrick's study, cited in Table 1, does not sort multiplier data by fund size.

⁴⁵ See also *In re Facebook Biometric Info. Priv. Litig.*, No. 21-15553, 2022 WL 822923, at *1 (9th Cir. Mar. 17, 2022) (noting that "[l]odestar multipliers tend to increase as the size of the class's fund increases").

⁴⁶ In each of the four studies cited, the authors investigated scaling impacts by splitting their data into 10 or 11 tranches with escalating common fund sizes. Table 2 reports the results of the final tranche in each study; that is, the tranche with the highest settlement sizes in that study's dataset.

TABLE 2
EMPIRICAL DATA ON MULTIPLIERS IN LARGER FUND CASES

	DEFINITION OF TRANCHE	CASES IN TRANCHE	AVERAGE MULTIPLIER
Eisenberg, Miller & Germano ⁴⁷	\$67.5 million+	35	2.72
Eisenberg & Miller ⁴⁸	\$175.5 million+	40	3.18
Rubenstein & Krishna ⁴⁹	\$44.6 million+	89	2.39
Logan, Moore & Moshman ⁵⁰	\$100 million+	64	4.50

43. The requested multiplier of 1.99 is therefore consistent with the average multiplier for all cases (1.42–3.89), and lower than the average multiplier for cases with larger settlement funds (2.39–4.50).⁵¹

⁴⁷ See Eisenberg & Miller III, *supra* note 40, at 967 tbl.13.

⁴⁸ See Eisenberg & Miller II, *supra* note 42, at 274 tbl.15.

⁴⁹ See 5 Newberg and Rubenstein on Class Actions, *supra* note 3, at § 15:89 (citing William B. Rubenstein et al., *Class Action Fee Awards 2006–2011: An Empirical Study*).

⁵⁰ See Logan, Moore & Moshman, *supra* note 43, at 167.

⁵¹ For example, in another recent large Facebook settlement in this District – the \$650 million *Facebook Biometrics* settlement – Judge Donato approved a fee constituting a lower percentage (in the 15%-18% range) than sought here, but it embodied a multiplier of approximately 4.71. See *In re Facebook Biometric*, 2022 WL 822923, at *1 (affirming award). In a declaration I prepared in support of class counsel’s fee petition in that case, I noted that the 5-level multiplier class counsel sought there was “higher than the average multiplier in cases with similar fund sizes,” though “not a complete outlier,” and I appended an exhibit listing 67 cases with multipliers above 4. Expert Declaration of Professor William B. Rubenstein, *In re: Facebook Biometric Information Privacy Litigation*, No. 3:15-cv-03747-JD (N.D. Cal. Oct. 15, 2020), ECF No. 499-3 at ¶ 49 & Ex. C; see also *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 633 (N.D. Cal. 2021) (noting that “Professor Rubenstein forthrightly acknowledges that ‘the multiplier sought here is higher than the average multiplier in cases with similar fund sizes’” and approving multiplier of 4.71 as “reasonable in the circumstances here”). Here, although Class Counsel seek the Ninth Circuit benchmark 25% fee, that percentage constitutes a far more modest 2.0 multiple of their

44. As courts have approved fee awards embodying multipliers in the 2 range sought here in appropriate circumstances, the sole question is whether Counsel’s work in *this* case justifies this multiplier. The Ninth Circuit offers several reasonableness factors to consider in making this assessment, “including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.”⁵² In the following paragraphs, I sort these factors into two categories – risks and results – and consider each in turn.

45. Ten independent factors demonstrate the riskiness of this case:⁵³

- ***Non-piggyback case.*** Many class actions follow on the heels of government enforcement actions, such as securities class actions that follow SEC enforcement actions or antitrust cases that follow Department of Justice actions. Class counsel have a lower risk in such cases as their investigative costs may be lower; as they may be able to employ non-mutual offensive issue preclusion to establish liability without litigation;⁵⁴ and/or as the defendant has a natural incentive to settle with the government, thereby easing the road to settlement with the class. In this case, an earlier Federal Trade Commission (FTC) enforcement action laid the groundwork for some of the allegations in the complaint,⁵⁵ but the FTC’s subsequent new enforcement action, in light of the Cambridge Analytica scandal, is evidence that the prior consent decree had failed and new improprieties were at issue; moreover, the renewed FTC action appears to have unfolded in real time on a parallel track with this case,⁵⁶ not with this

lodestar, which, as noted in the text, is below the average in all the empirical studies of multipliers in large fund cases.

⁵² *In re Bluetooth Headset*, 654 F.3d at 942 (citation omitted).

⁵³ The point is not to look at Class Counsel’s risks *ex post*, but rather to demonstrate the strength of the achievement compared to the risks *ex ante*.

⁵⁴ See, e.g., *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979).

⁵⁵ See First Amended Consolidated Complaint, *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 3:18-MD-02843-VC (N.D. Cal. Feb. 22, 2019), ECF No. 257 at ¶¶ 672-690.

⁵⁶ See, e.g., Pretrial Order No. 20: Granting in Part and Denying in Part Motion to Dismiss First Amended Complaint, *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 3:18-MD-02843-VC (N.D. Cal. Sept. 9, 2019), ECF No. 298 at 26 n.13 (noting “a pending case” in which the FTC had proposed a civil penalty against, and consent decree with, Facebook and explaining differences between that case in this).

case piggybacking on it. That synergy may have assisted the Plaintiffs in this case to some extent. But the allegations they proffer in their complaint so exceeded any enforcement by the FTC that their risks remain substantial and real.⁵⁷ Moreover, the First Amended Consolidated Complaint filed in this MDL similarly exceeded any of the bare-bones complaints that led up to the JPML's creation of this MDL, making apparent that Class Counsel independently had to fully investigate, theorize, and execute the case more or less from scratch, as described in greater depth in the prior section.

- **Novelty.** Many class actions are pursued by lawyers who specialize in particular areas (securities, antitrust, consumer, etc.) and can economize their practices and lower their risks by repeating efforts from one case to the next. This case shares that dynamic to a limited extent, as it is a data privacy case and, in applying to lead the MDL, the lawyers selected as Class Counsel each noted their expertise in this area.⁵⁸ However, data privacy cases arising out of social media networks like Facebook are still a relatively new area of law and the particular allegations at issue in this case were far more *sui generis* than run-of-the-mill. Unlike a repeat failure-to-pay-overtime employment case or failure-to-disclose-material-information securities case, almost nothing in the 424-page amended consolidated complaint in this case could have been recycled from past cases. The novelty significantly increased Class Counsel's risk.
- **Complexity.** All class action cases are typically more complex than the average contingent fee case – that is why the field is known as “complex litigation.” But not many class actions involve as complicated a factual and legal setting as did this case: as just noted, the consolidated amended complaint ran to 424 pages and this Court's 71-page order considering Facebook's motion to dismiss that complaint encompassed 43 pages of legal and factual analysis. The level of intricacy and detail – not to mention the heavy lifting required in reviewing millions of pages and data tables – rendered this case far riskier than the average class action.
- **Uncertainty.** In many class actions, application of the antitrust, securities, or consumer laws is based on well-established precedent and enables counsel, at the outset, to gauge – with some certainty – the chances of success in the new case. Not so here: as just noted above, this case turned on the application of complex legal theories to an intricate factual setting, with one of the largest corporations in the world strongly opposing Class

⁵⁷ See *id.*

⁵⁸ See Letter from Lesley E. Weaver of Bleichmar Fonti & Auld re: Leadership Application, *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 3:18-MD-02843-VC (N.D. Cal. Jun. 21, 2018), ECF No. 31; Letter from Derek W. Loeser of Keller Rohrback re: Leadership Application, *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 3:18-MD-02843-VC (N.D. Cal. Jun. 21, 2018), ECF No. 41.

Counsel's approach to each factual and legal contention. The case embodied significant risk because the outcome was so uniquely unpredictable.⁵⁹

- **High stakes.** Notwithstanding Meta's enormous valuation, this appears to be the largest private settlement it has ever entered. It surely did so in part because the risk of a trial loss was greater. Given the magnitude of this case, the company defended it with special interest and vigor. Indeed, the Defendant and its counsel contested nearly every aspect of this lawsuit to such an extreme that the Court found "by clear and convincing evidence that Facebook and Gibson Dunn acted in bad faith during much of the litigation"⁶⁰
- **High expense.** Class Counsel report a lodestar and expenses above \$90 million. This means that Class Counsel have loaned the class tens of millions of dollars – and risked losing every penny of it on the outcome of this case.
- **Unshared risk.** In most class action matters, particularly of this magnitude, the class is represented by a collection of plaintiffs' firms.⁶¹ This means that the lawyers can spread the risk among the various firms. Here, two relatively small law firms undertook essentially 100% of the work for the class. For two firms of their size to shoulder the risk of nearly \$100 million in lodestar is notable.
- **Well-funded Defendant.** Meta is one of the most well-capitalized corporations in the nation,⁶² reaping annual revenues of \$117 billion and boasting an enterprise valuation of over \$600 billion.⁶³ While Class Counsel were funding this case themselves, with tens of millions of dollars of their own time and money, they were up against a Defendant with almost unlimited resources.

⁵⁹ Indeed, in a case pursued by the District of Columbia Attorney General's Office, the District's Superior Court recently entered summary judgment for Facebook on some of the issues that would have been tried here had this case not settled. *See D.C. v. Facebook, Inc.*, Civ. Action No. 2018-CA-008715 (June 1, 2023). This is further evidence of the risks Class Counsel faced here.

⁶⁰ *See* Sanctions Order, *supra* note 29, at 37.

⁶¹ *See, e.g., Manual for Complex Litigation* (Fourth), at § 10.22 (discussing presence of multiple counsel in complex litigation and advising judges on how to manage); *Judith Resnick et al., Individuals Within the Aggregate: Relationships, Representation, and Fees*, 71 N.Y.U. L. Rev. 296, 321 n.74 (1996) (describing a class action "in which some 60 firms are reportedly involved").

⁶² *See* Fortune 500, *Meta Platforms*, <https://fortune.com/company/facebook/fortune500/> (ranking Meta Platforms as the 27th largest company in the United States by revenue in 2022).

⁶³ *See* Yahoo! Finance, *Meta Platforms, Inc. (META) – Statistics*, <https://finance.yahoo.com/quote/META/key-statistics> (indicating trailing twelve-month revenues of \$117 billion and enterprise value of \$603 billion for Defendant Meta as of May 29, 2023).

- **Powerful defense firm.** Meta exerted its financial strength by retaining high-priced counsel from Gibson, Dunn & Crutcher LLP, one of the largest,⁶⁴ most expensive, and well-respected firms in the country.⁶⁵ Class Counsel's risk was increased significantly by the skill, depth, resources, and tenacity of the defense firm they faced.
- **Opportunity costs.** It is fair to conclude that Class Counsel's extraordinary devotion of time and resources for about five years to this complex case prevented them from pursuing simpler, less risky, actions, many of which would have had a higher expectation of settlement and hence ease of recovery of a contingent fee, possibly a well-multiplied one.

46. These ten points provide strong support for the conclusion that Class Counsel took large risks in litigating this case from inception to settlement. Similar to an investor that takes large risks, these attorneys are entitled to a return on their commitment, so long as the risks they took paid off for their clients. I will now turn to that analysis.

47. At least six components of this case's outcome speak to the results Class Counsel obtained in this matter:

- **Significant monetary relief.** The settlement amount – \$725 million – is an extraordinary sum. My own database has fund information on 1,017 settlements; when those settlement funds are adjusted to 2023 dollars, only 11 are larger than this, placing this settlement in the top 1%.⁶⁶ Class Counsel report that this is the largest data privacy

⁶⁴ See Gibson Dunn, <https://www.gibsondunn.com/> (stating that the firm has “1800+ lawyers” in 20 offices worldwide); PublicLegal, *America's 350 Largest Law Firms*, <https://www.ilrg.com/nlj250> (listing Gibson Dunn as 19th largest law firm in the United States by number of attorneys); ALM, *The 2022 Global 200 Ranked by Revenue*, <https://www.law.com/international-edition/2022/09/20/the-2022-global-200-ranked-by-revenue/> (listing Gibson Dunn as 14th largest law firm in the world by revenue).

⁶⁵ See Vault, *2023 Vault Law 100*, <https://legacy.vault.com/best-companies-to-work-for/law/top-100-law-firms-rankings> (ranking Gibson Dunn as the 10th most prestigious law firm in the United States).

⁶⁶ Without adjusting for inflation, only four settlements in my dataset are larger than \$725 million, putting this settlement in the top 0.3%.

class action in U.S. history,⁶⁷ a conclusion that comports with research my students undertook.

- **100% of class eligible for relief.** The settlement agreement explains that the class, for settlement purposes, is defined as “all Facebook users in the United States during the Class Period,” excluding only certain categories of users that have special affiliation with Meta, such as its “employees” and “officers, directors, [and] legal representatives.”⁶⁸ Any class member who meets these criteria is eligible to file a proof of claim form.
- **Cash relief.** Class actions sometimes end in settlements that return class members little direct compensation, occasionally nothing more concrete than coupons or recoveries going exclusively to third party *cy pres* recipients.⁶⁹ The *Manual for Complex Litigation* therefore warns federal judges overseeing class action settlements to be on the lookout for settlements “granting class members illusory nonmonetary benefits, such as discount coupons for more of defendants’ products. . . .”⁷⁰ The settlement secured in this case will deliver cash compensation directly to class members, a form of recovery that speaks highly of the case’s outcome.
- **Straightforward claims process.** Class actions often end with settlements requiring class members to file claims. The claim-filing process may often dissuade class members from making the effort, particularly in small-claim situations. The *Manual for Complex Litigation* therefore warns federal judges overseeing class action settlements to be on the lookout for settlements “imposing such strict eligibility conditions or cumbersome claims procedures that many members will be unlikely to claim benefits. . . .”⁷¹ Here, the claim form is straightforward: class members need only fill in identifying information on a website, the manner in which they would like to receive their funds, an attestation to the veracity of the information – and then click submit.⁷²

⁶⁷ Motion to Certify a Settlement Class and Grant Preliminary Settlement Approval, *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 3:18-MD-02843-VC (N.D. Cal. Dec. 22, 2022), ECF No. 1096 at 24.

⁶⁸ Settlement Agreement, *supra* note 1, at ¶ 46.

⁶⁹ See 4 Newberg and Rubenstein on Class Actions, *supra* note 3, at §§ 12:7 to 12:13 (on nonpecuniary damages).

⁷⁰ *Manual for Complex Litigation (Fourth)* § 21.61 (2004).

⁷¹ *Id.*

⁷² *In re: Facebook, Inc. Consumer Privacy User Profile Litigation – Submit Claim*, <https://facebookuserprivacysettlement.com/#submit-claim>; see also Settlement Agreement, *supra* note 1, at 105-09.

- **No hint of collusion.** A critical concern in class suits is that the class’s agents might be tempted to sell out the class by agreeing to a low recovery in return for a high fee. The *Manual for Complex Litigation* therefore warns federal judges overseeing class action settlements that “[a]ctive judicial oversight of the settlement process [is necessary to] prevent collusion between counsel for the class and defendant and [to] minimize the potential for unfair settlements.”⁷³ Here, there is not a hint of collusion – this case has been nothing but adversarial since its inception, encompassing about five years of hard-fought litigation, and even resulting in a successful sanctions motion against the Defendant and its counsel. There is no evidence whatsoever of Counsel selling out the class’s interest.
- **Public interest.** While all class action settlements assist in the government’s enforcement of the law,⁷⁴ this settlement provides an important and unique public service. Through their persistent and protracted efforts, Class Counsel have helped establish legal limits in a critical and developing field – the use of technology to invade privacy. That description sounds general, but unlike the mass of data privacy cases, the facts of this case are far more specific, targeted, and important: the sale of private data to third parties is an area of increasing national concern, and this settlement holding a major social media platform like Facebook accountable serves an important deterrence function.⁷⁵

48. These ten risks and six results are evidence that Class Counsel, consisting of two relatively small law firms, took significant risks in investing substantial capital and labor in highly adversarial litigation without the promise of an easy return on that investment, and Class Counsel shouldered that risk superbly, prevailing at each critical juncture and generating a record-setting recovery for the class. This contextual review provides strong support for the conclusion that Class Counsel’s 1.99 multiplier is reasonable.

⁷³ *Manual for Complex Litigation (Fourth)* § 22.923 (2004).

⁷⁴ See *Deposit Guar. Nat. Bank, Jackson, Miss. v. Roper*, 445 U.S. 326, 339 (1980) (“The aggregation of individual claims in the context of a classwide suit is an evolutionary response to the existence of injuries unremedied by the regulatory action of government.”).

⁷⁵ See *Hughes v. Kore of Indiana Enterprise, Inc.*, 731 F.3d 672, 677–78 (7th Cir. 2013) (“A class action, like litigation in general, has a deterrent as well as a compensatory objective.”); see also 1 *Newberg and Rubenstein on Class Actions*, *supra* note 3, at § 1:8 (discussing the deterrence function of class actions).

* * *

49. I have testified that:

- Empirical analysis provides support for the conclusion that the hourly billing rates Class Counsel employ in their lodestar cross-check are reasonable.
- Empirical and qualitative analyses provide support for the conclusion that the total quantity of hours Class Counsel bill in their lodestar is reasonable.
- Empirical evidence supports the conclusion that the 1.99 lodestar multiplier reflected in Class Counsel's 25% fee request is below normal for settlements of this size, and a qualitative analysis of the risks Class Counsel shouldered and the results they achieved for the class provides strong support for the conclusion that such a multiplier is justified.



June 20, 2023

William B. Rubenstein

EXHIBIT A

PROFESSOR WILLIAM B. RUBENSTEIN

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Cambridge, MA 02138

(617) 496-7320
rubenstein@law.harvard.edu

ACADEMIC EMPLOYMENT

HARVARD LAW SCHOOL, CAMBRIDGE MA

Bruce Bromley Professor of Law	2018-present
Sidley Austin Professor of Law	2011-2018
Professor of Law	2007-2011
Bruce Bromley Visiting Professor of Law	2006-2007
Visiting Professor of Law	2003-2004, 2005-2006
Lecturer in Law	1990-1996
<i>Courses:</i> Civil Procedure; Class Action Law; Remedies	
<i>Awards:</i> 2012 Albert M. Sacks-Paul A. Freund Award for Teaching Excellence	
<i>Membership:</i> American Law Institute; American Bar Foundation Fellow	

UCLA SCHOOL OF LAW, LOS ANGELES CA

Professor of Law	2002-2007
Acting Professor of Law	1997-2002
<i>Courses:</i> Civil Procedure; Complex Litigation; Remedies	
<i>Awards:</i> 2002 Rutter Award for Excellence in Teaching	
Top 20 California Lawyers Under 40, <i>Calif. Law Business</i> (2000)	

STANFORD LAW SCHOOL, STANFORD CA

Acting Associate Professor of Law	1995-1997
<i>Courses:</i> Civil Procedure; Federal Litigation	
<i>Awards:</i> 1997 John Bingham Hurlbut Award for Excellence in Teaching	

YALE LAW SCHOOL, NEW HAVEN CT

Lecturer in Law	1994, 1995

BENJAMIN N. CARDOZO SCHOOL OF LAW, NEW YORK NY

Visiting Professor	Summer 2005

LITIGATION-RELATED EMPLOYMENT

AMERICAN CIVIL LIBERTIES UNION, NATIONAL OFFICE, NEW YORK NY

Project Director and Staff Counsel	1987-1995
-Litigated impact cases in federal and state courts throughout the United States.	
-Supervised a staff of attorneys at the national office, oversaw work of ACLU attorneys around the country and coordinated work with private cooperating counsel nationwide.	
-Significant experience in complex litigation practice and procedural issues; appellate litigation; litigation coordination, planning and oversight.	

HON. STANLEY SPORKIN, U.S. DISTRICT COURT, WASHINGTON DC

Law Clerk	1986-87

PUBLIC CITIZEN LITIGATION GROUP, WASHINGTON DC

Intern	Summer 1985

EDUCATION

HARVARD LAW SCHOOL, CAMBRIDGE MA
J.D., 1986, *magna cum laude*

YALE COLLEGE, NEW HAVEN CT
B.A., 1982, *magna cum laude*
Editor-in-Chief, YALE DAILY NEWS

SELECTED COMPLEX LITIGATION EXPERIENCE

Professional Service and Highlighted Activities

- ◇ *Author*, NEWBERG AND RUBENSTEIN ON CLASS ACTIONS (6th ed. 2022); NEWBERG ON CLASS ACTIONS (sole author since 2008, sole author of entirely re-written Fifth Edition (2011-2019))
- ◇ *Speaker*, Judicial Panel on Multidistrict Litigation, Multidistrict Litigation (MDL) Transferee Judges Conference, Palm Beach, Florida (provided presentation to MDL judges on recent developments in class action law and related topics (2010, 2011, 2013-2019, 2023 (scheduled)))
- ◇ *Panelist*, Federal Judicial Center, *Managing Multidistrict Litigation and Other Complex Litigation Workshop* (for federal judges) (March 15, 2018)
- ◇ *Amicus curiae*, authored *amicus* brief on proper approach to incentive awards in class action lawsuits in conjunction with motion for rehearing *en banc* in the United States Court of Appeals for the Eleventh Circuit (*Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020))
- ◇ *Amicus curiae*, authored *amicus* brief in United States Supreme Court on proper approach to *cy pres* award in class action lawsuits (*Frank v. Gaos*, 139 S. Ct. 1041 (2019))
- ◇ *Amicus curiae*, authored *amicus* brief in California Supreme Court on proper approach to attorney's fees in common fund cases (*Laffitte v. Robert Half Int'l Inc.*, 376 P.3d 672, 687 (Cal. 2016) (noting reliance on *amicus* brief))
- ◇ *Amicus curiae*, authored *amicus* brief in the United States Supreme Court filed on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion*, No. 09-893, 131 S. Ct. 1740 (2011))
- ◇ *Adviser*, American Law Institute, *Project on the Principles of the Law of Aggregate Litigation*, Philadelphia, Pennsylvania
- ◇ *Advisory Board*, *Class Action Law Monitor* (Strafford Publications), 2008-
- ◇ *Co-Chair*, ABA Litigation Section, Mass Torts Committee, Class Action Sub-Committee, 2007
- ◇ *Planning Committee*, American Bar Association, Annual National Institute on Class Actions Conference, 2006, 2007

- ◇ “Expert’s Corner” (Monthly Column), *Class Action Attorney Fee Digest*, 2007-2011

Judicial Appointments

- ◇ *Co-Mediator*. Appointed by the United States District Court for the Eastern District of Pennsylvania to help mediate a complex attorney’s fees issue (*In re National Football League Players’ Concussion Injury Litigation*, Civil Action No. 2:12-md-02323 (E.D. Pa. June-September 2022))
- ◇ *Mediator*. Appointed by the United States District Court for the Southern District of New York to mediate a set of complex issues in civil rights class action (*Grottano v. City of New York*, Civil Action No. 15-cv-9242 (RMB) (May 2020-January 2021))
- ◇ *Expert consultant*. Appointed by the United States District Court for the Northern District of Ohio, and Special Master, as an expert consultant on class certification and attorney’s fees issues in complex multidistrict litigation (*National Prescription Opiate Litigation*, MDL 2804, Civil Action No. 1:17-md-2804 (N.D. Ohio Aug. 13, 2018; June 29, 2019; March 10, 2020))
- ◇ *Expert witness*. Appointed by the United States District Court for the Eastern District of Pennsylvania as an expert witness on attorney’s fees in complex litigation, with result that the Court adopted recommendations (*In re National Football League Players’ Concussion Injury Litigation*, 2018 WL 1658808 (E.D. Pa. April 5, 2018))
- ◇ *Appellate counsel*. Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff’d sub. nom.*, *DeValerio v. Olinski*, 673 F. App’x 87, 90 (2d Cir. 2016))

Expert Witness

- ◇ Submitted expert witness declaration concerning constitutionality of proposed procedures for resolving aggregate claims within a bankruptcy proceeding (*In re PG&E Corporation and Pacific Gas and Electric Company*, Bankruptcy Case No. 19-30088 (N.D. Cal. Bankrpt. 2023))
- ◇ Submitted expert witness declaration concerning reasonableness of attorney’s fee request (*Health Republic Insurance Company v. United States*, Civil Action No. 1:16-cv-0259C (Ct. Fed. Cl. 2023))
- ◇ Submitted expert witness declaration concerning reasonableness of attorney’s fee request (*Benson, et al. v. DoubleDown Interactive, LLC, et al.*, Civil Action No. 2:18-cv-00525 (W.D. Wash. 2023))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney’s fees request (*In re Twitter Inc. Securities Litigation*, Case No. 4:16-cv-05314 (N.D. Cal. October 13, 2022))
- ◇ Submitted expert witness declaration concerning reasonableness of attorney’s fee request (*Ferrando v. Zynga Inc.*, Civil Action No. 2:22-cv-00214 (W.D. Wash. 2022))
- ◇ Submitted an expert witness declaration concerning reasonableness of proposed settlement in

nationwide securities class action, in light of competing litigation (*In re Lyft, Inc. Securities Litigation*, Case No. 4:19-cv-02690 (N.D. Cal. August 19, 2022))

- ◇ Submitted an expert witness declaration concerning reasonableness of common benefit attorney's fee request (*In re: Zetia (Ezetimibe) Antitrust Litigation*, MDL No. 2836, 2:18-md-2836 (E.D. Va. July 12, 2022))
- ◇ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Reed v. Scientific Games Corp.*, Civil Action No. 2:18-cv-00565 (W.D. Wash. 2022))
- ◇ Submitted an expert witness declaration concerning reasonableness of proposed settlement in nationwide securities class action, in light of competing litigation (*In re Micro Focus International PLC Securities Litigation*, Master File No. 1:18-cv-06763 (S.D.N.Y., May 4, 2022))
- ◇ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Americredit Financial Services, Inc., d/b/a/ GM Financial v. Bell*, No. 15SL-AC24506-01 (Twenty-First Judicial Circuit Court, St. Louis County, Missouri, March 13, 2022))
- ◇ Submitted an expert witness declaration concerning reasonableness of common benefit attorney's fee request (*In re: Marjory Stoneman Douglas High School Shooting FTCA Litigation*, Case No. 0:18-cv-62758 (S.D. Fla. February 7, 2022))
- ◇ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*City of Westland Police & Fire Ret. Sys. v. MetLife, Inc.*, No. 12-CV-0256 (LAK), 2021 WL 2453972 (S.D.N.Y. June 15, 2021))
- ◇ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Kater v. Churchill Downs*, Civil Action No. 2:15-cv-00612 (W.D. Wash. 2020))
- ◇ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Wilson v. Playtika, LTD*, Civil Action No. 3:18-cv-05277 (W.D. Wash. 2020))
- ◇ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Wilson v. Huuuge*, Civil Action No. 3:18-cv-005276 (W.D. Wash. 2020))
- ◇ Submitted expert witness declarations and testified at fairness hearing concerning (1) reasonableness of attorney's fee request and (2) empirical data confirming robustness of class claims rate (*In re Facebook Biometric Information Privacy Litigation*, Civil Action No. 3:15-cv-03747-JD (N.D. Cal. (2020))
- ◇ Retained as an expert witness on issues regarding the Lead Plaintiff/Lead Counsel provisions of the Private Securities Litigation Reform Act of 1995 (PSLRA) (*In re Apple Inc. Securities Litigation*, Civil Action No. 4:19-cv-02033-YGR (N.D. Cal. (2020))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Amador v. Baca*, Civil Action No. 2:10-cv-01649 (C.D. Cal. February 9, 2020))
- ◇ Submitted an expert witness declaration concerning reasonableness of class action settlement (*In re:*

Columbia Gas Cases, Civil Action No. 1877CV01343G (Mass. Super. Ct., Essex County, February 6, 2020))

- ◇ Submitted an expert witness declaration, and reply declaration, concerning reasonableness of attorney's fee request (*Hartman v. Pompeo*, Civil Action No. 1:77-cv-02019 (D.D.C. October 10, 2019; February 28, 2020))
- ◇ Submitted an expert witness declaration concerning reasonableness of common benefit attorney's fee request (*In re: Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724, 16-MD-2724 (E.D. Pa. May 15, 2019))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, relied upon by court in awarding fees (*Hale v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079 (S.D. Ill. Dec. 16, 2018))
- ◇ Submitted expert witness affidavit and testified at fairness hearing concerning second phase fee issues in common fund class action (*Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Assoc.*, Case No. 217-2010-CV-00294 (New Hampshire Superior Court, Merrimack County (2018))
- ◇ Submitted expert witness report – and rebutted opposing expert – concerning class certification issues for proposed class action within a bankruptcy proceeding (*In re Think Finance*, Case No. 17-33964 (N.D. Tex. Bankrpt. 2018))
- ◇ Submitted expert witness declaration concerning specific fee issues raised by Court at fairness hearing and second declaration in response to report of Special Master (*In re Anthem, Inc. Data Breach Litigation*, Case No. 15-MD-02617-LHK (N.D. Cal. 2018))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request following plaintiffs' verdict at trial in consumer class action (*Krakauer v. Dish Network, L.L.C.*, Civil Action No. 1:14-cv-00333 (M.D.N.C. 2018))
- ◇ Submitted three expert witness declarations and deposed by/testified in front of Special Master in investigation concerning attorney's fee issues (*Arkansas Teacher Ret. Sys. v. State St. Bank & Trust Co.*, Civ. Action No. 1:11-cv-10230 (D. Mass. 2017-18))
- ◇ Retained as an expert witness on issues regarding the preclusive effect of a class action judgment on later cases (*Sanchez v. Allianz Life Insurance Co. of N. Amer.*, Case No. BC594715 (California Superior Court, Los Angeles County (2018))
- ◇ Retained as an expert witness and submitted report explaining meaning of the denial of a motion to dismiss in American procedure to foreign tribunals (*In re Qualcomm Antitrust Matter*, declaration submitted to tribunals in Korea and Taiwan (2017))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in 3.0-liter settlement, referenced by court in awarding fees (*In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, 2017 WL 3175924 (N.D. Cal. July 21, 2017))
- ◇ Retained as an expert witness concerning impracticability of joinder in antitrust class action (*In re*

Celebrex (Celecoxib) Antitrust Litigation, Civ. Action No. 2-14-cv-00361 (E.D. Va. (2017))

- ◇ Submitted an expert witness declaration and deposed concerning impracticability of joinder in antitrust class action (*In re Modafinil Antitrust Litigation*, Civ. Action No. 2-06-cv-01797 (E.D. Pa. (2017))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in 2.0-liter settlement (*In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, 2017 WL 1047834 (N.D. Cal., March 17, 2017))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*Aranda v. Caribbean Cruise Line, Inc.*, 2017 WL 1368741 (N.D. Ill., April 10, 2017))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*McKinney v. United States Postal Service*, Civil Action No. 1:11-cv-00631 (D.D.C. (2016))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Johnson v. Caremark RX, LLC*, Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Geancopoulos v. Philip Morris USA Inc.*, Civil Action No. 98-6002-BLS1 (Mass. Superior Court, Suffolk County))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Gates v. United Healthcare Insurance Company*, Case No. 11 Civ. 3487 (S.D.N.Y. 2015))
- ◇ Retained as an expert trial witness on class action procedures and deposed prior to trial in matter that settled before trial (*Johnson v. Caremark RX, LLC*, Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*In re High-Tech Employee Antitrust Litig.*, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015))
- ◇ Retained as an expert witness concerning adequacy of putative class representatives in securities class action (*Medoff v. CVS Caremark Corp.*, Case No. 1:09-cv-00554 (D.R.I. (2015))
- ◇ Submitted an expert witness declaration concerning reasonableness of proposed class action settlement, settlement class certification, attorney's fees, and incentive awards (*Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.C.*, Case No. CJ-2010-38, Dist. Ct., Beaver County, Oklahoma (2015))

- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*Asghari v. Volkswagen Grp. of Am., Inc.*, 2015 WL 12732462 (C.D. Cal. May 29, 2015))
- ◇ Submitted an expert witness declaration concerning propriety of severing individual cases from class action and resulting statute of repose ramifications (*In re: American International Group, Inc. 2008 Securities Litigation*, 08-CV-4772-LTS-DCF (S.D.N.Y. (2015))
- ◇ Retained by Fortune Global 100 Corporation as an expert witness on fee matter that settled before testimony (2015)
- ◇ Submitted an expert witness declaration and testified at Special Master proceeding concerning reasonableness of attorney's fee allocation in sealed fee mediation (2014-2015)
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*In re: Hyundai and Kia Fuel Economy Litigation*, MDL 13-02424 (C.D. Cal. (2014))
- ◇ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Ammari Electronics v. Pacific Bell Directory*, Case No. RG0522096, California Superior Court, Alameda County (2014))
- ◇ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Deutsche Bank Securities, Inc.*, Case No. CGC-10-497839, California Superior Court, San Francisco County (2014))
- ◇ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Credit Suisse Securities (USA) LLC*, Case No. CGC-10-497840, California Superior Court, San Francisco County (2014))
- ◇ Retained as expert witness on proper level of common benefit fee in MDL (*In re Neurontin Marketing and Sales Practice Litigation*, Civil Action No. 04-10981, MDL 1629 (D. Mass. (2014))
- ◇ Submitted an expert witness declaration concerning Rule 23(g) selection of competing counsel, referenced by court in deciding issue (*White v. Experian Information Solutions, Inc.*, 993 F. Supp. 2d 1154 (C.D. Cal. (2014))
- ◇ Submitted an expert witness declaration concerning proper approach to attorney's fees under California law in a statutory fee-shifting case (*Perrin v. Nabors Well Services Co.*, Case No. 1220037974, Judicial Arbitration and Mediation Services (JAMS) (2013))
- ◇ Submitted an expert witness declaration concerning fairness and adequacy of proposed nationwide class action settlement (*Verdejo v. Vanguard Piping Systems*, Case No. BC448383, California Superior Court, Los Angeles County (2013))
- ◇ Retained as an expert witness regarding fairness, adequacy, and reasonableness of proposed nationwide

consumer class action settlement (*Herke v. Merck*, No. 2:09-cv-07218, MDL Docket No. 1657 (*In re Vioxx Products Liability Litigation*) (E. D. La. (2013))

- ◇ Retained as an expert witness concerning ascertainability requirement for class certification and related issues (*Henderson v. Acxiom Risk Mitigation, Inc.*, Case No. 3:12-cv-00589-REP (E.D. Va. (2013))
- ◇ Submitted an expert witness declaration concerning reasonableness of class action settlement and performing analysis of Anet expected value@ of settlement benefits, relied on by court in approving settlement (*In re Navistar Diesel Engine Products Liab. Litig.*, 2013 WL 10545508 (N.D. Ill. July 3, 2013))
- ◇ Submitted an expert witness declaration concerning reasonableness of class action settlement and attorney's fee request (*Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236 (Mass. Super. Aug. 5, 2013))
- ◇ Submitted an expert witness declaration concerning propriety of preliminary settlement approval in nationwide consumer class action settlement (*Anaya v. Quicktrim, LLC*, Case No. CIVVS 120177, California Superior Court, San Bernardino County (2012))
- ◇ Submitted expert witness affidavit concerning fee issues in common fund class action (*Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Assoc.*, Case No. 217-2010-CV-00294, New Hampshire Superior Court, Merrimack County (2012))
- ◇ Submitted expert witness declaration and deposed concerning class certification issues in nationwide fraud class action, relied upon by the court in affirming class certification order (*CVS Caremark Corp. v. Lauriello*, 175 So. 3d 596, 609-10 (Ala. 2014))
- ◇ Submitted expert witness declaration in securities class action concerning value of proxy disclosures achieved through settlement and appropriate level for fee award (*Rational Strategies Fund v. Jhung*, Case No. BC 460783, California Superior Court, Los Angeles County (2012))
- ◇ Submitted an expert witness report and deposed concerning legal malpractice in the defense of a class action lawsuit (*KB Home v. K&L Gates, LLP*, Case No. BC484090, California Superior Court, Los Angeles County (2011))
- ◇ Retained as expert witness on choice of law issues implicated by proposed nationwide class certification (*Simon v. Metropolitan Property and Cas. Co.*, Case No. CIV-2008-1008-W (W.D. Ok. (2011))
- ◇ Retained, deposed, and testified in court as expert witness in fee-related dispute (*Blue, et al. v. Hill*, Case No. 3:10-CV-02269-O-BK (N.D. Tex. (2011))
- ◇ Retained as an expert witness in fee-related dispute (*Furth v. Furth*, Case No. C11-00071-DMR (N.D. Cal. (2011))
- ◇ Submitted expert witness declaration concerning interim fee application in complex environmental class action (*DeLeo v. Bouchard Transportation*, Civil Action No. PLCV2004-01166-B, Massachusetts Superior Court (2010))

- ◇ Retained as an expert witness on common benefit fee issues in MDL proceeding in federal court (*In re Vioxx Products Liability Litigation*, MDL Docket No. 1657 (E.D. La. (2010))
- ◇ Submitted expert witness declaration concerning fee application in securities case, referenced by court in awarding fee (*In re AMICAS, Inc. Shareholder Litigation*, 27 Mass. L. Rptr. 568 (Mass. Sup. Ct. (2010))
- ◇ Submitted an expert witness declaration concerning fee entitlement and enhancement in non-common fund class action settlement, relied upon by the court in awarding fees (*Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172-74 (C.D. Cal. 2010))
- ◇ Submitted an expert witness declaration concerning class action fee allocation among attorneys (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))
- ◇ Submitted an expert witness declaration concerning settlement approval and fee application in wage and hour class action settlement (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))
- ◇ Submitted an expert witness declaration concerning objectors' entitlement to attorney's fees (*Rodriguez v. West Publishing Corp.*, Case No. CV-05-3222 (C.D. Cal. (2010))
- ◇ Submitted an expert witness declaration concerning fairness of settlement provisions and processes, relied upon by the Ninth Circuit in reversing district court's approval of class action settlement (*Radcliffe v. Experian Inform. Solutions Inc.*, 715 F.3d 1157, 1166 (9th Cir. 2013))
- ◇ Submitted an expert witness declaration concerning attorney's fees in class action fee dispute, relied upon by the court in deciding fee issue (*Ellis v. Toshiba America Information Systems, Inc.*, 218 Cal. App. 4th 853, 871, 160 Cal. Rptr. 3d 557, 573 (2d Dist. 2013))
- ◇ Submitted an expert witness declaration concerning common benefit fee in MDL proceeding in federal court (*In re Genetically Modified Rice Litigation*, MDL Docket No. 1811 (E.D. Mo. (2009))
- ◇ Submitted an expert witness declaration concerning settlement approval and fee application in national MDL class action proceeding (*In re Wal-Mart Wage and Hour Employment Practices Litigation*, MDL Docket No. 1735 (D. Nev. (2009))
- ◇ Submitted an expert witness declaration concerning fee application in national MDL class action proceeding, referenced by court in awarding fees (*In re Dept. of Veterans Affairs (VA) Data Theft Litigation*, 653 F. Supp.2d 58 (D.D.C. (2009))
- ◇ Submitted an expert witness declaration concerning common benefit fee in mass tort MDL proceeding in federal court (*In re Kugel Mesh Products Liability Litigation*, MDL Docket No. 1842 (D. R.I. (2009))
- ◇ Submitted an expert witness declaration and supplemental declaration concerning common benefit fee in consolidated mass tort proceedings in state court (*In re All Kugel Mesh Individual Cases*, Master Docket No. PC-2008-9999, Superior Court, State of Rhode Island (2009))

- ◇ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Warner v. Experian Information Solutions, Inc.*, Case No. BC362599, California Superior Court, Los Angeles County (2009))
- ◇ Submitted an expert witness declaration concerning process for selecting lead counsel in complex MDL antitrust class action (*In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL Docket No. 1869 (D. D.C. (2008))
- ◇ Retained, deposed, and testified in court as expert witness on procedural issues in complex class action (*Hoffman v. American Express*, Case No. 2001-022881, California Superior Court, Alameda County (2008))
- ◇ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Salsgiver v. Yahoo! Inc.*, Case No. BC367430, California Superior Court, Los Angeles County (2008))
- ◇ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Voight v. Cisco Systems, Inc.*, Case No. 106CV075705, California Superior Court, Santa Clara County (2008))
- ◇ Retained and deposed as expert witness on fee issues in attorney fee dispute (*Stock v. Hafif*, Case No. KC034700, California Superior Court, Los Angeles County (2008))
- ◇ Submitted an expert witness declaration concerning fee application in consumer class action (*Nicholas v. Progressive Direct*, Civil Action No. 06-141-DLB (E.D. Ky. (2008))
- ◇ Submitted expert witness declaration concerning procedural aspects of national class action arbitration (*Johnson v. Gruma Corp.*, JAMS Arbitration No. 1220026252 (2007))
- ◇ Submitted expert witness declaration concerning fee application in securities case (*Drulias v. ADE Corp.*, Civil Action No. 06-11033 PBS (D. Mass. (2007))
- ◇ Submitted expert witness declaration concerning use of expert witness on complex litigation matters in criminal trial (*U.S. v. Gallion, et al.*, No. 07-39 (E. D. Ky. (2007))
- ◇ Retained as expert witness on fees matters (*Heger v. Attorneys' Title Guaranty Fund, Inc.*, No. 03-L-398, Illinois Circuit Court, Lake County, IL (2007))
- ◇ Retained as expert witness on certification in statewide insurance class action (*Wagner v. Travelers Property Casualty of America*, No. 06CV338, Colorado District Court, Boulder County, CO (2007))
- ◇ Testified as expert witness concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corporate Derivative Litigation*, Case No. 01098905, California Superior Court, Santa Barbara Cty, CA (2006))
- ◇ Submitted expert witness declaration concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corp. Corporate Derivative Litigation*, Case No. CV-03-11 RSWL (C.D. Cal. (2006))

- ◇ Retained as expert witness as to certification of class action (*Canova v. Imperial Irrigation District*, Case No. L-01273, California Superior Court, Imperial Cty, CA (2005))
- ◇ Retained as expert witness as to certification of nationwide class action (*Enriquez v. Edward D. Jones & Co.*, Missouri Circuit Court, St. Louis, MO (2005))
- ◇ Submitted expert witness declaration on procedural aspects of international contract litigation filed in court in Korea (*Estate of Wakefield v. Bishop Han & Jooan Methodist Church* (2002))
- ◇ Submitted expert witness declaration as to contested factual matters in case involving access to a public forum (*Cimarron Alliance Foundation v. The City of Oklahoma City*, Case No. Civ. 2001-1827-C (W.D. Ok. (2002))
- ◇ Submitted expert witness declaration concerning reasonableness of class certification, settlement, and fees (*Baird v. Thomson Elec. Co.*, Case No. 00-L-000761, Cir. Ct., Mad. Cty, IL (2001))

Expert Consultant

- ◇ Retained as an expert in confidential matter pending in international arbitration forum concerning litigation financing issues in complex litigation (2022-2023)
- ◇ Retained as an expert in matter pending in several federal courts concerning attorney's fees in class action setting (2022-2023)
- ◇ Retained as an expert witness on class action issues in complex mass tort MDL (*In re Roundup Products Liability Litigation*, Civil Action No. 3:16-md-02741-VC (N.D. Cal. (2020))
- ◇ Provided expert consulting services to Harvard Law School Predatory Lending and Consumer Protection Clinic concerning complex class action issues in bankruptcy (*In re: ITT Educational Services Inc.*, Case No. 16-07207-JMC-7A (Bank. S.D. Ind. 2020))
- ◇ Provided expert consulting services to law firm concerning complex federal procedural and bankruptcy issues (*Homaidan v. Navient Solutions, LLC*, Adv. Proc. No. 17-1085 (Bank. E.D.N.Y 2020))
- ◇ Provided expert consulting services to the ACLU on multi-district litigation issues arising out of various challenges to President Trump's travel ban and related policies (*In re American Civil Liberties Union Freedom of Information Act Requests Regarding Executive Order 13769*, Case Pending No. 28, Judicial Panel on Multidistrict Litigation (2017); *Darweesh v. Trump*, Case No. 1:17-cv-00480-CBA-LB (E.D.N.Y. (2017))
- ◇ Provided expert consulting services to law firm regarding billing practices and fee allocation issues in nationwide class action (2016)
- ◇ Provided expert consulting services to law firm regarding fee allocation issues in nationwide class action (2016)

- ◇ Provided expert consulting services to the ACLU of Southern California on class action and procedural issues arising out of challenges to municipality's treatment of homeless persons with disabilities (*Glover v. City of Laguna Beach*, Case No. 8:15-cv-01332-AG-DFM (C.D. Cal. (2016))
- ◇ Retained as an expert consultant on class certification issues (*In re: Facebook, Inc., IPO Securities and Derivative Litigation*, No. 1:12-md-2389 (S.D.N.Y. 2015))
- ◇ Provided expert consulting services to lead class counsel on class certification issues in nationwide class action (2015)
- ◇ Retained by a Fortune 100 Company as an expert consultant on class certification issues
- ◇ Retained as an expert consultant on class action and procedure related issues (*Lange et al v. WPX Energy Rocky Mountain LLC*, Case No. 2:13-cv-00074-ABJ (D. Wy. (2013))
- ◇ Retained as an expert consultant on class action and procedure related issues (*Flo & Eddie, Inc., v. Sirius XM Radio, Inc.*, Case No. CV 13-5693 (C.D. Cal. (2013))
- ◇ Served as an expert consultant on substantive and procedural issues in challenge to legality of credit card late and over-time fees (*In Re Late Fee and Over-Limit Fee Litigation*, 528 F.Supp.2d 953 (N.D. Cal. 2007), *aff'd*, 741 F.3d 1022 (9th Cir. 2014))
- ◇ Retained as an expert on Class Action Fairness Act (CAFA) removal issues and successfully briefed and argued remand motion based on local controversy exception (*Trevino, et al. v. Cummins, et al.*, No. 2:13-cv-00192-JAK-MRW (C. D. Cal. (2013))
- ◇ Retained as an expert consultant on class action related issues by consortium of business groups (*In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010*, MDL No. 2179 (E.D. La. (2012))
- ◇ Provided presentation on class certification issues in nationwide medical monitoring classes (*In re: National Football League Players' Concussion Injury Litigation*, MDL No. 2323, Case No. 2:12-md-02323-AB (E.D. Pa. (2012))
- ◇ Retained as an expert consultant on class action related issues in mutli-state MDL consumer class action (*In re Sony Corp. SXRDRear Projection Television Marketing, Sales Practices & Prod. Liability Litig.*, MDL No. 2102 (S.D. N.Y. (2009))
- ◇ Retained as an expert consultant on class action certification, manageability, and related issues in mutli-state MDL consumer class action (*In re Teflon Prod. Liability Litig.*, MDL No. 1733 (S.D. Iowa (2008))
- ◇ Retained as an expert consultant/co-counsel on certification, manageability, and related issues in nationwide anti-trust class action (*Brantley v. NBC Universal*, No.- CV07-06101 (C.D. Cal. (2008))
- ◇ Retained as an expert consultant on class action issues in complex multi-jurisdictional construction dispute (*Antenucci, et al., v. Washington Assoc. Residential Partner, LLP, et al.*, Civil No. 8-04194 (E.D. Pa. (2008))

- ◇ Retained as an expert consultant on complex litigation issues in multi-jurisdictional class action litigation (*McGreevey v. Montana Power Company*, No. 08-35137, U.S. Court of Appeals for the Ninth Circuit (2008))
- ◇ Retained as an expert consultant on class action and attorney fee issues in nationwide consumer class action (*Figueroa v. Sharper Image*, 517 F.Supp.2d 1292 (S.D. Fla. 2007))
- ◇ Retained as an expert consultant on attorney's fees issue in complex class action case (*Natural Gas Anti-Trust Cases Coordinated Proceedings*, D049206, California Court of Appeals, Fourth District (2007))
- ◇ Retained as an expert consultant on remedies and procedural matters in complex class action (*Sunscreen Cases*, JCCP No. 4352, California Superior Court, Los Angeles County (2006))
- ◇ Retained as an expert consultant on complex preclusion questions in petition for review to California Supreme Court (*Mooney v. Caspari*, Supreme Court of California (2006))
- ◇ Retained as an expert consultant on attorney fee issues in complex common fund case (*In Re DietDrugs (Phen/Fen) Products Liability Litigation* (E. D. Pa. (2006))
- ◇ Retained as an expert consultant on procedural matters in series of complex construction lien cases (*In re Venetian Lien Litigation*, Supreme Court of the State of Nevada (2005-2006))
- ◇ Served as an expert consultant on class certification issues in countywide class action (*Beauchamp v. Los Angeles Cty. Metropolitan Transp. Authority*, (C.D. Cal. 2004))
- ◇ Served as an expert consultant on class certification issues in state-wide class action (*Williams v. State of California*, Case No. 312-236, Cal. Superior Court, San Francisco)
- ◇ Served as an expert consultant on procedural aspects of complex welfare litigation (*Allen v. Anderson*, 199 F.3d 1331 (9th Cir. 1999))

Ethics Opinions

- ◇ Retained to provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2017))
- ◇ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2013))
- ◇ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2011))
- ◇ Provided expert opinion on issues of professional ethics in implicated by nationwide class action practice (*In re Professional Responsibility Inquiries* (2010))

- ◇ Provided expert opinion on issues of professional ethics implicated by complex litigation matter (*In re Professional Responsibility Inquiries* (2010))
- ◇ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2007))

Publications on Class Actions & Procedure

- ◇ NEWBERG AND RUBENSTEIN ON CLASS ACTIONS (6th ed. 2022); NEWBERG ON CLASS ACTIONS (sole author since 2008, sole author of entirely re-written Fifth Edition (2011-2019))
- ◇ *Deconstitutionalizing Personal Jurisdiction: A Separation of Powers Approach*, Harvard Public Law Working Paper No. 20-34, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3715068.
- ◇ *The Negotiation Class: A Cooperative Approach to Class Actions Involving Large Stakeholders*, 99 TEXAS L. REV. 73 (2020) (with Francis E. McGovern)
- ◇ *Profit for Costs*, 63 DEPAUL L. REV. 587 (2014) (with Morris A. Ratner)
- ◇ *Procedure and Society: An Essay for Steve Yeazell*, 61 U.C.L.A. REV. DISC. 136 (2013)
- ◇ *Supreme Court Round-Up – Part II*, 5 CLASS ACTION ATTORNEY FEE DIGEST 331 (September 2011)
- ◇ *Supreme Court Round-Up – Part I*, 5 CLASS ACTION ATTORNEY FEE DIGEST 263 (July-August 2011)
- ◇ *Class Action Fee Award Procedures*, 5 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2011)
- ◇ *Benefits of Class Action Lawsuits*, 4 CLASS ACTION ATTORNEY FEE DIGEST 423 (November 2010)
- ◇ *Contingent Fees for Representing the Government: Developments in California Law*, 4 CLASS ACTION ATTORNEY FEE DIGEST 335 (September 2010)
- ◇ *Supreme Court Roundup*, 4 CLASS ACTION ATTORNEY FEE DIGEST 251 (July 2010)
- ◇ *SCOTUS Okays Performance Enhancements in Federal Fee Shifting Cases – At Least In Principle*, 4 CLASS ACTION ATTORNEY FEE DIGEST 135 (April 2010)
- ◇ *The Puzzling Persistence of the AMega-Fund@ Concept*, 4 CLASS ACTION ATTORNEY FEE DIGEST 39 (February 2010)
- ◇ *2009: Class Action Fee Awards Go Out With A Bang, Not A Whimper*, 3 CLASS ACTION ATTORNEY FEE DIGEST 483 (December 2009)
- ◇ *Privatizing Government Litigation: Do Campaign Contributors Have An Inside Track?*, 3 CLASS ACTION ATTORNEY FEE DIGEST 407 (October 2009)
- ◇ *Supreme Court Preview*, 3 CLASS ACTION ATTORNEY FEE DIGEST 307 (August 2009)

- ◇ *Supreme Court Roundup*, 3 CLASS ACTION ATTORNEY FEE DIGEST 259 (July 2009)
- ◇ *What We Now Know About How Lead Plaintiffs Select Lead Counsel (And Hence Who Gets Attorney's Fees!) in Securities Cases*, 3 CLASS ACTION ATTORNEY FEE DIGEST 219 (June 2009)
- ◇ *Beware Of Ex Ante Incentive Award Agreements*, 3 CLASS ACTION ATTORNEY FEE DIGEST 175 (May 2009)
- ◇ *On What a "Common Benefit Fee" Is, Is Not, and Should Be*, 3 CLASS ACTION ATTORNEY FEE DIGEST 87 (March 2009)
- ◇ *2009: Emerging Issues in Class Action Fee Awards*, 3 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2009)
- ◇ *2008: The Year in Class Action Fee Awards*, 2 CLASS ACTION ATTORNEY FEE DIGEST 465 (December 2008)
- ◇ *The Largest Fee Award – Ever!*, 2 CLASS ACTION ATTORNEY FEE DIGEST 337 (September 2008)
- ◇ *Why Are Fee Reductions Always 50%?: On The Imprecision of Sanctions for Imprecise Fee Submissions*, 2 CLASS ACTION ATTORNEY FEE DIGEST 295 (August 2008)
- ◇ *Supreme Court Round-Up*, 2 CLASS ACTION ATTORNEY FEE DIGEST 257 (July 2008)
- ◇ *Fee-Shifting For Wrongful Removals: A Developing Trend?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 177 (May 2008)
- ◇ *You Cut, I Choose: (Two Recent Decisions About) Allocating Fees Among Class Counsel*, 2 CLASS ACTION ATTORNEY FEE DIGEST 137 (April 2008)
- ◇ *Why The Percentage Method?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 93 (March 2008)
- ◇ *Reasonable Rates: Time To Reload The (Laffey) Matrix*, 2 CLASS ACTION ATTORNEY FEE DIGEST 47 (February 2008)
- ◇ *The "Lodestar Percentage" A New Concept For Fee Decisions?*, 2 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2008)
- ◇ *Class Action Practice Today: An Overview*, in ABA SECTION OF LITIGATION, CLASS ACTIONS TODAY 4 (2008)
- ◇ *Shedding Light on Outcomes in Class Actions*, in CONFIDENTIALITY, TRANSPARENCY, AND THE U.S. CIVIL JUSTICE SYSTEM 20-59 (Joseph W. Doherty, Robert T. Reville, and Laura Zakaras eds. 2008) (with Nicholas M. Pace)
- ◇ *Finality in Class Action Litigation: Lessons From Habeas*, 82 N.Y.U. L. REV. 791 (2007)

- ◇ *The American Law Institute's New Approach to Class Action Objectors' Attorney's Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 347 (November 2007)
- ◇ *The American Law Institute's New Approach to Class Action Attorney's Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 307 (October 2007)
- ◇ *"The Lawyers Got More Than The Class Did!": Is It Necessarily Problematic When Attorneys Fees Exceed Class Compensation?*, 1 CLASS ACTION ATTORNEY FEE DIGEST 233 (August 2007)
- ◇ *Supreme Court Round-Up*, 1 CLASS ACTION ATTORNEY FEE DIGEST 201 (July 2007)
- ◇ *On The Difference Between Winning and Getting Fees*, 1 CLASS ACTION ATTORNEY FEE DIGEST 163 (June 2007)
- ◇ *Divvyng Up The Pot: Who Divides Aggregate Fee Awards, How, and How Publicly?*, 1 CLASS ACTION ATTORNEY FEE DIGEST 127 (May 2007)
- ◇ *On Plaintiff Incentive Payments*, 1 CLASS ACTION ATTORNEY FEE DIGEST 95 (April 2007)
- ◇ *Percentage of What?*, 1 CLASS ACTION ATTORNEY FEE DIGEST 63 (March 2007)
- ◇ *Lodestar v. Percentage: The Partial Success Wrinkle*, 1 CLASS ACTION ATTORNEY FEE DIGEST 31 (February 2007) (with Alan Hirsch)
- ◇ *The Fairness Hearing: Adversarial and Regulatory Approaches*, 53 U.C.L.A. L. REV. 1435 (2006) (excerpted in THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION 447-449 (Richard A. Nagareda ed., 2009))
- ◇ *Why Enable Litigation? A Positive Externalities Theory of the Small Claims Class Action*, 74 U.M.K.C. L. REV. 709 (2006)
- ◇ *What a "Private Attorney General" Is – And Why It Matters*, 57 VAND. L. REV. 2129(2004) (excerpted in COMPLEX LITIGATION 63-72 (Kevin R. Johnson, Catherine A. Rogers & John Valery White eds., 2009)).
- ◇ *The Concept of Equality in Civil Procedure*, 23 CARDOZO L. REV. 1865 (2002) (selected for the Stanford/Yale Junior Faculty Forum, June 2001)
- ◇ *A Transactional Model of Adjudication*, 89 GEORGETOWN L.J. 371 (2000)
- ◇ *The Myth of Superiority*, 16 CONSTITUTIONAL COMMENTARY 599 (1999)
- ◇ *Divided We Litigate: Addressing Disputes Among Clients and Lawyers in Civil Rights Campaigns*, 106 YALE L. J. 1623 (1997) (excerpted in COMPLEX LITIGATION 120-123 (1998))

Selected Presentations

- ◇ *Class Action Law Update*, MDL Transferee Judges Conference, Palm Beach, Florida, October 24, 2023 (scheduled)
- ◇ *Opioid Litigation: What's New and What Does it Mean for Future Litigation?*, RAND Institute for Civil Justice and RAND Kenneth R. Feinberg Center for Catastrophic Risk Management and Compensation, RAND Corporation, October 22, 2020
- ◇ *The Opioid Crisis: Where Do We Go From Here?* Clifford Symposium 2020, DePaul University College of Law, Chicago, Illinois, May 28-29, 2020)
- ◇ *Class Action Law Update*, MDL Transferee Judges Conference, Palm Beach, Florida, October 30, 2019
- ◇ *Class Action Law Update*, MDL Transferee Judges Conference, Palm Beach, Florida, October 31, 2018
- ◇ *Attorneys' Fees Issues*, MDL Transferee Judges Conference, Palm Beach, Florida, October 30, 2018
- ◇ *Panelist*, Federal Judicial Center, Managing Multidistrict Litigation and Other Complex Litigation Workshop (for federal judges) (March 15, 2018)
- ◇ *Class Action Update*, MDL Transferee Judges Conference, Palm Beach, Florida, November 1, 2017
- ◇ *Class Action Update*, MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2016
- ◇ *Judicial Power and its Limits in Multidistrict Litigation*, American Law Institute, Young Scholars Medal Conference, *The Future of Aggregate Litigation*, New York University School of Law, New York, New York, April 12, 2016
- ◇ *Class Action Update & Attorneys' Fees Issues Checklist*, MDL Transferee Judges Conference, Palm Beach, Florida, October 28, 2015
- ◇ *Class Action Law*, 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop, Tucson, Arizona, January 26, 2015
- ◇ *Recent Developments in Class Action Law*, MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2014
- ◇ *Recent Developments in Class Action Law*, MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2013
- ◇ *Class Action Remedies*, ABA 2013 National Institute on Class Actions, Boston, Massachusetts, October 23, 2013
- ◇ *The Public Life of the Private Law: The Logic and Experience of Mass Litigation – Conference in Honor of Richard Nagareda*, Vanderbilt Law School, Nashville, Tennessee, September 27-28, 2013

- ◇ *Brave New World: The Changing Face of Litigation and Law Firm Finance*, Clifford Symposium 2013, DePaul University College of Law, Chicago, Illinois, April 18-19, 2013
- ◇ *Twenty-First Century Litigation: Pathologies and Possibilities: A Symposium in Honor of Stephen Yeazell*, UCLA Law Review, UCLA School of Law, Los Angeles, California, January 24-25, 2013
- ◇ *Litigation's Mirror: The Procedural Consequences of Social Relationships*, Sidley Austin Professor of Law Chair Talk, Harvard Law School, Cambridge, Massachusetts, October 17, 2012
- ◇ *Alternative Litigation Funding (ALF) in the Class Action Context – Some Initial Thoughts*, Alternative Litigation Funding: A Roundtable Discussion Among Experts, George Washington University Law School, Washington, D.C., May 2, 2012
- ◇ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Brooklyn Law School Faculty Workshop, Brooklyn, New York, April 2, 2012
- ◇ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Loyola Law School Faculty Workshop, Los Angeles, California, February 2, 2012
- ◇ *Recent Developments in Class Action Law and Impact on MDL Cases*, MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2011
- ◇ *Recent Developments in Class Action Law*, MDL Transferee Judges Conference, Palm Beach, Florida, October 26, 2010
- ◇ *A General Theory of the Class Suit*, University of Houston Law Center Colloquium, Houston, Texas, February 3, 2010
- ◇ *Unpacking The “Rigorous Analysis” Standard*, ALI-ABA 12th Annual National Institute on Class Actions, New York, New York, November 7, 2008
- ◇ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of California (Boalt Hall) School of Law Civil Justice Workshop, Berkeley, California, February 28, 2008
- ◇ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of Pennsylvania Law Review Symposium, Philadelphia, Pennsylvania, Dec. 1, 2007
- ◇ *Current CAFA Consequences: Has Class Action Practice Changed?*, ALI-ABA 11th Annual National Institute on Class Actions, Chicago, Illinois, October 17, 2007
- ◇ *Using Law Professors as Expert Witnesses in Class Action Lawsuits*, ALI-ABA 10th Annual National Institute on Class Actions, San Diego, California, October 6, 2006
- ◇ *Three Models for Transnational Class Actions*, Globalization of Class Action Panel, International Law Association 2006 Conference, Toronto, Canada, June 6, 2006
- ◇ *Why Create Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, UMKC

Law Review Symposium, Kansas City, Missouri, April 7, 2006

- ◇ *Marks, Bonds, and Labels: Three New Proposals for Private Oversight of Class Action Settlements*, UCLA Law Review Symposium, Los Angeles, California, January 26, 2006
- ◇ Class Action Fairness Act, Arnold & Porter, Los Angeles, California, December 6, 2005
- ◇ ALI-ABA 9th Annual National Institute on Class Actions, Chicago, Illinois, September 23, 2005
- ◇ Class Action Fairness Act, UCLA Alumni Assoc., Los Angeles, California, September 9, 2005
- ◇ Class Action Fairness Act, Thelen Reid & Priest, Los Angeles, California, May 12, 2005
- ◇ Class Action Fairness Act, Sidley Austin, Los Angeles, California, May 10, 2005
- ◇ Class Action Fairness Act, Munger, Tolles & Olson, Los Angeles, California, April 28, 2005
- ◇ Class Action Fairness Act, Akin Gump Strauss Hauer Feld, Century City, CA, April 20, 2005

SELECTED OTHER LITIGATION EXPERIENCE

United States Supreme Court

- ◇ Served as *amicus curiae* and authored *amicus* brief on proper approach to *cy pres* award in class action lawsuits (*Frank v. Gaos*, No. 17-961, October Term 2018)
- ◇ Co-counsel on petition for writ of *certiorari* concerning application of the voluntary cessation doctrine to government defendants (*Rosebrock v. Hoffman*, 135 S. Ct. 1893 (2015))
- ◇ Authored *amicus* brief filed on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion*, No. 09-893, 131 S. Ct. 1740 (2011))
- ◇ Co-counsel in constitutional challenge to display of Christian cross on federal land in California's Mojave preserve (*Salazar v. Buono*, 130 S. Ct. 1803 (2010))
- ◇ Co-authored *amicus* brief filed on behalf of constitutional law professors arguing against constitutionality of Texas criminal law (*Lawrence v. Texas*, 539 U.S. 558 (2003))
- ◇ Co-authored *amicus* brief on scope of *Miranda* (*Illinois v. Perkins*, 496 U.S. 292 (1990))

Attorney's Fees

- ◇ Appointed by the United States District Court for the Eastern District of Pennsylvania as an expert witness on attorney's fees in complex litigation, with result that the Court adopted recommendations (*In re National Football League Players' Concussion Injury Litigation*, 2018 WL 1658808 (E.D.Pa.

April 5, 2018))

- ◇ Appointed by the United States District Court for the Northern District of Ohio as an expert consultant on common benefit attorney's fees issues in complex multidistrict litigation, with result that the Court adopted recommendations (*In re: Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804, 2020 WL 8675733 (N.D. Ohio June 3, 2020))
- ◇ Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom.*, *DeValerio v. Olinski*, 673 F. App'x 87, 90 (2d Cir. 2016)).
- ◇ Co-counsel in appeal of common benefit fees decision arising out of mass tort MDL (*In re Roundup Prod. Liab. Litig.*, Civil Action No. 21-16228, 2022 WL 16646693 (9th Cir. 2022))
- ◇ Served as *amicus curiae* and co-authored *amicus* brief on proper approach to attorney's fees in common fund cases (*Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 504, 376 P.3d 672, 687 (2016))

Consumer Class Action

- ◇ Co-counsel in challenge to antenna-related design defect in Apple's iPhone4 (*Dydyk v. Apple Inc.*, 5:10-cv-02897-HRL, U.S. Dist. Court, N.D. Cal.) (complaint filed June 30, 2010)
- ◇ Co-class counsel in \$8.5 million nationwide class action settlement challenging privacy concerns raised by Google's Buzz social networking program (*In re Google Buzz Privacy Litigation*, 5:10-cv-00672-JW, U.S. Dist. Court, N.D. Cal.) (amended final judgment June 2, 2011)

Disability

- ◇ Co-counsel in successful ADA challenge (\$500,000 jury verdict) to the denial of health care in emergency room (*Howe v. Hull*, 874 F. Supp. 779, 873 F. Supp 72 (N.D. Ohio 1994))

Employment

- ◇ Co-counsel in challenges to scope of family benefit programs (*Ross v. Denver Dept. of Health*, 883 P.2d 516 (Colo. App. 1994)); (*Phillips v. Wisc. Personnel Com'n*, 482 N.W.2d 121 (Wisc. 1992))

Equal Protection

- ◇ Co-counsel in (state court phases of) successful challenge to constitutionality of a Colorado ballot initiative, Amendment 2 (*Evans v. Romer*, 882 P.2d 1335 (Colo. 1994))
- ◇ Co-counsel (and *amici*) in challenges to rules barring military service by gay people (*Able v. United States*, 44 F.3d 128 (2d Cir. 1995); *Steffan v. Perry*, 41 F.3d 677 (D.C. Cir. 1994) (*en banc*))
- ◇ Co-counsel in challenge to the constitutionality of the Attorney General of Georgia' firing of staff attorney (*Shahar v. Bowers*, 120 F.3d 211 (11th Cir. 1997))

Fair Housing

- ◇ Co-counsel in successful Fair Housing Act case on behalf of group home (*Hogar Agua y Vida En el Desierto v. Suarez-Medina*, 36 F.3d 177 (1st Cir. 1994))

Family Law

- ◇ Co-counsel in challenge to constitutionality of Florida law limiting adoption (*Cox v. Florida Dept. of Health and Rehab. Svcs.*, 656 So.2d 902 (Fla. 1995))
- ◇ Co-authored *amicus* brief in successful challenge to Hawaii ban on same-sex marriages (*Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993))

First Amendment

- ◇ Co-counsel in successful challenge to constitutionality of Alabama law barring state funding for university student groups (*GLBA v. Sessions*, 930 F.Supp. 1492 (M.D. Ala. 1996))
- ◇ Co-counsel in successful challenge to content restrictions on grants for AIDS education materials (*Gay Men's Health Crisis v. Sullivan*, 792 F.Supp. 278 (S.D.N.Y. 1992))

Landlord / Tenant

- ◇ Lead counsel in successful challenge to rent control regulation (*Braschi v. Stahl Associates Co.*, 544 N.E.2d 49 (N.Y. 1989))

Police

- ◇ Co-counsel in case challenging DEA brutality (*Anderson v. Branen*, 27 F.3d 29 (2d Cir. 1994))

Prison Conditions

- ◇ Co-counsel in appeal of class certification decision in damages class action arising out of conditions in St. Louis City Jail, *Cody, et al v. City of St. Louis*, Civil Action No. 22-2348 (8th Cir. 2023) (pending)

Racial Equality

- ◇ Co-authored *amicus* brief for constitutional law professors challenging constitutionality of Proposition 209 (*Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997))

SELECTED OTHER PUBLICATIONS

Editorials

- ◇ *Follow the Leaders*, NEW YORK TIMES, March 15, 2005
- ◇ *Play It Straight*, NEW YORK TIMES, October 16, 2004
- ◇ *Hiding Behind the Constitution*, NEW YORK TIMES, March 20, 2004
- ◇ *Toward More Perfect Unions*, NEW YORK TIMES, November 20, 2003 (with Brad Sears)
- ◇ *Don't Ask, Don't Tell, Don't Believe It*, NEW YORK TIMES, July 20, 1993
- ◇ *AIDS: Illness and Injustice*, WASH. POST, July 26, 1992 (with Nan D. Hunter)

BAR ADMISSIONS

- ◇ Massachusetts (2008)
- ◇ California (2004)
- ◇ District of Columbia (1987) (inactive)
- ◇ Pennsylvania (1986) (inactive)
- ◇ U.S. Supreme Court (1993)
- ◇ U.S. Court of Appeals for the First Circuit (2010)
- ◇ U.S. Court of Appeals for the Second Circuit (2015)
- ◇ U.S. Court of Appeals for the Fifth Circuit (1989)
- ◇ U.S. Court of Appeals for the Ninth Circuit (2004)
- ◇ U.S. Court of Appeals for the Eleventh Circuit (1993)
- ◇ U.S. Court of Appeals for the D.C. Circuit (1993)
- ◇ U.S. District Courts for the Central District of California (2004)
- ◇ U.S. District Court for the District of the District of Columbia (1989)
- ◇ U.S. District Court for the District of Massachusetts (2010)
- ◇ U.S. District Court for the Northern District of California (2010)

EXHIBIT B

In re: Facebook, Inc. Consumer Privacy User Profile Litigation
Case No. 3:18-MD-02843-VC
U.S. District Court for the Northern District of California
San Francisco Division

EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN

EXHIBIT B

Partial List of Documents Reviewed by Professor Rubenstein
(other than case law and scholarship on the relevant issues)

A. *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, Case No. 3:18-MD-02843 (N.D. Cal.)

1. United States Judicial Panel on Multidistrict Litigation Transfer Order, ECF No. 1
2. Pretrial Order No. 1, ECF No. 2
3. Letter Notifying Court of Cambridge Analytica, LLC's Chapter 7 Bankruptcy Case, ECF No. 14
4. Lesley E. Weaver's Application to Serve in a Leadership Position, ECF No. 31
5. Lesley E. Weaver's Biography, ECF No. 31-1
6. Counsel Who Have Filed Cases in This Multi-District Litigation and Support Lesley E. Weaver's Application to Serve as Lead Counsel, ECF No. 31-2
7. Billing and Expense Protocol, ECF No. 31-3
8. James Cecchi's Application to Serve in a Leadership Position, ECF No. 33
9. Gary F. Lynch's Application to Serve in a Leadership Position, ECF No. 35
10. Derek W. Loeser's Application to Serve in a Leadership Position, ECF No. 41
11. Attachment A, Derek Loeser's Biography, ECF No. 41-1
12. Attachment B, Plaintiffs' Counsel Supporting Appointment of Derek Loeser for Leadership, ECF No. 41-2
13. Steve W. Berman's Application to Serve in a Leadership Position, ECF No. 64
14. Case Management Statement of Defendants Facebook, Inc. and Mark Zuckerberg, ECF No. 66
15. Pretrial Order No. 3, ECF No. 76
16. Response of Derek Loeser and Keller Rohrback L.L.P. to Pretrial Order No. 3, ECF No. 81
17. Biographies of Keller Rohrback Members, ECF No. 81-1
18. Norman E. Siegel's Response to Pretrial Order No. 3, ECF No. 83
19. Michael W. Sobol's Response to Pretrial Order No. 3, ECF No. 84
20. Lesley E. Weaver's Response to Pretrial Order No. 3, ECF No. 88
21. Biographies of BFA Members, ECF No. 88-1
22. Pretrial Order No. 4: Appointing Lead Counsel, ECF No. 102
23. [Proposed] Pretrial Order No. 8; Protocol for Common Benefit Work and Expenses, ECF No. 114
24. [Proposed] Pretrial Order No. 7 Regarding Duties and Authority of Co-Lead Counsel, ECF No. 115
25. Pretrial Order No. 7: Bankruptcy Counsel, ECF No. 119

26. Pretrial Order No. 8: Duties and Authority of Co-Lead Counsel, ECF No. 120
27. Pretrial Order No. 9: Protocol for Common Benefit Work and Expenses, ECF No. 121
28. Monthly Time Reports, ECF No. 121-1
29. Consolidated Complaint, ECF No. 148
30. Administrative Motion for Oral Argument on Fully-Briefed Motion to Remand for Lack of Subject Matter Jurisdiction, ECF No. 172
31. Defendant Robert Mercer's Notice of Motion and Motion to Dismiss; Memorandum of Points and Authorities, ECF No. 183
32. Notice of Motion and Motion by Defendant Facebook, Inc. to Dismiss Plaintiffs' Consolidated Complaint, ECF No. 184
33. Memorandum of Law in Support of Motion of Defendant Facebook, Inc. to Dismiss Plaintiffs' Consolidated Complaint, ECF No. 184-1
34. Notice of Joinder in Motion to Dismiss and Reservation of Rights by Non-Prioritized Defendants Mark Zuckerberg and Sheryl Sandberg, ECF No. 188
35. Plaintiffs' Opposition to Motion of Defendant Facebook, Inc. to Dismiss Plaintiffs' Consolidated Complaint, ECF No. 208
36. Plaintiffs' Opposition to Robert Mercer's Motion to Dismiss Plaintiffs' Consolidated Complaint, ECF No. 211
37. Order Requesting Further Supplemental Briefing Regarding Motion to Remand, ECF No. 216
38. Plaintiff's Second Supplemental Brief in Support of Motion to Remand, ECF No. 229
39. Supplemental Memorandum of Law Regarding Plaintiff Cook County's Motion to Remand in Response to the Court's December 6, 2018 Order, ECF No. 230
40. Defendant Robert Mercer's Reply in Support of Motion to Dismiss, ECF No. 233
41. Reply in Support of Motion of Defendant Facebook, Inc. to Dismiss Plaintiffs' Consolidated Complaint, ECF No. 234
42. Pretrial Order No. 14: Order Granting Mercer's Motion to Dismiss, ECF No. 240
43. Pretrial Order No. 15: Order Granting Motion to Remand, ECF No. 241
44. Pretrial Order No. 16: Order Re Hearing on Motion to Dismiss, ECF No. 243
45. Order After Hearing Granting Plaintiffs' Motion to Amend Complaint and Mooting Motion to Dismiss, ECF No. 247
46. First Amended Consolidated Complaint, ECF No. 257
47. Memorandum of Law in Support of Motion of Defendant Facebook, Inc. to Dismiss Plaintiffs' First Amended Consolidated Complaint, ECF No. 261-1
48. Plaintiffs' Opposition to Motion of Defendant Facebook, Inc. to Dismiss Plaintiffs' First Amended Consolidated Complaint, ECF No. 266
49. Reply in Support of Motion of Defendant Facebook, Inc. to Dismiss Plaintiffs' First Amended Consolidated Complaint, ECF No. 267
50. Pretrial Order No. 19: Guidance for Hearing on Motion to Dismiss Amended Complaint, ECF No. 273
51. Plaintiffs' Letter in Response to Court's May 29 Request to Provide Best Cases Re Subsequent Change to the Contract Terms of Service, ECF No. 280
52. Plaintiffs' Letter Identifying Allegations that Facebook Violated Users' Privacy Settings, ECF No. 281
53. Plaintiffs' Amended Letter Identifying Allegations that Facebook Violated Users' Privacy Settings, ECF No. 282

54. Defendants' Letter in Response to Court's May 29 Request to Provide Best Cases Re Subsequent Change to the Contract Terms of Service, ECF No. 283
55. Pretrial Order No. 20: Granting in Part and Denying in Part Motion to Dismiss First Amended Complaint, ECF No. 298
56. Memorandum of Law in Support of Motion of Defendant Facebook, Inc. to Certify Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b), ECF No. 318-1
57. Plaintiffs' Opposition to Defendant Facebook, Inc.'s Motion to Certify Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b), ECF No. 324
58. Joint Case Management Statement, ECF No. 326
59. Plaintiff Robert Zimmerman and Uxor Press's Case Management Statement with Regard to Defendant Facebook Inc.'s Administrative Motion to Relate Case No. 3:19-cv-04591-WHO to Case No. 3:18-md-02843-VC, ECF No. 327
60. Reply in Support of Motion of Defendant Facebook, Inc. to Certify Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b), ECF No. 328
61. Pretrial Order No. 26: Order Denying Motion to Certify for Interlocutory Appeal, ECF No. 330
62. Pretrial Order No. 27: Questions for Case Management Conference, ECF No. 331
63. Plaintiffs' Brief in Response to Pretrial Order No. 28, ECF No. 340
64. Facebook's Supplemental Brief Regarding Proposed Case Schedule, ECF No. 342
65. Pretrial Order No. 30: Denying Facebook's Request to Phase Discovery, ECF No. 347
66. Pretrial Order No. 31: Order Requiring Letter Briefs Re Discovery Deadlines, ECF No. 349
67. Plaintiffs' Letter Responding to Pretrial Order No. 31, ECF No. 353
68. Defendant's Letter Responding to Pretrial Order No. 31, ECF No. 354
69. Pretrial Order No. 32: Case Management Schedule, ECF No. 356
70. Facebook's Answer to Plaintiffs' First Amended Consolidated Complaint, ECF No. 373
71. Stipulation and [Proposed] Order on Discovery Dispute Resolution Procedures, ECF No. 392
72. Stipulation and Order on Discovery Dispute Resolution Procedures, ECF No. 393
73. Plaintiffs' Administrative Motion Pursuant to Civil Local Rule 7-11 Re Participating Counsel Performing Common Benefit Work Related to Plaintiffs' Responses to Discovery, ECF No. 395
74. [Proposed] Order Approving Participating Counsel Performing Common Benefit Work Related to Plaintiffs' Responses to Discovery, ECF No. 395-1
75. Declaration of Cari C. Laufenberg in Support of Plaintiffs' Administrative Motion Re Participating Counsel Performing Common Benefit Work Related to Plaintiffs' Responses to Discovery, ECF No. 395-2
76. Joint Status Update, ECF No. 428
77. Order Approving Participating Counsel Performing Common Benefit Work Related to Plaintiffs' Responses to Discovery, ECF No. 433
78. Joint Status Update, ECF No. 449
79. Pretrial Order No. 38: Granting Motion for Leave to File Second Amended Consolidated Complaint, ECF No. 482
80. Second Amended Consolidated Complaint, ECF No. 491

81. Defendant Facebook, Inc.'s Memorandum of Law in Support of Motion to Dismiss Plaintiffs Naomi Butler and Peter Christley and Motion to Strike from SACC Claims that Have Been Dismissed with Prejudice, ECF No. 503-1
82. Plaintiffs' Opposition to Facebook, Inc.'s Motion to Dismiss Plaintiffs Naomi Butler and Peter Christley and Motion to Strike from SACC Claims that Have Been Dismissed with Prejudice, ECF No. 516
83. Summons in a Civil Action, Stephen K. Bannon, ECF No. 539
84. Defendant Facebook, Inc.'s Reply in Support of Motion to Dismiss Plaintiffs Naomi Butler and Peter Christley and Motion to Strike from SACC Claims that Have Been Dismissed with Prejudice, ECF No. 540
85. Order Granting Motion to Dismiss Plaintiffs Naomi Butler and Peter Christley, ECF No. 571
86. Facebook's Supplemental Answer, ECF No. 576
87. Defendant Facebook, Inc.'s Opening Brief in Support of its Claim of Confidentiality, ECF No. 643
88. Stipulation and [Proposed] Order Regarding Discovery Mediator, ECF No. 644
89. Plaintiffs' Opposition to Facebook Inc.'s Motion in Support of its Claim of Confidentiality, ECF No. 660
90. Block & Leviton LLP's Notice of Motion and Motion for Leave to Intervene and to Unseal, ECF No. 669
91. Stipulation and [Proposed] Order Regarding Withdrawal of Block & Leviton LLP's Motion for Leave to Intervene and Unseal, ECF No. 678
92. Defendant Facebook, Inc.'s Reply Brief in Support of its Claim of Confidentiality, ECF No. 681
93. Joint Letter Regarding Technology Assisted Review Discovery, ECF No. 697
94. Joint Letter Regarding App Development Investigation Discovery, ECF No. 699
95. Pretrial Order No. 40: Order Appointing Special Discovery Master, ECF No. 709
96. Stipulation and [Proposed] Supplemental Order Pursuant to Fed. R. Civ. P. 53 Appointing Special Master, ECF No. 728
97. Consent of Master and Affidavit, ECF No. 728-1
98. Protocol for Resolving Discovery Disputes – Order No. 1, ECF No. 733
99. Stipulation and Supplemental Order Pursuant to Fed. R. Civ. P. 53 Appointing Special Master, ECF No. 734
100. Order Regarding the Use of TAR, ECF No. 742
101. Order Regarding Motion to Compel Mark Zuckerberg Notebooks – Order No. 3, ECF No. 745
102. Order Regarding Production of ADI Related Documents, ECF No. 766
103. Amended Order Regarding Production of ADI Related Document, ECF No. 776
104. Order Re: Facebook's Appeal of Special Master's Order Regarding Depositions of Five Former Named Plaintiffs, ECF No. 805
105. Order Re: Facebook's Appeal of Special Master's Order Regarding ADI Materials, ECF No. 806
106. Order Re: Facebook's Appeal of Special Master's Order Regarding Production of Plaintiff Data, ECF No. 807
107. Pretrial Order No. 41: Amended Order Appointing Special Discovery Master, ECF No. 816

108. Amended Protocol for Resolving Discovery Disputes, ECF No. 821
109. Pretrial Order No. 42: Order Requiring Facebook to Designate Executive Responsible for Discovery Decisions, ECF No. 831
110. Facebook, Inc.'s Disclosure of Executive Pursuant to Pretrial Order No. 42 and Supplemental Case Management Statement, ECF No. 840
111. Plaintiffs' Response to Facebook, Inc.'s Disclosure of Executive Pursuant to Pretrial Order No. 42 and Supplemental Case Management Statement, ECF No. 841
112. Pretrial Order No. 43: Order Re Public Access to Special Master Hearings, ECF No. 859
113. Stipulation and Order Regarding Briefing on Motion for Sanctions, ECF No. 863
114. Opposition of Facebook, Inc., Gibson, Dunn & Crutcher LLP, and Orin Snyder to Plaintiffs' Motion for Sanctions, ECF No. 911
115. Declaration of Orin Snyder in Support of Opposition of Facebook, Inc., Gibson, Dunn & Crutcher, LLP, and Orin Snyder to Plaintiffs' Motion for Sanctions, ECF No. 912
116. Plaintiffs' Reply in Support of Motion for Sanctions, ECF No. 922
117. Notice of Settlement in Principle and Joint Request to Stay Action to Allow Parties to Seek Approval of the Class Action Settlement, ECF No. 1014
118. Plaintiffs' Corrected Notice of Motion, Motion, and Memorandum in Support of Motion for Sanctions, ECF No. 1050-1
119. Plaintiffs' Reply in Support of Motion for Sanctions, ECF No. 1050-2
120. Plaintiffs' Corrected Supplemental Brief in Support of Sanctions, ECF No. 1050-3
121. Plaintiffs' Notice of Lodging of Timelines of Events in Support of Plaintiffs' Motion for Sanctions, ECF No. 1058
122. Timeline of Deposition Issues Related to Plaintiffs' March 1, 2022 30(b)(6) Deposition Notice, ECF No. 1058-1
123. Timeline of Issues Related to Financial Documents, ECF No. 1058-2
124. Timeline of Issues Related to Named Plaintiff Depositions, ECF No. 1058-3
125. Timeline of Document Production Issues Related to Privilege Overdesignation, ECF No. 1058-4
126. Timeline of Discovery Issues Related to Production of Quips, ECF No. 1058-5
127. Timeline of Issues Related to Named Plaintiff Data, ECF No. 1058-6
128. Timeline of Issues Related to ADI Production, ECF No. 1058-7
129. Plaintiffs' Letter Responding to Two Questions the Court Posed at the September 15 Hearing on Sanctions, ECF No. 1061
130. Facebook, Inc., Gibson, Dunn & Crutcher LLP, and Orin Snyder's Brief in Response to the Court's Questions at the September 15, 2022 Hearing, ECF No. 1063
131. Plaintiffs' Supplemental Brief Regarding Fees and Costs Sought as Sanctions, ECF No. 1079
132. Joint Declaration of Derek W. Loeser and Lesley E. Weaver Regarding Fees and Costs Incurred Due to Sanctionable Misconduct, ECF No. 1080
133. Declaration of Steven Elia in Support of Settlement, ECF No. 1094
134. Declaration of Elizabeth Dunphy in Support of Settlement, ECF No. 1095
135. Plaintiffs' Notice of Motion and Motion to Certify a Settlement Class and Grant Preliminary Settlement Approval, ECF No. 1096
136. Declaration of Derek W. Loeser and Lesley E. Weaver in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement Pursuant to Federal Rules of Civil Procedure 23(e)(1), ECF No. 1096-1

137. Class Action Settlement Agreement and Release, ECF No. 1096-2
138. Plan of Allocation, ECF No. 1096-3
139. Declaration of Jay C. Gandhi in Support of Preliminary Settlement Approval, ECF No. 1096-4
140. Declaration of Lynn A. Baker in Support of Preliminary Settlement Approval, ECF No. 1096-5
141. Keller Rohrback Firm Resume, ECF No. 1096-6
142. Bleichmar Fonti & Auld Firm Resume, ECF No. 1096-7
143. Compilation of Name Plaintiff Declarations, ECF No. 1096-8
144. Defendant's Statement in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, ECF No. 1097
145. Order Granting in Part Plaintiffs' Motion for Sanctions, ECF No. 1104
146. Notice Regarding Revisions to Proposed Order Granting Preliminary Approval and Proposed Notice of Class Action Settlement, ECF No. 1106
147. Further Notice Regarding Revision to Proposed Order Granting Preliminary Approval, ECF No. 1108
148. Amended [Proposed] Preliminary Approval Order (Redlined), ECF No. 1108-1
149. Amended [Proposed] Preliminary Approval Order, ECF No. 1108-2
150. Order Re Preliminary Approval Hearing, ECF No. 1109
151. State of New Mexico's Motion to Intervene, ECF No. 1111
152. Declaration of Corban S. Rhodes in Support of the State of New Mexico's Motion to Intervene, ECF No. 1111-1
153. Further Notice Regarding Revisions to Proposed Order Granting Preliminary Approval, Proposed Notice of Class Action Settlement, Proposed Claim Form, Proposed Long-Form Notice, and Proposed Short-Form Notice, ECF No. 1114
154. Amended Claim Form (Redlined), ECF No. 1114-1
155. Amended Claim Form, ECF No. 1114-2
156. Second Amended [Proposed] Preliminary Approval Order (Redlined), ECF No. 1114-3
157. Second Amended [Proposed] Preliminary Approval Order, ECF No. 1114-4
158. Second Amended Notice of Proposed Settlement of Class Action (Redlined), ECF No. 1114-5
159. Second Amended Notice of Proposed Settlement of Class Action, ECF No. 1114-6
160. Summary Notice of Settlement (Redlined), ECF No. 1114-7
161. Summary Notice of Settlement, ECF No. 1114-8
162. Plaintiffs' Response to New Mexico's Motion to Intervene, ECF No. 1116
163. Order Denying Motion to Intervene and Inviting Further Briefing, ECF No. 1117
164. Facebook, Inc.'s Preliminary Response to the State of New Mexico's Motion to Intervene, Filed Pursuant to the Court's March 1 Order, ECF No. 1118
165. Notice Regarding Filing of Proposed Opt-Out Form and Objection Form, ECF No. 1122
166. [Proposed] Opt-Out Form, ECF No. 1122-1
167. [Proposed] Objection Form, ECF No. 1122-2
168. Order Denying Motion to Intervene and Inviting Further Briefing, ECF No. 1127
169. Notice in Response to Court's Order Denying Motion to Intervene and Inviting Further Briefing, ECF No. 1128
170. Plaintiffs' Response to Order Denying Motion to Intervene and Inviting Further Briefing, ECF No. 1129

- 171. Order Certifying Settlement Class; Granting Preliminary Approval of Class Action Settlement Pursuant to Federal Rule of Civil Procedure 23(e)(1); and Approving Form and Content of Class Notice, ECF No. 1130
- 172. Order Re Objections to Class Action Settlement, ECF No. 1131

B. *Adkins v. Facebook, Inc.*, Case No. 3:18-cv-05982 (N.D. Cal.)

- 173. Defendant Facebook, Inc.'s Opposition to Plaintiff's Motion for Attorneys' Fees, Litigation Costs, and Service Award, ECF No. 323
- 174. Declaration of Melanie M. Blunski in Support of Defendant Facebook, Inc.'s Opposition to Plaintiff's Motion for Attorney's Fees, Litigation Costs, and Service Award, ECF No. 323-1
- 175. Holiday Inn Receipt, ECF No. 323-2
- 176. Plaintiffs' Amended Initial Disclosures Pursuant to Fed. R. Civ. P 26(a)(1)(A), ECF No. 323-3
- 177. Email Correspondence with Class Counsel, ECF No. 323-4
- 178. Proportion of Hours Billed by 35 Timekeepers with Highest Billing Rates, ECF No. 323-5
- 179. Fees Associated with Task Codes Relating to Expert Witnesses, ECF No. 323-6
- 180. Application of Discounts Proposed in Opposition Brief to Class Counsel's Lodestar, ECF No. 323-7
- 181. Class Counsel's Proposed Costs & Facebook's Proposed Reductions, ECF No. 323-8

C. *Price v. Facebook, Inc. et al.*, Case No. 3:18-cv-01732 (N.D. Cal.)

- 182. Class Action Complaint, ECF No. 1
- 183. Plaintiff Schinder's Administrative Motion to Consider Whether Cases Should Be Related Under Local Rule 3-12(e), ECF No. 48

D. *U.S. v. Facebook, Inc.*, Case No. 1:19-cv-02184 (D.D.C.)

- 184. Complaint for Civil Penalties, Injunction, and Other Relief, ECF No. 1
- 185. Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief, ECF No. 2-1

E. *D.C. v. Facebook, Inc.*, Case No. 2018-CA-008715 (D.C. Super. Ct.)

- 186. Complaint for Violations of the Consumer Protection Procedures Act, filed 12/19/2018
- 187. Order Granting Facebook, Inc.'s Motion for Summary Judgment, filed 6/1/2023

EXHIBIT C

In re: Facebook, Inc. Consumer Privacy User Profile Litigation
Case No. 3:18-MD-02843-VC
U.S. District Court for the Northern District of California
San Francisco Division

EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN

EXHIBIT C

Northern District of California Class Actions Terminated in 2022
With Fee Awards Explicitly Affirming Hourly Rates

1. *AdTrader, Inc. v. Google LLC*, No. 5:17-cv-07082 (N.D. Cal. Nov. 1, 2022), ECF No. 407.
2. *Barreras v. Wells Fargo Bank, N.A.*, No. 5:21-cv-00071 (N.D. Cal. Dec. 8, 2021), ECF No. 133.
3. *Bautista v. Juul Labs, Inc.*, No. 4:20-cv-01613 (N.D. Cal. Jun. 22, 2022), ECF No. 149.
4. *Camarlinghi v. Santa Clara County*, No. 5:21-cv-03020 (N.D. Cal. Dec. 16, 2022), ECF No. 84.
5. *Cameron v. Apple Inc.*, No. 4:19-cv-03074 (N.D. Cal. Jun. 10, 2022), ECF No. 491.
6. *Chinitz v. Intero Real Estate Services*, No. 5:18-cv-05623 (N.D. Cal. Oct. 28, 2022), ECF No. 305.
7. *Durham v. Sachs Electric Co.*, No. 5:18-cv-04506 (N.D. Cal. Jun. 27, 2022), ECF No. 121.
8. *Fleming v. Impax Laboratories Inc.*, No. 4:16-cv-06557 (N.D. Cal. Jul. 15, 2022), ECF No. 133.
9. *Foster v. Adams and Associates, Inc.*, No. 3:18-cv-02723 (N.D. Cal. Feb. 11, 2022), ECF No. 244.
10. *Gillard v. Volkswagen Group of America, Inc.*, No. 4:17-cv-07287 (N.D. Cal. Sept. 12, 2022), ECF No. 150.
11. *Hubbard v. Henkel Corp.*, No. 4:19-cv-04346 (N.D. Cal. Jul. 25, 2022), ECF No. 51.
12. *In re Aqua Metals, Inc. Securities Litigation*, No. 4:17-cv-07142 (N.D. Cal. Mar. 2, 2022), ECF No. 182.
13. *In re Google Inc. Street View Electronic Communications Litigation*, No. 3:10-md-02184 (N.D. Cal. Mar. 18, 2020), ECF No. 211.

14. *In re Plaid Inc. Privacy Litigation*, No. 4:20-cv-03056 (N.D. Cal. Jul. 20, 2022), ECF No. 184.
15. *In re Zoom Video Communications, Inc. Privacy Litigation*, No. 3:20-cv-02155 (N.D. Cal. Apr. 21, 2022), ECF No. 249.
16. *Junkersfeld v. Per Diem Staffing Systems, Inc.*, No. 4:18-cv-07795 (N.D. Cal. Sept. 12, 2022), ECF No. 100.
17. *Kudatsky v. Tyler Technologies*, No. 3:19-cv-07647 (N.D. Cal. Nov. 17, 2021), ECF No. 137.
18. *Merante v. American Institute for Foreign Study, Inc.*, No. 3:21-cv-03234 (N.D. Cal. Dec. 20, 2022), ECF No. 61.
19. *Norton v. LVNV Funding, LLC*, No. 4:18-cv-05051 (N.D. Cal. Feb. 24, 2022), ECF No. 150.
20. *Nucci v. Rite Aid Corp.*, No. 3:19-cv-01434 (N.D. Cal. May 26, 2022), ECF No. 136.
21. *Parker v. Cherne Contracting Corp.*, No. 4:18-cv-01912 (N.D. Cal. Dec. 9, 2021), ECF No. 110.
22. *Ramirez v. Trans Union, LLC*, No. 3:12-cv-00632 (N.D. Cal. Dec. 15, 2022), ECF No. 428.
23. *Rodriguez v. Nike Retail Services, Inc.*, No. 5:14-cv-01508 (N.D. Cal. Jan. 27, 2022), ECF No. 166.
24. *Roe No. 1 and 2 v. Deja Vu Services, Inc.*, No. 3:19-cv-03960 (N.D. Cal. Nov. 29, 2022), ECF No. 130.
25. *Rollins v. Dignity Health*, No. 4:13-cv-01450 (N.D. Cal. Jul. 15, 2022), ECF No. 320.
26. *Samora v. Chase Dennis Emergency Medical Group, Inc.*, No. 5:20-cv-02027 (N.D. Cal. Jul. 29, 2022), ECF No. 83.
27. *Sica v. Construction & Turnaround Services, L.L.C.*, No. 4:21-cv-00188 (N.D. Cal. Jan. 7, 2022), ECF No. 42.
28. *Sica v. Madison Industrial Services Team, Limited Partnership*, No. 4:20-cv-08347 (N.D. Cal. Aug. 10, 2022), ECF No. 47.
29. *Taylor v. The Board of Trustees of the Leland Stanford Junior University*, No. 4:18-cv-05248 (N.D. Cal. Apr. 18, 2022), ECF No. 87.

30. *The Police Retirement System of St. Louis v. Granite Construction Inc.*, No. 3:19-cv-04744 (N.D. Cal. Mar. 17, 2022), ECF No. 303.
31. *Vianu v. AT&T Mobility LLC*, No. 3:19-cv-03602 (N.D. Cal. Nov. 8, 2022), ECF No. 164.
32. *Villatoro v. Walters & Wolf Interiors*, No. 4:20-cv-00609 (N.D. Cal. Mar. 4, 2022), ECF No. 55.
33. *Wilson v. Wholesome Harvest Baking, LLC*, No. 4:20-cv-05186 (N.D. Cal. Sept. 14, 2022), ECF No. 53.

Exhibit G

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

MDL No. 2843
Case No. 18-md-02843-VC

This document relates to:

ALL ACTIONS

**DECLARATION OF BRIAN T.
FITZPATRICK IN SUPPORT OF
PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS' FEES,
EXPENSES, AND SERVICE AWARDS**

Judge: Hon. Vince Chhabria
Courtroom: 4, 17th Floor
Hearing Date: September 7, 2023
Hearing Time: 1:00 p.m.

I. Background and qualifications

1. I am the Milton R. Underwood Chair in Free Enterprise and Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from the University of Notre Dame in 1997 and Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States

Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Exhibit 1. I speak only for myself and not for Vanderbilt.

2. My teaching and research at Vanderbilt have focused on class action litigation. I teach the Civil Procedure, Federal Courts, and Complex Litigation courses. In addition, I have published a number of articles on class action litigation in such journals as the *University of Pennsylvania Law Review*, the *Journal of Empirical Legal Studies*, the *Vanderbilt Law Review*, the *Fordham Law Review*, the *NYU Journal of Law & Business*, and the *University of Arizona Law Review*. My work has been cited by numerous courts, scholars, and media outlets such as the *New York Times*, *USA Today*, and *Wall Street Journal*. I have also been invited to speak at symposia and other events about class action litigation, such as the ABA National Institutes on Class Actions in 2011, 2015, 2016, 2017, 2019, and 2023; and the ABA Annual Meeting in 2012. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. In 2015, I was elected to the membership of the American Law Institute. In 2021, I became the co-editor of *THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY* (with Randall Thomas).

3. In December 2010, I published an article in the *Journal of Empirical Legal Studies* entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811 (2010) (hereinafter “Empirical Study”). This article is still what I believe to be the most comprehensive examination of federal class action settlements and attorneys’ fees that has ever been published. Unlike other studies of class actions, which have been confined to one subject matter or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine *every*

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

¹ *See, e.g., In re Stericycle Sec. Litig.*, 35 F.4th 555, 561 (7th Cir. 2022) (relying on article to assess fees); *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (same); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 2022 WL 4329646, at *5 (D. Mass., Sep. 19, 2022) (same); *de la Cruz v. Manhattan Parking Group*, 2022 WL 3155399, at *4 (S.D.N.Y., Aug. 8, 2022) (same); *Kukorinis v. Walmart*, 2021 WL 8892812, at *4 (S.D.Fla., Sep. 21, 2021) (same); *Kuhn v. Mayo Clinic Jacksonville*, No. 3:19-cv-453-MMH-MCR, 2021 WL 1207878, at *12-13 (M.D. Fla. Mar. 30, 2021) (same); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MD 2262 (NRB), 2020 WL 6891417, at *3 (S.D.N.Y. Nov. 24, 2020) (same); *Shah v. Zimmer Biomet Holdings, Inc.*, No. 3:16-cv-815-PPS-MGG, 2020 WL 5627171, at *10 (N.D. Ind. Sept. 18, 2020) (same); *In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020) (same); *In re Wells Fargo & Co. S'holder Derivative Litig.*, No. 16-cv-05541-JST, 2020 WL 1786159, at *11 (N.D. Cal. Apr. 7, 2020) (same); *Arkansas Teacher Ret. Sys. v. State St. Bank & Trust Co.*, No. CV 11-10230-MLW, 2020 WL 949885, 2020 WL 949885, at *52 (D. Mass. Feb. 27, 2020), *appeal dismissed sub nom. Arkansas Tchr. Ret. Sys. v. State St. Corp.*, No. 20-1365, 2020 WL 5793216 (1st Cir. Sept. 3, 2020) (same); *In re Equifax Inc. 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.*

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 “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

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. 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); *Gehrich 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 Vioxx 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).

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

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

II. Case background

6. The lawsuits giving rise to this settlement were filed over five years ago and then consolidated and transferred here by the Judicial Panel on Multidistrict Litigation. They allege that Facebook committed various torts and state and federal statutory violations by allowing third parties to access the plaintiffs' data without their consent, and by failing to monitor how third parties used the plaintiffs' data after acquisition. The Court mostly denied Facebook's motion to dismiss, and the parties thereafter engaged in years of extremely contentious discovery—so contentious it led to an extraordinary order against Facebook for sanctions—including millions of pages of documents, volumes of structured data, and dozens of depositions. The parties reached a settlement near the end of discovery, and the Court certified a settlement class and preliminarily

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); *Tershakovec 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).

approved the settlement on March 29, 2023. The parties are now seeking final approval and class counsel is seeking a fee award.

7. The settlement class consists of, with minor exceptions, “all Facebook users in the United States” between May 24, 2007, and December 22, 2022. Settlement Agreement ¶¶ 20, 46. Under the settlement, Facebook will pay the settlement class members \$725 million in cash. *See id.* at ¶ 49. After deducting costs for notice and settlement administration, service awards to the class representatives, and any attorneys’ fees and expenses awarded by the Court, the monies will be distributed to settlement class members who file claims pro rata based on the number of months they used Facebook during the class period. *See id.* at ¶¶ 82-85; Plan of Allocation ¶¶ 5. None of the money can revert to Facebook; to the extent money remains (because checks go uncashed), Class Counsel will propose to the Court an equitable method for distributing the remaining funds to Authorized Claimants if economically feasible, and, if not, the Parties will confer and present to the Court a proposal for treatment of the remaining funds. *See* Settlement Agreement ¶ 104; Plan of Allocation ¶¶ 2, 8-9. In exchange for these benefits, settlement class members agree to release Facebook from any and all claims “that were asserted or could have been asserted based on, relating to, or arising out of the identical factual predicate as the allegations in the Action, including but not limited to sharing or otherwise making accessible user data and data about users’ friends with/to third parties (including but not limited to third-party developers, whitelisted parties, business partners, advertisers, and data brokers), and monitoring and enforcement of third parties’ access to and use and/or sharing of user data with other third parties.” Settlement Agreement ¶ 73.

8. Class counsel have now moved the Court for an award of fees of 25% of the settlement fund. In my opinion, this requested percentage is within the range of reason in light of

the empirical and economic research on class actions as applied to the specific facts and circumstances of this case.

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

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

10. At one time, courts that awarded fees in such cases did so using the familiar lodestar approach. *See Fitzpatrick, Class Action Lawyers, supra*, at 2051. Under this approach, courts awarded counsel a fee equal to the number of hours they worked on the case (to the extent the hours were reasonable), multiplied by a reasonable hourly rate as well as by a discretionary multiplier that courts often based on the risk of non-recovery and other factors. *See id.* Over time, however, the lodestar approach fell out of favor, largely for two reasons. First, courts came to dislike the lodestar method because it was difficult to calculate the lodestar; courts had to review and analyze voluminous time records and related materials. Second—and more importantly—courts came to dislike the lodestar method because it did not align the interests of counsel with the interests of their clients—to wit, counsel's recovery did not depend on how much was recovered, but rather on how many hours could be spent on the case. *See id.* at 2051-52. According to my empirical study, the lodestar method is now used to award fees in only a small percentage of class action and derivative cases, usually those involving fee-shifting statutes or those where the relief is injunctive in nature and the value of the injunction cannot be reliably calculated. *See Fitzpatrick, Empirical Study, supra*, at 832 (finding the lodestar method used in only 12% of settlements). The

other large-scale academic studies of fees agree. *See, e.g.,* Theodore Eisenberg et al., *Attorneys’ Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Review 937, 945 (2017) (hereinafter “Eisenberg-Miller 2017”) (finding the lodestar method used only 6.29% of the time from 2009-2013, down from 13.6% from 1993-2002 and 9.6% from 2003-2008).

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

12. In the Ninth Circuit, district courts have the discretion to use either the lodestar method or the percentage method. *See, e.g., In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (en banc) (“No presumption in favor of either the percentage or the lodestar method encumbers the district court’s discretion to choose one of the other.”) In light of the well-recognized disadvantages of the lodestar method and the well-recognized advantages of the percentage method, it is my opinion that courts should generally use the percentage method when enough of the value of the settlement can be reliably calculated. It is my opinion that courts should use the lodestar method only where the value of the settlement cannot be reliably calculated (and the percentage method is therefore not feasible) or a fee-shifting statute requiring the lodestar method is applicable. This is not just my opinion. It is the consensus opinion of class action scholars. *See* American Law Institute, *Principles of the Law of Aggregate Litigation* § 3.13(b) (2010) (“[A] percentage-of-the-fund approach should be the method utilized in most common-

fund cases.”). In this case, the settlement consists of cash, which can be easily valued. Thus, in my opinion, the Court should use the percentage method, and I will proceed under that method here.

13. Under the percentage method, courts must 1) calculate the value of the benefits conferred by the litigation, and then 2) select a percentage of that value to award to counsel. When selecting the percentage, the Ninth Circuit has identified at least eight different factors that district courts can examine in deciding whether a requested percentage is appropriate:

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

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

15. The fee request here is 25%. Although this is a very large settlement, and some courts reduce fee percentages simply for that reason, it is my opinion that this policy is unwise. But even if that policy is entertained, as I explain, the usual justification for the policy—that an otherwise reasonable percentage may yield too great a lodestar multiplier—is inapplicable here. Thus, it is my opinion that the request is reasonable under the Ninth Circuit's factors in light of the empirical studies of class action fees and in light of the research on the economic incentives in class action litigation.

Valuation of the settlement

16. Here, the settlement is easily valued because it consists of \$725 million in cash. All of this money will be paid out. None of it can revert to Facebook. There is an argument that this litigation caused Facebook to alter many of the practices that gave rise to the lawsuit, that the disclosure of previously non-public evidence regarding those practices has served the public (including by leading to a Congressional inquiry), and that class counsel should also be rewarded for the value of public disclosure and for saving class members from data privacy violations in the

future. One way to do this is the way suggested by the American Law Institute above: to value those additional savings and benefits and add them to the cash in the settlement to arrive at a number for the total benefit conferred on the class here by class counsel. However, it is difficult to quantify the value of these additional savings and benefits as well as class counsel's particular contributions to obtaining them. As such, it is my opinion that the behavior-modification and disclosure benefits conferred by class counsel are not sufficiently quantified to include in the denominator of the fee percentage calculation. Rather, if they are to be considered at all, they should be considered as a factor weighing in favor of a higher fee percentage from the cash settlement. Thus, for present purposes, I will assume the settlement's total valuation is the \$725 million in cash.

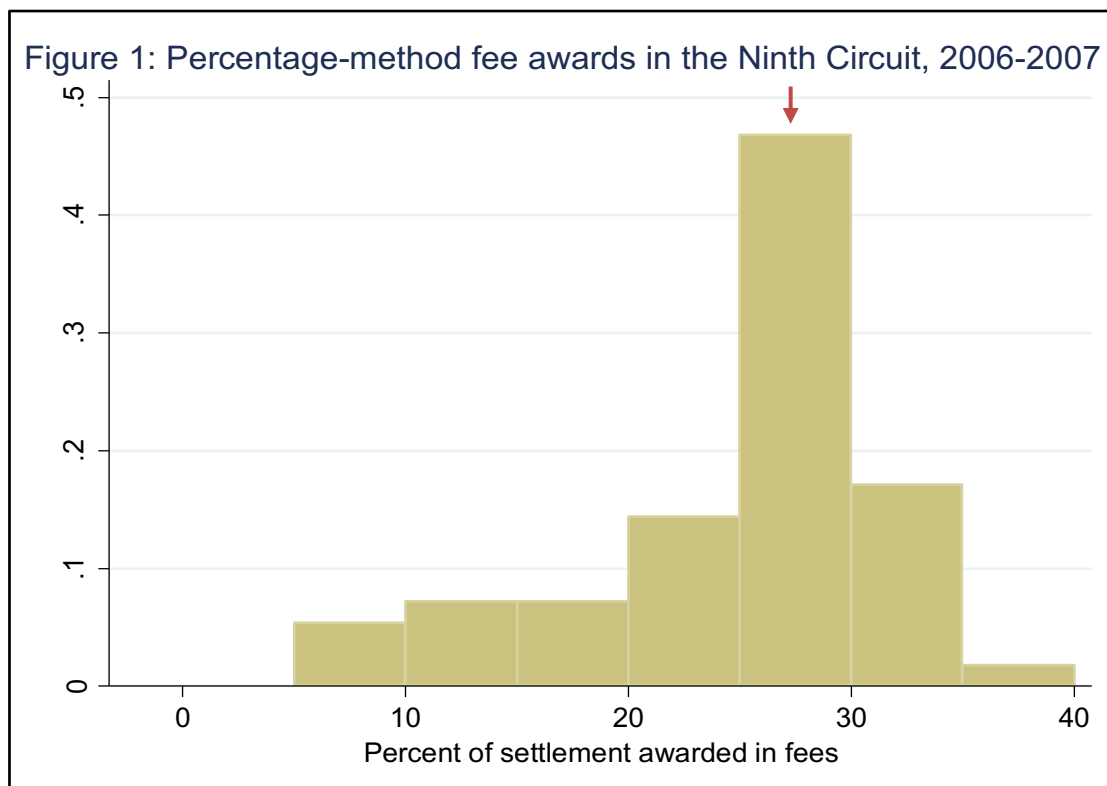
Selecting the percentage

17. Class counsel have requested 25% of the cash fund in fees. As I noted above, it is my opinion that this percentage is justified under the Ninth Circuit's factors in light of the empirical studies of class action fees and in light of the research on the economic incentives in class action litigation.

18. Consider the first factor (1): the awards in other cases. According to my empirical study, the most common percentages awarded by all federal courts using the percentage method were 25%, 30%, and 33%, with nearly two-thirds of awards between 25% and 35%, and with a mean award of 25.4% and a median award of 25%. *See Fitzpatrick, Empirical Study, supra*, at 833-34, 838. The numbers for the 111 settlements in the Ninth Circuit in my study where the percentage method was used were quite similar: the mean was 23.9% and the median 25%. My numbers agree with the other large-scale academic studies of class action fee awards. *See Theodore Eisenberg & Geoffrey P. Miller, Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 260 (2010) (hereinafter "Eisenberg-Miller

2010”) (finding mean and median of 24% and 25% nationwide, and 25% in Ninth Circuit); Eisenberg-Miller 2017, *supra*, at 951 (finding mean and median of 27% and 29% nationwide, and 26% and 25% in the Ninth Circuit). The request here is right in the middle of fee awards nationwide and in the Ninth Circuit.

19. In order to visualize how typical the fee request here is, I graphed the distribution of the Ninth Circuit’s percentage awards from my study in Figure 1, below. The figure shows what fraction of settlements (y-axis) had fee awards within each five-point range of fee percentages (x-axis). The range that includes class counsel’s request is the range between 25% and 30% (the numbers that fall on a border are included in the bar to the right of the border), which I have marked with a red arrow. This range is the most common in the Figure, comprising nearly half of all fee awards. Indeed, some *two-thirds* of fee awards in the Ninth Circuit are *at or above* what class counsel request here.



20. With all of that said, the settlement here is unusually large; very few settlements each year reach \$725 million. This is notable because some courts analyze the “other cases” factor in reference solely to settlements of a similar monetary magnitude. 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 \$500 million and \$1 billion were only 12.9%. *See* Fitzpatrick, *Empirical Study, supra*, at 839. (The Eisenberg-Miller studies do not break settlements down granularly enough to be useful here). The fee request here is considerably above that number. Nonetheless, for several reasons, this does not change my opinion that the request is reasonable in light of the empirical studies of class action fees and in light of the research on economic incentives in class action litigation.

21. First, settlements between \$500 million and \$1 billion are so rare that my empirical study only had two data points in that range. Thus, I am reluctant to put much stock in my own study on this point. Rather, given the paucity of data in my study in this settlement range, I have endeavored, as I explain below, to uncover as much additional data as I could find for the Court on settlements in this range. Based on this additional data, it is my opinion that the fee request here is much closer to the average than the numbers in my study suggest.³ This means that, if one

³ It is also worth noting that the data in my study is approximately 15 years old now, and inflation may have affected the various categories. For example, using the consumer price index to adjust for inflation, a \$725 million settlement today would have been in the \$250 million to \$500 million range in 2007 (\$495 million). The average and median fee percentage in my study in that range were 17.8% and 19.5%, respectively. *See* Fitzpatrick, *Empirical Study, supra*, at 839. These numbers are more consistent with those I discuss in the balance of this paragraph.

considers only similarly sized settlements when analyzing this factor, the fee request here is somewhat above average, but much less so than first meets the eye:

- My fellow expert, Harvard Professor Bill Rubenstein, has a proprietary class action fee dataset that he discusses in the famous Newberg treatise. Although he does not say how many data points he has in the \$500 million to \$1 billion range, the average percentage he finds in that range appears to be around 16%. *See* William Rubenstein, 5 Newberg on Class Actions § 15.81 (5th ed. 2015) (graph 2).
- There are very good empirical studies of securities class action settlements published every year by NERA Economic Consulting. Although these studies include only securities cases, and this is not a securities case—something I address below—securities cases comprise a plurality of federal class action settlements, *see* Fitzpatrick, *Empirical Study*, *supra*, at 818, and therefore represent the largest potential pool of fee data. Thus, they are worth considering. In its most recent study, NERA reports that the median fee percentage awarded over the last ten years in securities settlements between \$500 million and \$1 billion is consistent with what Professor Rubenstein found: 17%. *See Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review*, at p. 21 (fig. 22), available at <https://www.nera.com/publications/archive/2023/recent-trends-in-securities-class-action-litigation--2022-full-.html>.
- Third, I spent many hours attempting to identify all non-securities class action settlements in the \$500 million to \$1 billion range that have been approved by federal courts since the period covered by my study (2006-2007). I put the

settlements I found in Table 1, below. To compile the Table, I examined 1) research I had done for previous expert reports, 2) class action settlement notices from the U.S. Department of Justice under the Class Action Fairness Act, *see* 28 U.S.C. § 1715(b), which I have been studying for several years, and 3) searches in the federal court and news databases on Westlaw. I excluded non-cash components (because it is often difficult to quantify them reliably, as noted above), claims-made settlements (because the face valuations of these settlements often do not reflect a reliable denominator), and settlements that were combined with other settlements for fee purposes if the combination sum exceeded \$1 billion (however, I did include the converse: smaller settlements that were combined for fee purposes if the combination fell into the \$500 million to \$1 billion range). This was an inexact science, so I cannot claim that I found every settlement. Nonetheless, this list is not cherry-picked; I excluded no settlement I found except for the reasons I just described. As the Table shows, there have been 10 non-securities settlements falling in the \$500 million to \$1 billion range since 2008. All the courts used the percentage method to award fees, and the mean and median fee percentages were over 20%.

Table 1: Federal non-securities cash common fund class action settlements between \$500 million (inclusive) and \$1 billion, 2008 to present (including smaller settlements combined for fee purposes)

Case	Settlement Amount	Lodestar Multiplier	Fee Percentage
Native American Contract (2016) ⁴	\$940 million	Not calculated	8.5%
Urethane Antitrust (2016) ⁵	\$835 million	3.2	33.3%

⁴ *Ramah Navajo Chapter v. Jewell*, No. 90-CV-957, at pp. 35-46 (D.N.M. Feb. 23, 2016).

⁵ *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *7 (D. Kan. July 29, 2016).

Case	Settlement Amount	Lodestar Multiplier	Fee Percentage
Native American Discrimination (2011) ⁶	\$760 million	Not calculated	8%
Toyota Unintended Acceleration (2013) ⁷	\$757 million	2.9	26.4%
Namenda Antitrust (2020) ⁸	\$750 million	2.0	9.3%
Facebook Biometric (2021) ⁹	\$650 million	4.7	15%
Monsanto PCBs (2022) ¹⁰	\$629 million	1.24	14.6%
Private Equity Antitrust (2015) ¹¹	\$590 million	Not calculated	33%
CRT Antitrust (2016) ¹²	\$576 million	1.96	27.5%
Provigil Antitrust (2015) ¹³	\$512 million	4.12	27.5%
		Mean = 2.87 Median = 2.90	Mean = 20.3% Median = 20.7%

- Finally, it should be noted that there is only one settlement in Table 1 that falls into the data privacy category—the Facebook Biometric settlement—and the

⁶ *Keepseagle v. Vilsack*, No. 99–cv-3119 (D.D.C. Apr. 28, 2011).

⁷ *In re Toyota Motor. Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liab. Litig.*, No. 10–ml-2151 (C.D. Cal., June 17, 2013). The non-reversionary, cash portion of the settlement consisted of \$500 million to the class, \$200 million in attorneys’ fees, \$27 million in litigation expenses, and \$30 million in research and education spending.

⁸ *In re Namenda Direct Purchaser Antitrust Litig.*, 2020 WL 3170586, at *6 (S.D.N.Y. June 15, 2020).

⁹ *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 632–33 (N.D. Cal. 2021), *aff’d* 2022 WL 822923 (9th Cir. Mar. 17, 2022).

¹⁰ *City of Long Beach v. Monsanto*, No. 16–cv-03493, at pp. 23–27 (C.D. Cal. Nov. 19, 2022).

¹¹ *Dahl v. Bain Capital Partners, LLC*, No. 07–cv-12388 (D. Mass. Feb. 2, 2015).

¹² *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. 1917, 2016 WL 4126533, at *10 (N.D. Cal. Aug. 3, 2016).

¹³ *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, 2015 WL 12843830, at *6 (E.D. Pa. Oct. 15, 2015).

percentage awarded in that case was a bit lower than most of the others. In my opinion, it would be inaccurate to draw from this one data point the conclusion that fee percentages are systematically lower in data privacy cases. I was an expert in that case as well, and, as the lodestar multiplier in Table 1 shows, the lawyers there did not work as many hours to secure the settlement as the lawyers here have had to. Further, the lawyers there requested a low fee percentage, perhaps on account of the higher multiplier in that case.

22. I am unaware of any studies of fee percentages in data privacy class actions, and, in order to provide the Court with figures in data privacy cases in particular, I used the same techniques used to produce Table 1 to gather all fee awards in so-called “mega-fund” data privacy class actions settlements (those of \$100 million or more). I put these settlements in Table 2, below. All of the courts used the percentage method, and, again, the average and median were above 20%. This is higher than the averages and medians I found in my study for mega-fund settlements of any subject matter, which were between 16% and 18% depending on the settlement band. *See Fitzpatrick, Empirical Study, supra*, at 839. Thus, I have no reason to believe that data privacy cases are in any way disfavored by courts compared to other class action cases. For all these reasons, it is my opinion that the fee request here is therefore only modestly above the typical fee award for a settlement of this size.

Table 2: Federal data privacy class action settlements, \$100+ million

Case	Settlement Amount	Lodestar Multiplier	Fee Percentage
Facebook Biometric (2021) ¹⁴	\$650 million	4.7	15%

¹⁴ *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 632-33 (N.D. Cal. 2021), *aff'd* 2022 WL 822923 (9th Cir. Mar. 17, 2022).

Case	Settlement Amount	Lodestar Multiplier	Fee Percentage
Equifax Data Breach (2020) ¹⁵	\$380 million	2.62	20.4%
Capital One Data Breach (2022) ¹⁶	\$190 million	1.39	28%
Yahoo Data Breach (2020) ¹⁷	\$117 million	1.15	19.4%
Anthem Data Breach (2020) ¹⁸	\$115 million	1.0	27%
		Mean = 2.17 Median = 1.39	Mean = 22% Median = 20.4%

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

¹⁵ *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800, at pp. 5, 11, 104 (N.D. Ga. Mar. 17, 2020).

¹⁶ *In re Capital One Consumer Data Sec. Breach Litig.*, No. 19-md-02915-AJT-JFA, 2022 WL 17176495 (E.D. Va. Nov. 17, 2022).

¹⁷ *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-md-2752, at pp. 19, 72-73 (N.D. Cal. July 22, 2020).

¹⁸ *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, at pp. 8, 53 (N.D. Cal. Aug. 16, 2018).

24. Third, when, as here, courts are not required to assess this factor in reference only to similarly-sized settlements, it is my opinion that courts should not exercise their discretion to do so. The reason is the one I indicated above: it creates poor incentives for class counsel. *See, e.g., In re Cendant Corp. Litigation*, 264 F.3d 201, 284 n. 55 (3d Cir. 2001) (“Th[e] position [that the percentage of a recovery devoted to attorneys’ fees should decrease as the size of the overall settlement or recovery increases] . . . has been criticized by respected courts and commentators, who contend that such a fee scale often gives counsel an incentive to settle cases too early and too cheaply.” (alteration in original)); *Allapattah Servs. Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1213 (S.D. Fla. 2006) (“By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for Class Counsel to settle too early for too little”); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011) (quoting *Allapattah*). As one court in this Circuit put it, “[t]he Court . . . agrees with . . . other courts . . . which have found that decreasing a fee percentage based only on the size of the fund would provide a perverse disincentive to counsel to maximize recovery for the class.” *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, No. 10-ml-02151, at 17 n.16 (C.D. Cal., Jun. 17, 2013)). Consider the following example: if courts award attorneys 18% of settlements if they are under \$500 million but only 13% of settlements if they are over \$500 million (the averages in these ranges from my study), then rational attorneys will prefer to settle cases for \$450 million (*i.e.*, an \$81 million fee award) rather than \$600 million (*i.e.*, a \$78 million fee award). Such incentives are obviously perverse. Indeed, cutting fee percentages when lawyers recover more money has been deemed so irrational—at least when not done only on the margin (*e.g.*, for the *portion* above \$500 million)—that it has been banned in at least one circuit on the ground that “[p]rivate parties would never

contract for such an arrangement” See *In re Synthroid I*, 264 F.3d 712, 718 (7th Cir. 2001). This is why studies of sophisticated corporate clients do not report any such practice among them when they hire lawyers on a contingent fee basis, even in cases with the biggest financial stakes like patent litigation. See, e.g., David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 Ala. L. Rev. 335, 360 (2012) (finding that corporations either agree to flat rates of, on average, 38.6% or graduated rates that start, on average, at 28% and accelerate, on average, to 40.2%); Fitzpatrick, *Fiduciary Judge*, *supra*, at 1159-63. If class members would never contract for such an arrangement on their own, why should courts force it upon them in class actions? Given that courts are supposed to act as “fiduciaries” for absent class members, the answer is clear: they should not. See, e.g., Fitzpatrick, *Fiduciary Judge*, *supra*, at 1154-55; FITZPATRICK, THE CONSERVATIVE CASE FOR CLASS ACTIONS 93-95.

25. Finally, it bears noting that, no matter what the average might be for settlements of this size, there is a large range around the mean: the standard deviations in my study ranged from 5.2% to 11% depending on the settlement band, and the standard deviations in Tables 1 and 2 are 10.2% and 5.4%, respectively. This means that fee awards can be found much higher (and lower) than average in every settlement band, including, as Table 1 shows, in the \$500 million to \$1 billion band. The reason for this is that the awarded percentages in other cases is only one of several factors that courts consider when they award fees.¹⁹ Thus, even if one looks only to settlements of a similar size to analyze this factor, courts are not hesitant to award an above-average fee percentage if the other factors point in that direction. Consider, for example, that class counsel’s lodestar, which as I noted above and discuss below, is sometimes crosschecked against

¹⁹ Another reason is that the requested fee percentage often influences the fee award, and judges generally do not award higher fees than counsel has requested. Thus, the fact that counsel requested and received an average (or below-average) percentage in the specific circumstances of one case does not make a higher award in a different case unreasonable.

the requested fee percentage. The lodestar crosscheck is the most common reason why some courts decrease fee percentages in larger settlements: they want to prevent class counsel from collecting a so-called “windfall”—i.e., undue compensation per hour of work. But as Table 1 shows and as I discuss below, the fee requested here would yield a much smaller lodestar multiplier than is typical in a case of this size. Indeed, there are only two settlements in Table 1 that yielded a lower multiplier than what is proposed here. The reason for this is not a secret: nothing in this case came easy to class counsel; Facebook fought tooth and nail—and then some. Thus, granting this fee request would not result in any sort of “windfall” here, and the usual justification for cutting the percentage in a big case is therefore inapposite. Indeed, as I explain below, it is my opinion that *all* the other factors point in favor of granting class counsel’s fee request. In other words, properly considered, this factor supports class counsel’s fee request; but, even if only similarly-sized settlements are included in the analysis—this factor is outweighed by the others.

26. Consider next factors (2), (3), and (4): the results achieved by counsel compared to the risks and complexities counsel faced. These factors reward or punish class counsel based on what they accomplished for the class: did they over or underperform with the hand they were dealt? To a large extent, the percentage method is supposed to address this by automatically rewarding class counsel if they recover more for the class, but the percentage method does not perfectly incentivize class counsel, *see* Fitzpatrick, *Fiduciary Judge*, *supra*, at 1154-55; FITZPATRICK, *THE CONSERVATIVE CASE FOR CLASS ACTIONS* 93-95, so it is good to double check class counsel’s performance with these factors. In their preliminary approval motion, class counsel analyzed these factors in more detail than I have seen before in other such motions. Without attempting to improve upon their analysis, I will summarize the situation as I see it. It is true, in theory, that the class might have recovered billions and billions of dollars in this case; but, given that the most

easily quantifiable damages—statutory damages—would likely have been reduced far below such numbers due to constitutional concerns, and the other possible damages are sufficiently difficult to quantify that the class might have been left with only nominal damages even if it prevailed on liability, it is easy for me to conclude that \$725 million is more than fair value for the class’s claims. This is especially true given the litigation risks present here, including certifying a class for litigation purposes and the absence of evidence regarding how individual class members’ data was disclosed. Indeed, there is no better indication of the considerable risk class counsel faced than the fact that Facebook defeated a case on summary judgment in the District of Columbia raising a claim based on a very similar theory as the one pursued here; thus, there was a very real possibility the class here could have ended up with absolutely nothing. Although I do not have data on how much of the class’s theoretical damages have been recovered in other data privacy class actions, in my opinion the recovery here compares favorably to the typical settlements in areas where I do have data, antitrust and securities fraud. *See, e.g.,* Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review, at p. 18 (fig. 19), available at <https://www.nera.com/publications/archive/2023/recent-trends-in-securities-class--action-litigation--2022-full-.html> (finding that the median securities fraud class action between 2013 and 2022 settled for between 1.5% and 2.5% 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). The only thing that gives me any pause about concluding that these factors weigh fully in favor of the fee request is the fact that the government has been pursuing Facebook for much of the same misconduct this lawsuit sought to remedy through various

investigations. On the other hand, the government did not have to surmount all of the litigation hurdles class counsel would have had to surmount here. Further, it is unclear whether and to what extent the government's continuing investigations may have benefitted by events in this lawsuit, particularly given Facebook's arguments that these investigations were unrelated to this case. Thus, it is possible that class counsel's efforts enabled the government to more effectively pursue Facebook in certain respects. Moreover, even though the Federal Trade Commission has recovered a substantial amount of money from Facebook in connection with one of these investigations, none of it will be distributed to the victims of the misconduct. If we want any compensation to be paid directly to settlement class members here, we need the private bar to deliver it. The way to incentivize the private bar to deliver it is to give them a worthwhile percentage of a good recovery. In my opinion, this is a good recovery in light of the risks faced by class counsel, and these factors therefore support the fee request.

27. Consider next factor (5): the length the litigation has transpired. This factor is important because the longer class counsel must wait to get paid for their work, the lower their "effective" fee becomes. This is the "time value of money": a dollar today is worth more today than a dollar several years from now. This case is already five years old, and, largely because of Facebook's scorched-earth tactics, the parties had not even reached class certification or summary judgment by the time the settlement was finalized. It is therefore no surprise that this case has already lasted much longer than the typical class action does before it reaches final approval. *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 factor therefore supports awarding class counsel a higher-than-typical percentage: a 25% fee award in a case that lasts five years is worth less than

a 25% fee award in a case that lasts three years, everything else held constant. As such, this factor supports the fee request.

28. Consider next factor (6): the non-monetary benefits conferred by the litigation. As I noted above, there is an argument that this litigation changed conduct by causing Facebook to alter many of the practices that gave rise to the lawsuit and added value through public disclosure of new evidence regarding those practices, which has already led to a Congressional inquiry. The purpose behind this factor is to ensure that class counsel is compensated for securing non-monetary benefits that cannot be valued and included in the denominator of the percentage method by, for example, increasing the percentage class counsel is awarded from the cash portion of a settlement. This is what I referenced above when I said that there are other ways to give class counsel due credit for any behavioral changes they induced. It should be noted that only a minority of class action settlements include such non-monetary benefits. *See Fitzpatrick, Empirical Study, supra*, at 824 (finding only 25% of settlements with such relief). Thus, if the Court deems class counsel responsible for some of Facebook's changes or for some of the additional effects of the disclosure of information class counsel obtained through discovery, this would be yet another way in which class counsel's performance would be better than in the typical case and thereby justify a better than typical fee percentage.

29. Consider next factor (7): the percentages in standard contingency-fee agreements in similar individual cases. It is well known that standard contingency-fee percentages in individual litigation are one-third or greater. *See, e.g., Fitzpatrick, Fiduciary Judge, supra*, at 1159-63 (canvassing the empirical studies). This is true even among sophisticated clients, and, as far as I can tell, it is true even in big cases like this one. *See, e.g., Schwartz, supra*, at 360 (finding that corporations in patent cases either agree to flat rates of, on average, 38.6% or graduated rates

that start, on average, at 28% and accelerate, on average, to 40.2%); Fitzpatrick, *Fiduciary Judge*, *supra*, at 1159-63. The fee request here is well below such numbers. Thus, this factor also supports the fee request.

30. Finally, consider factor (8): counsel's lodestar. As I noted above, this factor—known as the “lodestar crosscheck”—is designed to prevent class counsel from collecting a so-called “windfall.” It is important to note that the crosscheck is not required in the Ninth Circuit. *See, e.g., Farrell v. Bank of Am. Corp., N.A.*, 827 F. App'x 628, 630 (9th Cir. 2020) (“This Court has consistently refused to adopt a crosscheck requirement, and we do so once more.”). Moreover, only a minority of courts nationwide perform the crosscheck with the percentage method. *See* Fitzpatrick, *supra*, at 833 (finding that only 49% of courts consider lodestar when awarding fees with the percentage method); *Eisenberg-Miller 2017*, *supra*, at 945 (finding percent method with lodestar crosscheck used 38% of the time versus 54% for percent method without lodestar crosscheck). In my opinion, the majority approach is the better one. As I have explained, courts that entertain the lodestar crosscheck do not create good incentives for lawyers. *See, e.g.,* Fitzpatrick, *Fiduciary Judge*, *supra*, at 1167.

31. Nonetheless, class counsel have reported their lodestar, and, in case the Court wishes to try to perform a crosscheck, I note that class counsel's lodestar confirms that their fee request is reasonable. Class counsel have reported a lodestar of approximately \$91.2 million, which would result in a lodestar multiplier of approximately 1.99 if the Court grants their fee request. This multiplier is modest, and the wait for fees has been so long that, as I noted above, there is no basis to think that anything like a “windfall” could result here. For example, this multiplier would be very close to the typical multiplier in even run-of-the-mill cases. *See* Fitzpatrick, *Empirical Study*, *supra*, at 834 (finding mean and median lodestar multipliers in cases

using the percentage method with the lodestar crosscheck were 1.65 and 1.34, respectively); *Eisenberg-Miller 2010, supra*, at 273 (finding mean multiplier of 1.81 for cases between 1993 and 2008); *Eisenberg-Miller 2017, supra*, at 965 (finding mean multiplier of 1.48 for cases between 2009 and 2013). But, more importantly, it would be a fraction of the lodestar multipliers that are typical in complex cases with large recoveries like the settlement here. Although they lump all big settlements together—including multi-billion-dollar ones—the best data we have on this point is from one of the Eisenberg-Miller studies. *See Eisenberg-Miller 2010, supra*, at 274 (finding mean and median multipliers of 3.18 and 2.60, respectively, for recoveries above \$175.5 million). Further, if there were any doubt, just look at Table 1: the typical lodestar multiplier in non-securities settlements between \$500 million and \$1 billion since 2008 is *almost 50% higher* than what would result here. Thus, this factor, too, strongly supports the fee request.

32. 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.

33. My compensation in this matter was a flat fee agreed to before I commenced any work on this matter and is in no way dependent on the outcome of class counsel's fee petition.

Nashville, TN

June 20, 2023

A handwritten signature in black ink, appearing to read "Brian T. Fitzpatrick", with a long horizontal flourish extending to the right.

Brian T. Fitzpatrick

EXHIBIT 1



Brian T. Fitzpatrick

Milton R. Underwood Chair in Free Enterprise

Brian Fitzpatrick's research at Vanderbilt focuses on class action litigation, federal courts, judicial selection and constitutional law. Professor Fitzpatrick joined Vanderbilt's law faculty in 2007 after serving as the John M. Olin Fellow at New York University School of Law. He graduated first in his class from Harvard Law School and went on to clerk for Judge Diarmuid O'Scannlain on the U.S. Court of Appeals for the Ninth Circuit and Justice Antonin Scalia on the U.S. Supreme Court. After his clerkships, Professor Fitzpatrick practiced commercial and appellate litigation for several years at Sidley Austin in Washington, D.C., and served as Special Counsel for Supreme Court Nominations to U.S. Senator John Cornyn. Before earning his law degree, Fitzpatrick graduated summa cum laude with a bachelor's of science in chemical engineering from the University of Notre Dame. He has received the Hall-Hartman Outstanding Professor Award, which recognizes excellence in classroom teaching, for his Civil Procedure course.

Research Interests

Class actions, civil procedure, federal courts, judicial selection, the U.S. Supreme Court, constitutional law

Courses

- Civil Procedure (6010) (/courses/34)
- Complex Litigation (7073) (/courses/50)
- Decentralized versus Centralized Lawmaking Seminar (9052) (/courses/438)
- Federal Courts and the Federal System (7198) (/courses/116)
- Textualism and Originalism Seminar (9150) (/courses/490)

Representative Publications

- *The Conservative Case for Class Actions*, University of Chicago Press (2019)
Full Text | WWW (<https://www.briantfitzpatrick.com/>)

- "Do Class Actions Deter Misconduct?" in *The Class Action Effect: From the Legislator's Imagination to Today's Uses and Practices*, Éditions Yvon Blais, Montreal (2018) (Catherine Piché, editor)
Full Text | SSRN (<https://ssrn.com/abstract=3020282>)
- "The Ideological Consequences of Judicial Selection," 70 *Vanderbilt Law Review* 1729 (2017)
Full Text | SSRN (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2722662) | WWW (<https://wp0.vanderbilt.edu/lawreview/2017/11/the-ideological-consequences-of-selection-a-nationwide-study-of-the-methods-of-selecting-judges/>)
- "An Empirical Look at Compensation in Consumer Class Actions" 11 *New York University Journal of Law and Business* 767 (2015) (with Robert C. Gilbert)
Full Text | SSRN (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2577775)
- "The End of Class Actions?" 57 *Arizona Law Review* 161 (2015)
Full Text | SSRN (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2576304) | HEIN (<http://www.heinonline.org/HOL/Page?handle=hein.journals/arz57&id=161>)
- "The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure," 98 *Virginia Law Review* 839 (2012)
Full Text | SSRN (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2091684) | HEIN (http://www.heinonline.org.proxy.library.vanderbilt.edu/HOL/Page?handle=hein.journals/valr98&div=25&collection=journals&set_as_cursor=0&men_tab=srchresults)
- "Twombly and Iqbal Reconsidered," 87 *Notre Dame Law Review* 1621 (2012)
Full Text | SSRN (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2091622) | HEIN (http://www.heinonline.org.proxy.library.vanderbilt.edu/HOL/Page?handle=hein.journals/tndl87&div=41&collection=journals&set_as_cursor=0&men_tab=srchresults)
- "An Empirical Study of Class Action Settlements and Their Fee Awards," 7 *Journal of Empirical Legal Studies* 811 (2010)
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EXHIBIT 2

Journal of Empirical Legal Studies

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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

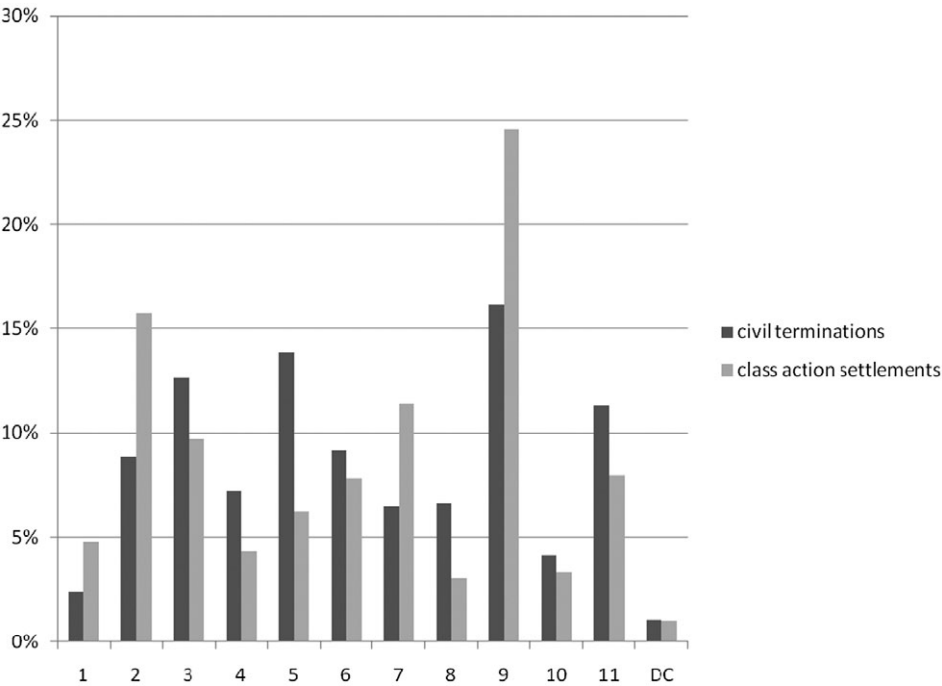
⁴³See Eisenberg & Miller, *supra* note 15, at 59–60.

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.



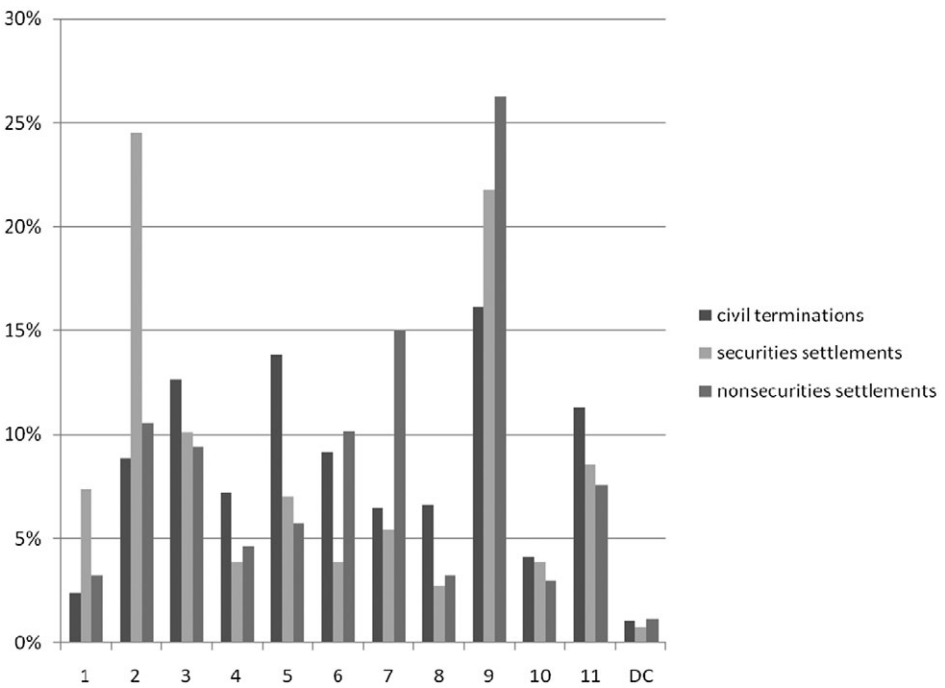
SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <<http://www.uscourts.gov/stats/index.html>>).

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

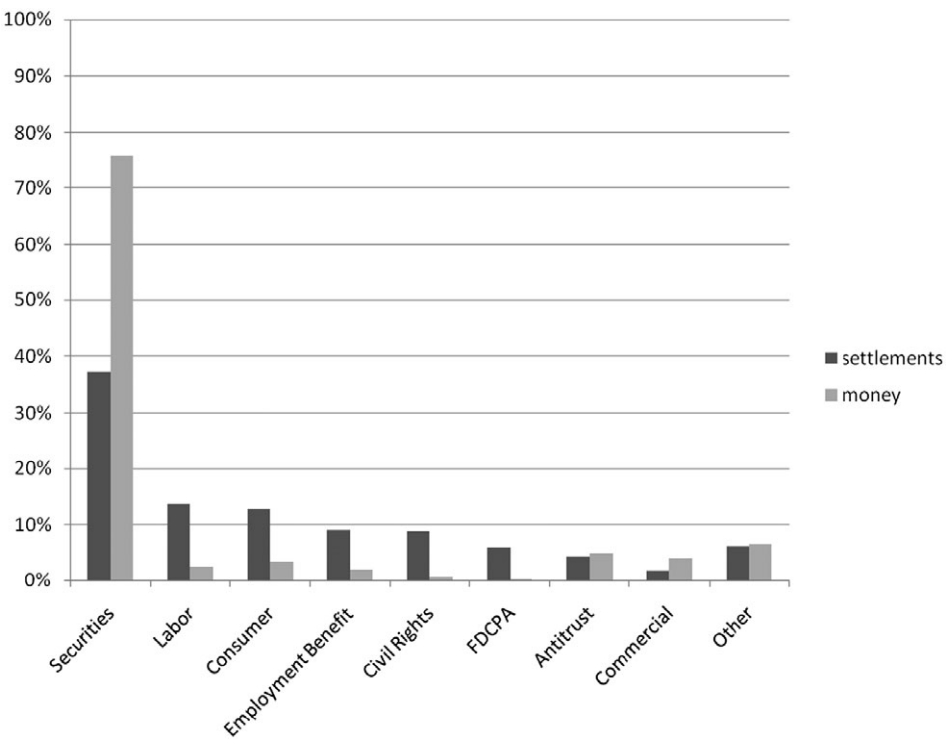
⁵²For example, I excluded awards of a fixed amount of money to each class member who eventually filed a valid claim (as opposed to settlements that awarded a pro rata amount of a fixed settlement to each class member) if the total amount of money set aside to pay the claims was not set forth in the settlement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

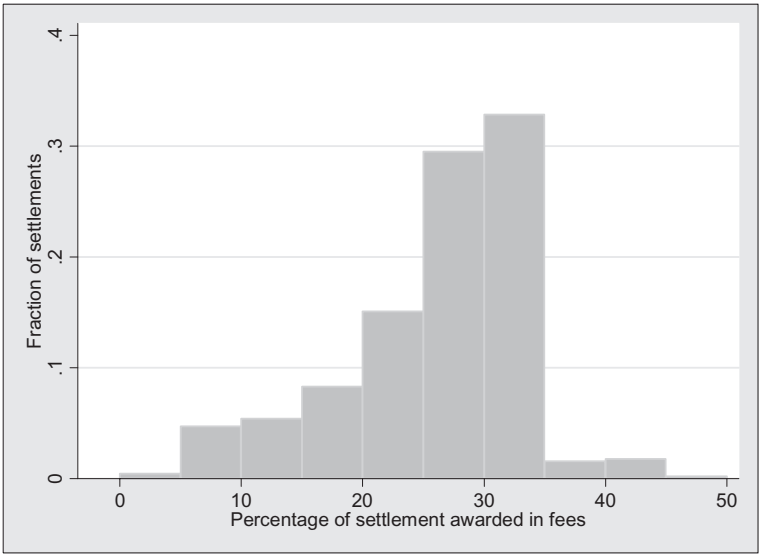
⁷⁶See, e.g., *In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001).

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

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

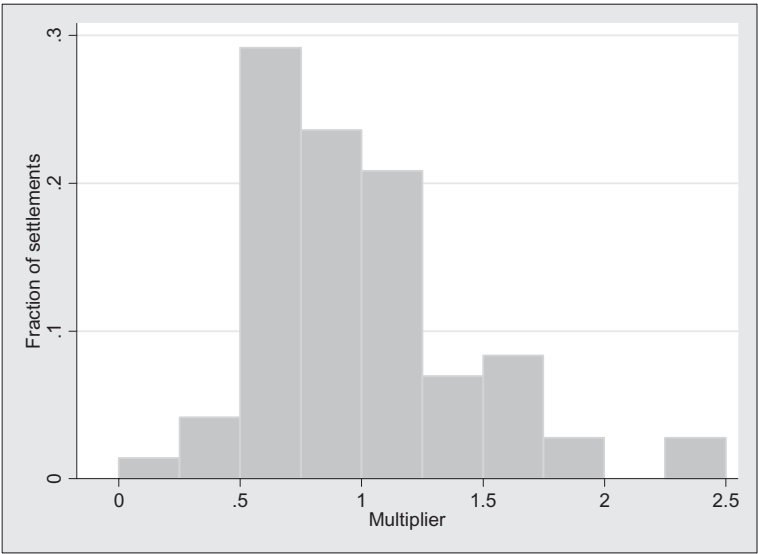
SOURCES: Westlaw, PACER, district court clerks’ offices.

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.



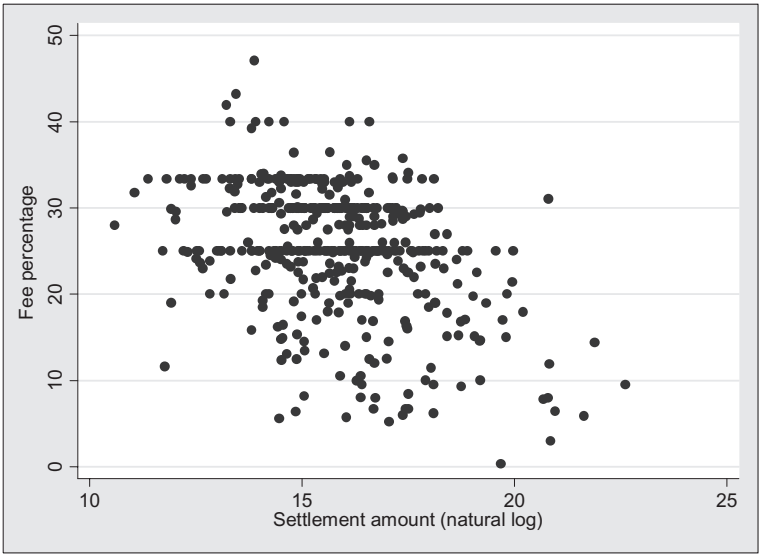
SOURCES: Westlaw, PACER, district court clerks’ offices.

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.

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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.

EXHIBIT 3

Documents reviewed:

- Pretrial Order No. 20: Granting in Part and Denying in Part Motion to Dismiss First Amended Complaint (ECF No. 298, filed 9/9/19)
- Declaration of Steven Elia in Support of Settlement (ECF No. 1094, filed 12/22/22)
- Declaration of Elizabeth Dunphy in Support of Settlement (ECF No. 1095, filed 12/22/22)
- Plaintiffs' Notice of Motion and Motion to Certify a Settlement Class and Grant Preliminary Settlement Approval (ECF No. 1096, filed 12/22/22)
- Declaration of Derek W. Loeser and Lesley E. Weaver in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement Pursuant to Federal Rule of Civil Procedure 23(e)(1) (ECF No. 1096-1, filed 12/22/22)
- Class Action Settlement Agreement and Release ("Settlement Agreement") (ECF No. 1096-2, filed 12/22/22)
- Plan of Allocation (ECF No. 1096-3, filed 12/22/22)
- Declaration of Jay C. Gandhi in Support of Plaintiffs' Motion for Preliminary Approval of Proposed Class Action Settlement (ECF No. 1096-4, filed 12/22/22)
- Declaration of Lynn A. Baker in Support of Plaintiffs' Motion for Preliminary Approval of Proposed Class Action Settlement Pursuant to Federal Rule of Civil Procedure 23(e)(1) (ECF No. 1096-5, filed 12/22/22)
- Defendant's Statement in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement (ECF No. 1097, filed 1/18/23)
- Order Granting in Part Plaintiffs' Motion for Sanctions (ECF No. 1104, filed 2/9/23)

- Order Certifying Settlement Class; Granting Preliminary Approval of Class Action Settlement Pursuant to Federal Rule of Civil Procedure 23(e)(1); and Approving Form and Content of Class Notice (ECF No. 1130, filed 3/29/23)
- Order granting Facebook, Inc.'s Motion for Summary Judgment, No. 2018-CA-008715-B (Sup. Ct. D. C.) (filed 6/1/23)

Exhibit H

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,	)	
	)	
Plaintiff,	)	Civil Action No. 2018-CA-008715-B
	)	Judge Maurice A. Ross
v.	)	
	)	
FACEBOOK, INC.,	)	
	)	
Defendant.	)	

ORDER GRANTING FACEBOOK, INC.’S MOTION FOR SUMMARY JUDGMENT

Introduction

On December 19, 2018, the District of Columbia filed a one-count Complaint against Facebook, Inc. based upon alleged misrepresentations regarding protections of user data. The District specifically points to Facebook’s alleged lax oversight and enforcement of third-party applications as violations of the District of Columbia Consumer Protection Procedures Act (“CPPA”). D.C. Code §§ 28-3901, *et seq.* On May 17, 2022, Facebook, Inc. filed a Motion for Summary Judgment. After extensive briefing by the parties, a Motion Hearing was held before the Court on March 21, 2023. The matter is now ripe for resolution.

Background

Launched in 2004, Facebook is a social networking service that operates a website (Facebook.com) and companion mobile applications (“application” and “app” are terms used interchangeably). Facebook boasts roughly two billion active users. The main utility of the service is to allow users to connect and communicate with other users. Facebook users can add other users as “friends,” follow or like pages, create or join groups, and interact with third-party applications. When joining Facebook, users expressly agreed to the Statement of Rights and

Responsibilities (“SRR”), now known as the Terms of Service, and the Data Use Policy which set out the policies. These policies described the Facebook platform and informed users of how their information is shared. Users were able to change their settings to determine what information and data of their profile could be shared.

Third-Party Applications and Friend-Sharing

During the relevant time period, users could install third-party applications on Facebook. These third-party applications created additional user experiences on Facebook, such as games, news, music services, birthday reminders, and pop culture and personality quizzes. These third-party applications had various terms of service that dictated what information was shared from Facebook to the third-party application. For example, if a user played a word-search game, that game application may ask for access to the user’s friend list so that users could play the game with their friends. This information sharing would only be allowed if the user’s settings allowed for it and the user accepted the various terms of service of the application.¹

Integration Partnerships

Facebook also utilized “integration partnerships” until roughly December 2018. Facebook SUMF 268. Integration partnerships allowed device manufacturers and operating systems to create apps which replicated Facebook or the Facebook experience on users’ devices. Facebook SUMF 245-258. For example, an integration partnership with BlackBerry allowed BlackBerry to make a Facebook application. *Id.* Notably, Android and iOS had not yet become the predominant method of accessing internet and applications. Facebook SUMF 248. Instead, integration partnerships with companies such as Apple, Amazon, Blackberry, and Yahoo were

¹ During a portion of this time, November 2018 through April 2018, the practice of friend-sharing was active. Friend-sharing allowed users to share certain information about their friends if both the user’s and the friends’ settings allowed for it. For example, sharing a user’s friend list with a game as stated above.

used to build Facebook apps or platforms for each specific device, which was the norm at the time. Facebook SUMF 248-250. Users had to opt into these integration partnerships affirmatively by granting permission, for example by downloading the app and agreeing to the terms. Facebook SUMF 253, 261.

Enforcement Program

The enforcement program was a tool outlined by Facebook which included monitoring for potential violations of Facebook's policies, confirmation that a violation occurred, a determination of the appropriate enforcement action in response to a violation, and execution of the determined enforcement action. Facebook SUMF 270. Facebook used a range of measures to monitor third-party apps and ensure compliance, including both manual review and automated review. Facebook SUMF 272-273. Automated review utilized a variety of programs that attempted to detect any kind of signals that would warrant human review, such as rapid app growth, app seeking obviously unnecessary information, users deleting content by the app poster to their timelines, a high number of app uninstalls, and a high call volume. Facebook SUMF 288-289. Once a policy violation had been discovered, Facebook could take a range of enforcement actions, including suspension of apps and developers. Facebook SUMF 274.

Aleksandr Kogan and Cambridge Analytica

In November 2013, Aleksandr Kogan created a personality quiz app which supported friend-sharing. Facebook SUMF 361. Kogan obtained data from approximately 300,000 users who installed this app, as well as data from those users' friends in instances where the user gave permission and the friends' privacy settings allowed it. Facebook SUMF 356-360, 378-385. Kogan sold some of this data to political advertising firm Cambridge Analytica. *Id.* Facebook became aware of this incident after an article was published in December 2015. Facebook SUMF

356-360, 378-385. In response, Facebook removed Kogan's app, demanded Kogan delete the user data in his possession, and began an investigation. Both Kogan and Cambridge Analytica provided written certifications that all of the data had been accounted for and destroyed. Facebook SUMF 387-391. In March 2018, Facebook learned from media inquiries that Cambridge Analytica may not have destroyed the data and may have used it for political advertising, contrary to its prior representations. Facebook SUMF 392. In response, Facebook banned Cambridge Analytica and initiated an investigation. Facebook SUMF 393-394. Also, Facebook notified users who may have been affected beginning on April 9, 2018. Facebook SUMF 397-404. The notice was in the form of a dialog box upon logging into the platform. There were three potential messages presented to the user, depending on whether that user had been impacted. *Id.*

Legal Action

In December 2018, the District brought a one-count Complaint against Facebook alleging violations of the CPPA by making misleading representations, misleading omissions, and misleading ambiguous statements. The core theory of the District's case revolved around how user information could be shared with third-party apps. The District contends that Facebook failed to honor its promise to protect user data, instead exerting lax oversight and enforcement of third-party applications. Specifically, the misleading disclosures fell into five categories: (1) friend-sharing, (2) integration partnerships, (3) enforcement, (4) privacy settings, and (5) data-misuse disclosures, specifically involving Cambridge Analytica.

On May 17, 2022, Facebook, Inc. filed a Motion for Summary Judgment. Facebook's theory of the case is that after years of discovery, the District has failed to produce any evidence of what exactly misled consumers. Facebook points to three other cases where the Court has

considered, and rejected, this very theory challenging Facebook’s disclosures.² Facebook further asserts that the District has failed to produce any evidence as to what differentiates this claim from every other case before it. Facebook asks for summary judgment because Facebook repeatedly and accurately disclosed their policies to consumers. Thus, with accurate and thorough disclosures, a consumer could not have been misled about Facebook’s policies.

Legal Standard

To prevail on a motion for summary judgment, the moving party has the burden of demonstrating based on the pleadings, discovery, and any affidavits submitted, that there is no genuine issue as to any material fact. Super. Ct. Civ. R. 56(c); *Wash. Inv. Ptnrs. Of Del., LTC v. Sec. House*, 28 A.3d 566, 573 (D.C. 2011); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “A genuine issue of material fact existed if the record contains ‘some significant probative evidence...so that a reasonable fact-finder would return a verdict for the non-moving party.’” *Brown v. 1301 K St. Ltd. P’ship*, 31 A.3d 902, 908 (D.C. 2011).

In ruling on a motion for summary judgment, the evidence must be viewed in the light most favorable to the party opposing the motion. *Rustin v. District of Columbia*, 491 A.2d 496, 500 n.7, *cert denied* (1985). The Court cannot “resolve issues of fact or weigh evidence at the summary judgment stage.” *Barrett v. Covington & Burling, LLP*, 979 A.2d 1239, 1244 (D.C. 2009). “A movant is entitled to summary judgment when the evidence is such that a reasonable jury, drawing all reasonable inferences in the non-movant’s favor, could not return a verdict for the non-movant.” *See Walker v. Johnson*, 798 F.3d 1085, 1091 (D.C. Cir. 2015) (*citing Anderson*

² *See In re Facebook, Inc. Sec. Litig.*, 405 F. Supp. 3d 809, 846 (N.D. Cal. 2019) (dismissing claim because Facebook user agreements included third-party consent and were not inaccurate or misleading); *Illinois v. Facebook, Inc.*, No. 2018-CH-03868 (Ill. Cir. Ct. Cook Cnty. Mar. 8, 2021) (rejecting the allegation that a reasonable person reading Facebook policies might believe that their data was guaranteed to be safe from third parties); *Smith v. Facebook, Inc.*, 745 F. App’x 8, 8-9 (9th Cir. 2018) (holding that a reasonable person reading Facebook’s policies would understand that Facebook uses the practices described in those policies).

v. Liberty Lobby Inc., 477 U.S. 242, 248, 255 (1986). While inferences are drawn in favor of the non-moving party at this stage, “once the moving party has carried its initial burden . . . [t]he party opposing the motion for summary judgment must offer ‘competent evidence admissible at trial showing that there is a genuine issue as to a material fact.’” *Hamilton v. Howard Univ.*, 960 A.2d 308, 317-18 (D.C. 2008) (quoting *Sanchez v. Magafan*, 892 A.2d 1130, 1132 (D.C. 2006)).

In order for Facebook to prevail on this summary judgment motion, Facebook must show that there is no genuine issue of material fact and that Facebook is entitled to judgment as a matter of law. The evidence must be viewed in the light most favorable to the non-moving party, and all reasonable inferences must be drawn in that party’s favor. The correct evidentiary standard for a CPPA claim is clear and convincing evidence. *See Frankeny v. Dist. Hosp. Partners, LP*, 225 A.3d 999, 1005 (D.C. 2020).³

Statutory Framework

This action is brought under the CPPA, which protects DC consumers from unfair or deceptive trade practices. D.C. Code §§ 28-3901, et seq. To prevail on a CPPA claim, the District must prove that Facebook made representations, omissions, or ambiguous statements that “have a tendency to mislead” consumers about a “material fact.” D.C. Code § 28-3904. In order to successfully plead a CPPA claim, both elements must be met; (1) tendency to mislead, and (2) material fact.

According to the CPPA, a violation occurs regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904. The representation or misrepresentation is evaluated in the eyes of a reasonable D.C. consumer. The fact that a reasonable consumer could be reasonably misled is sufficient to constitute a violation. *Frankeny*

³ “The burden of proof for CPPA claims is clear and convincing evidence.” *Pearson v. Chung*, 961 A.2d 1067, 1073 (D.C. 2008).

v. District Hospital Partners, LP, 225 A.3d 999 at 1004-1005 (D.C. 2020). A “reasonable consumer generally would not deem an accurate statement to be misleading.” *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013). Statements are not actionable if they are “in fact either accurate, not misleading to a reasonable consumer, or mere puffery.” *Whiting v. AARP*, 701 F. Supp. 2d 21, 29 (D.D.C. 2010), *aff’d*, 637 F.3d 355 (D.C. Circ. 2011). Additionally, the misrepresentation need not be done intentionally by Defendant. *Frankeny v. District Hospital Partners, LP*, 225 A.3d 999 at 1004-1005 (D.C. 2020). A fact is material “if a significant number of unsophisticated consumers would find that information important in determining a course of action.” *Saucier*, 64 A.3d at 442. Summary judgment is appropriate when “the plaintiff has failed to direct the Court to the existence of any facts from which a reasonable jury could find that the alleged statements or omissions were material in nature.” *Id.*

Analysis

I. Facebook clearly disclosed all relevant terms in its policies such that a reasonable consumer could not have been misled as a matter of law.

The District alleges that multiple Facebook policies and practices, including friend sharing, integration partnerships, the enforcement program, and privacy settings, are misleading representations, omissions, or ambiguous statements under the CPPA. Looking at the various terms of service and agreements, it is clear that this was not the case. Facebook clearly and repeatedly made disclosures to users about its policies such that the reasonable user could not have been misled as a matter of law. This analysis does not reach the materiality element because a reasonable consumer could not have been misled, materially or not, with the accurate disclosures by Facebook.

A. Friend-Sharing

The District alleges that Facebook misled consumers about the ability of third-party apps to access users' friends' data, the practice of friend-sharing.⁴ Specifically, the District contends that disclosures made by Facebook were (1) ambiguous, misleading, and deceptive because they were hidden in two lengthy documents that users must agree to in order to create a Facebook account, and (2) the consumer controls to change these settings were confusing. On the other hand, Facebook asserts that friend-sharing was disclosed repeatedly and prominently on multiple locations on the website.

The most straightforward disclosure of friend-sharing could be found in the Data Use Policy (effective from December 11, 2012 until January 30, 2015). Facebook SUMF 110. The policy included a section titled "Controlling what is shared when the people you share with use applications" which stated,

Just like when you share information by email or elsewhere on the web, information you share on Facebook can be re-shared. This means that if you share something on Facebook, anyone who can see it can share it with others, including the games, applications, and websites they use.

Facebook SUMF 110. The Data Use Policy further stated the following:

Your friends and the other people you share information with often want to share your information with applications to make their experiences on those applications more personalized and social. For example, one of your friends might want to use a music application that allows them to see what their friends are listening to. To get the full benefit of the application, your friend would want to give the application her friend list – which includes your User ID – so the applications knows which of her friends is also using it. Your friend might also want to share the music you 'like' on Facebook. If you have made that information public, then the application can access it just like anyone else. But if you've shared your likes with just friends, the application could ask your friend for permission to share them.

Facebook SUMF 111.

⁴ See page 2 for more background on the practice of "friend-sharing."

Choosing to make your information public is exactly what it sounds like: anyone, including people off of Facebook, will be able to see it. Choosing to make your information also means that this information: can be associated with you (i.e. you name, profile pictures, cover photos, timeline, User ID, username, etc) even off Facebook; can show up when someone does a search on Facebook or on a public search engine; will be accessible to Facebook-integrated games, applications, and websites you and your friends use; and will be accessible to anyone who uses our APIs such as Graph API.

Facebook SUMF 112 (emphasis added).

If you want to completely block applications from getting your information when your friends and others use them, you will need to turn off all Platform applications. This means you will no longer be able to use any third-party Facebook integrated games, applications or websites.

Facebook SUMF 115.

Facebook also maintained an App Settings page in the Privacy Settings where users could restrict their data as they so choose. Facebook SUMF 139-153. A consumer could specifically select what kinds of information other Facebook users can view, including all Facebook consumers (most expansive), only Facebook friends (the less expansive default), and a customized list of Facebook friends (the least expansive). Facebook SUMF 139-153. Within the Privacy Settings page, a disclaimer stated, *“the people you share with can always share your information with others, including apps.”* Facebook SUMF 153 (emphasis added).

Repeatedly, Facebook disclosed the sharing of this data and pointed users to the applicable settings to turn off the friend-sharing functions. The statements throughout the policies and within the settings were *accurate*. The District has not pointed to any specific language within the policies which is inaccurate. As “reasonable consumer[s] generally would not deem an accurate statement to be misleading,” Facebook users could not reasonably be misled by the clear and explicit disclosures of friend-sharing. *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013) (holding that a “reasonable consumer generally would not

deem an accurate statement to be misleading”). In the United States District Court for the Northern District of California, the Court agreed. There, the Court held that terms agreed to by Facebook users included “allowing the Aleksandr Kogans of the world to interact with users and obtain information of the users’ friends through these interactions.” *In re Facebook, Inc., Consumer Privacy User Profile Litig.*, 402 F. Supp. 3d 767, 792(N.D. Cal. 2019). The District has not plausibly pled that the practice of friend-sharing constitutes a valid CPPA claim because it was accurately disclosed to users.

B. Integration Partnerships

The District alleges that consumers had little or no control over whether to permit the sharing of their information with integration partners.⁵ The District asserts that Facebook’s failure to inform consumers that it permitted certain companies this type of access has a tendency to mislead consumers about a material fact. Facebook’s response is twofold; (1) users had to opt into the integration partnerships, and (2) the existence of integrations partnerships was well-known and widely reported.

Integration partners were required, via their terms of service with Facebook, to provide notice to the user about what data they were collecting and how they were going to use that information. Facebook SUMF 260. Also, integration partners could not integrate the user’s Facebook features with their device or app without the user’s express permission. Facebook SUMF 261. This permission or authorization would be granted by the user by signing into their Facebook account on the device or app and agreeing to the terms. Facebook SUMF 261, 263, 264-265.

Facebook users were given explicit and accurate notice of the integration partners twice. The first notice was given when users began their Facebook experience via the terms of service,

⁵ See page 2-3 for more background on the practice of “integration partnerships.”

the text of which varied by the partner. Facebook SUMF 264-265. The second notice was given to users in Facebook’s Data Use Policy, which outlined the sharing of user information with service providers. Facebook SUMF 265. The Data Use Policy section titled “Apps, websites and other third-party integrations on our using [sic] our Services” stated:

When you use third-party apps, websites or other services that use, or are integrated with, our Services, they may receive information about what you post or share. For example, when you play a game with your Facebook Friends or use the Facebook Comment or Share button on a website, the game developer or website might get information about your activities in the game or receive a comment or link that you share from their website on Facebook. *In addition, when you download or use such third-party services, they can access your Public Profile, which includes your username or user ID, your age range and country/language, your list of friends, as well as any information that you share with them. Information collected by these apps, websites or integrated services is subject to their own terms and policies.*

Facebook SUMF 108 (emphasis added).

With disclosures in the Facebook Data Use Policy and the terms of service, which a user had to affirmatively agree to when using a Facebook experience with an integration partner, the user had been notified twice of the existence and terms of the integration partnership. Any user with two accurate and clear notices could not be materially misled about the existence and operation of the integration partnerships as a matter of law. The accurate disclosures of the integration partnership policies make it impossible for the District to plausibly plead that Facebook made misleading representation or omissions.

C. Enforcement Program

The District alleges that Facebook’s enforcement efforts⁶ against third party applications who violated Facebook policies did not live up to the enforcement policies outlined in the Data Use Policy and SRR. Specifically, the District contends that Facebook failed to exert meaningful review or compliance mechanisms to enforce its policies, including the ability to audit third-

⁶ See page 3 for more background on the “enforcement program.”

party apps. In response, Facebook asserts (1) the District has not proven that Facebook's enforcement and monitoring efforts were insufficient, and (2) even if the District did prove that Facebook's efforts were insufficient, the District has failed to show a misleading discrepancy between Facebook's representations and its enforcement program sufficient for a CPPA claim.

Once again, Facebook was clear in its disclosures and policies about the limitations of the enforcement program. The SRR stated "FACEBOOK IS NOT RESPONSIBLE FOR THE ACTIONS, CONTENT, INFORMATION, OR DATA OF THIRD PARTIES." Facebook SUMF 100. The Data Use Policy stated that "Remember that these games, applications and websites are created and maintained by other businesses and developers who are not part of, or controlled by, Facebook, so you should always make sure to read their terms of service and privacy policies to understand how they treat your data." Facebook SUMF 109. The above policies clearly disclaim control over how third-party applications operate. It is not possible for Facebook to one-hundred percent guarantee to users that no bad actor may violate Facebook's policies.

Facebook also never guaranteed how it would proceed in an enforcement investigation. The Platform Policy stated, "we *may* enforce against your app or website if we conclude that your app violates our terms or is negatively impacting the Platform" (emphasis added). Facebook SUMF 269. Instead, Facebook only outlined the potential enforcement avenues available to it, should an investigation or further action be deemed necessary. In *Illinois v. Facebook*, the Court also reached this conclusion, stating "Facebook's relevant policies only indicate the enforcement available to it and Facebook makes no guarantee as to how it will proceed in such investigations." *Illinois v. Facebook*, No. 2018 CH 03868 at 11 (March 2, 2021). A user could not have been misled about Facebook's utilization of the enforcement measures because Facebook never made guarantees of how it would proceed in such a situation. The accurate

disclosures, which dictated how Facebook *may* proceed, as a matter of law, cannot mislead users. Facebook acted in accordance with its policies, and while these enforcement actions are not what the District wanted them to be, that does not translate to a misrepresentation under the CPPA. There is also no duty imposed onto Facebook, by the CPPA or any other applicable statute, that would require Facebook to act otherwise. The District fails to plausibly plead how the application of Facebook's *discretionary* enforcement program fails to meet any statutory duty to act. The District also fails to plausibly plead a misleading representation that informed consumers that Facebook would act differently in such a scenario.

D. Privacy Settings

The District alleges that Facebook did not adequately explain to consumers how to change their settings regarding what information was shared with third-party applications. The District further alleges that Facebook's representations to consumers, both express and implied, that it would protect the privacy of users' personal information has a tendency to mislead consumers about a material fact. In response, Facebook asserts that the website boasted numerous resources that educated users on data sharing and how to change their settings. Facebook also contends that clear disclosures throughout their policies accurately described what data was shared and with whom.

As evidenced above, the Data Use Policy and the Statement of Rights and Responsibilities clearly set out Facebook policies and were available for users to read. Before signing up for a Facebook account, users were required to read and agree to both the Data Use Policy and the SRR. In addition to public policies that users affirmatively agreed to, users also had access to numerous tools designed to educate users on their settings and how to protect their privacy. These included the Help Center, the Privacy Tour, the Privacy Checkup, and the Privacy

Basics. Facebook SUMF 86-93. The Help Center contained educational materials, including how to navigate privacy controls. Facebook SUMF 86-88. The Privacy Tour is presented to users when creating an account. Facebook SUMF 89. The Tour walks new users through how Facebook works and how to control the sharing of their information, including with apps and websites. Facebook SUMF 89-90. The Privacy Checkup allowed users to check the scope of their information sharing, including the apps to which they had given permissions. Facebook SUMF 92. Privacy Basics provided tips and interactive guides that answer commonly asked questions on how to control user information. Facebook SUMF 93. These tools are easy to locate within the Facebook platform and possess clear interfaces where a reasonable user could readily follow along and change their settings as they please. Facebook SUMF 86-93.

Considering all of these sources of information and user-friendly tools, it is difficult to imagine what else Facebook could have conceivably done to be more forthcoming about the privacy settings. To that end, with the various policies outlined in the Data Use Policy and SRR along with the tools designed to help users configure their settings as they pleased, users were empowered to dictate the level of data that was shared with third-party applications. The privacy settings provided exactly what was promised in Facebook policies. The District has failed to plausibly plead any duty or authority that would require greater disclosures or further regulation of the privacy settings. The privacy settings and how to adjust them are not misleading.

II. Facebook did not have a duty under CPPA to disclose alleged data misuse, such as in the Cambridge Analytica incident.

The District alleges that Facebook failed to disclose to affected consumers when their data was improperly used by third-party applications in violation of Facebook's platform policies. The District points to the Cambridge Analytica incident as a primary example. In response, Facebook asserts that they *did* notify users potentially affected by the Cambridge

Analytica data misuse. Facebook also asserts that even if Facebook had not notified users, the Cambridge Analytica incident was widely reported such that well-informed users would not have been misled by a material omission. The District's claim fails for two reasons; (1) Facebook did not have a duty to disclose the alleged data misuse to consumers, and (2) Facebook never misrepresented its actions in response to Cambridge Analytica.

A CPPA claim asks whether Facebook made material representations, omissions, or ambiguous statements that have a tendency to mislead. The CPPA never mentions or alludes to an affirmative duty to disclose data misuse. Facebook policies repeatedly disclosed the potential for data misuse by third-party applications. These disclosures negated any duty for Facebook to inform consumers when the forewarned data misuse occurred.⁷ While Facebook took steps to inform consumers of the risk of data misuse and utilized various enforcement tools, a reasonable consumer had been on repeated notice that something like a Cambridge Analytica incident was possible. The District's speculation that Facebook misled consumers about data misuse fails to consider the repeated disclosures within Facebook policies.

Secondly, Facebook never misrepresented its actions in response to Cambridge Analytica.⁸ In response to the first incident in December 2015, Facebook removed Kogan's app, demanded Kogan delete the user data in his possession, and began an investigation. Both Kogan and Cambridge Analytica provided written certifications that all of the data had been accounted for and destroyed. Facebook SUMF 387-391. In response to the second incident in March 2018, when Facebook learned from media inquiries that Cambridge Analytica may not have destroyed the data and may have used it for political advertising contrary to its prior representations,

⁷ Indeed, at the Motions Hearing, the Court inquired about third party misuse of Facebook data by parties other than Cambridge Analytica. Counsel for the District responded that such misuse occurred on a few occasions but gave the Court the impression that such misuse was of no moment. This left the Court to wonder why the Cambridge Analytica misuse created a cause of action.

⁸ See page 3-4 for a more detailed timeline of the Cambridge Analytica incident.

Facebook again took action. Facebook SUMF 392. In response, Facebook banned Cambridge Analytica and initiated an investigation. Facebook SUMF 393-394. Also, Facebook notified users who may have been affected beginning on April 9, 2018. Facebook SUMF 397-404. The notice was in the form of a dialog box upon logging into the platform, with three potential messages presented to the user, depending on whether that user had been impacted. Facebook SUMF 397-404. If a user's information was not shared, the below message was presented:

Recently, we shared information about the potential misuse of your Facebook data by apps and websites. We also shared plans for how we're taking action to prevent this from happening in the future.

Check below to see if your information may have been shared with Cambridge Analytica by the app "This is Your Digital Life."

Was My Information Shared?

Based on our available records, neither you nor your friends logged into "This Is Your Digital Life."

As a result, it doesn't appear your Facebook information was shared with Cambridge Analytica by "This Is Your Digital Life."

Facebook SUMF 402.

If the user installed the app, the message included the following information as potentially shared with Cambridge Analytica:

Your public profile, page likes, friend list, birthday and current city; Your friends public profiles, birthdays, current cities and page likes. A small number of people also shared their News Feed, timeline, posts, messages and friends hometowns with 'This is Your Digital Life.'

Facebook SUMF 403.

If the user was a non-installer friend that was potentially affected, the message included the following information as potentially shared with Cambridge Analytica:

Your public profile, page likes, birthday and current city. A small number of people who logged into 'This is Your Digital Life' also shared their own News

Feed, timeline, posts and messages which may have included posts and messages from you. They may also have shared your hometown information.

Facebook SUMF 404.

As the above timeline provides, Facebook took swift action in response to Cambridge Analytica. While there was no requirement to inform users of the incident, Facebook took a number of enforcement actions. First, in 2015, Facebook removed the app, demanded Kogan delete the user data in his possession, and began an investigation. Then, in 2018, Facebook banned Cambridge Analytica, began an investigation, and informed users of potential disclosure. There is no promise within Facebook's policies that dictates how Facebook should have responded differently in these situations. While the District may disagree with Facebook's approach to the situation, there is no legal basis that required Facebook to act differently. The actions that Facebook took were consistent with its stated policies. Facebook did not materially mislead consumers as to their response to Cambridge Analytica.

Conclusion

Upon consideration of *Facebook, Inc.'s Motion for Summary Judgment* filed on May 17, 2022, *District's Opposition to Defendant Facebook's Motion for Summary Judgment* filed on June 28, 2022, Defendant's *Reply in Support of Facebook, Inc.'s Opposed Motion for Summary Judgment* filed on July 19, 2022, the representations made by the parties during the Motion Hearing on March 21, 2023, and the entire record herein, it is this **1st** day of June 2023, hereby

ORDERED that *Facebook, Inc.'s Motion for Summary Judgment* is **GRANTED**; and it is further

ORDERED, that Plaintiff's Complaint is **DISMISSED**; and it is further

ORDERED that this case is now closed.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Maurice A. Ross". The signature is written in a cursive, flowing style.

Judge Maurice A. Ross

Copies to (via e-service):

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