

# **EXHIBIT G**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

In re TWITTER INC. SECURITIES LITIGATION	: Case No. 4:16-cv-05314-JST (SK)
_____	: : :
This Document Relates to:	: <b>EXPERT DECLARATION OF</b>
	: <b>PROFESSOR WILLIAM B.</b>
ALL ACTIONS	: <b>RUBENSTEIN</b>
_____	: : :

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 Counsel<sup>1</sup> seek a fee of \$182.1 million, which constitutes 22.5% of the \$809.5 million settlement fund.<sup>2</sup> Class Counsel have retained me to provide my opinion as to 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 extensive empirical evidence, all of which support the ultimate conclusion that Class Counsel’s 4-level lodestar multiplier is well-deserved. Specifically:

- **Class Counsel’s requested percentage is below the Ninth Circuit’s 25% benchmark though higher than awards in cases involving common funds of this magnitude** (Part II(A), *infra*). The requested 22.5% fee here is 10% below the Ninth Circuit’s 25% benchmark, but in cases of this magnitude, empirical evidence shows that the average percentage is somewhere between 12–18%. Such a percentage comparison recedes in importance given the fact that the Court may consider Class Counsel’s lodestar as a cross-check and must consider a series

---

<sup>1</sup> By order dated July 16, 2018 (and posted on PACER the following day), this Court granted a motion for class certification and held that “Plaintiffs’ counsel, Motley Rice LLC and Robbins Geller Rudman & Dowd LLP, are appointed as co-class counsel.” Order Granting Class Certification, Appointment of Class Representatives, and Approval of Class Counsel, ECF No. 181 at 17 (Jul. 17, 2018).

<sup>2</sup> Stipulation of Settlement, ECF No. 653-4 at 3 [hereinafter “Settlement Agreement”].

of 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 class counsel’s proposed profit (captured by the lodestar cross-check’s resulting multiplier) and provides no information about the particular risks class counsel shouldered or the strength of the settlement it secured for the class (captured by the Ninth Circuit’s multi-factor test).

- **Class Counsel’s lodestar reflects reasonable billing rates** (Part II(B), *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 2021 (230 rates from 26 cases). The billing rates Class Counsel employ for partners and partnership-track attorneys are slightly above (7.6% higher than) those approved rates. This is impressive in that many cases in this comparison set were more routine, localized matters (such as wage-and-hour cases) and only two resulted in settlements greater than \$17 million. My research assistants also compiled a database of billing rates from all securities class action fee petitions approved in the Northern District of California from 2020–2021 (135 rates from 10 cases). Class Counsel’s rates are below (2.8% lower than) the rates in those cases. The reasonableness of Class Counsel’s rates is consistent across other categories of billers, including staff attorneys and paralegals, with Class Counsel’s average hourly rate for all professionals (\$598) falling 3.0% below the median average hourly rate in the database of 26 class actions approved in 2021 and 13.1% lower than the average hourly rate in the 10 securities class actions. Some of the reasonableness of Class Counsel’s overall rate is attributable to the use of relatively low cost contract attorney time, but as discussed in more depth below, even if the contract attorneys are removed entirely from Class Counsel’s lodestar, the impacts on their blended hourly rate and on their proposed lodestar multiplier are relatively immaterial.
- **Class Counsel’s lodestar reflects a reasonable quantity of hours** (Part II(C), *infra*). My research assistants undertook a similar empirical evaluation of the number of hours Class Counsel billed, comparing that total to hours billed in settlements of this magnitude (roughly \$500 million–\$1.1 billion). That analysis found that the total hours expended in this case is well below the mean and close to the median (4.2% higher) for cases of this size. When the hours are normalized over the length of the case, Class Counsel here spent about 33% less time per day (33 hours/day) achieving this settlement as did counsel in the comparison set (50 hours/day). These data support the conclusions that Class Counsel were efficient in prosecuting this case and engaged in no churning or lodestar padding. A qualitative assessment of the time spent also supports these conclusions.
- **Class Counsel are entitled to a fee enhancement because of the risk the firms undertook and the results they achieved for the class – and the multiplier sought is at a level that, in the words of a court in this District, “has frequently**

***been awarded in common fund cases such as this***<sup>3</sup> (Part II(D), *infra*). Class Counsel’s multiplier in the 4 range is supported by the *ex ante* risks that inhered in this case, risks that rendered an outcome of a \$809.5 million fund extraordinarily unlikely.<sup>4</sup> Specifically, as set forth in detail below, in pursuing this case, Class Counsel were not piggybacking on a government enforcement action; the Defendants’<sup>5</sup> liability was far from certain and indeed the Defendants have consistently denied and continue to deny any wrongdoing; and suing a large, wealthy corporate defendant like Twitter is something of a David and Goliath endeavor. Despite these risks, Class Counsel have secured one of the 20 largest securities class action settlements since the enactment of the Private Securities Litigation Reform Act of 1995 (“PSLRA”). The aggregate amount is not only historic – it is available to the full class and represents approximately a quarter to a third of the estimated maximum damages in this case. That means, most importantly, that the class members’ recovery here is extraordinary, about 500% greater than the median percentage recovery for comparable securities cases resolved in 2021 and about 1,000% greater than the median percentage recovery for securities class actions resolved from 2012-2020.

2. As noted in the last bullet point above, a court in this District has observed that multipliers in the 4 range “have frequently been awarded in common fund cases,” a conclusion supported by Exhibit C hereto. Similarly, this Court has noted that a 4.14 multiplier, though “slightly higher than the typical range,” “might not be remarkable” if a settlement represents an “excellent result for the class.”<sup>6</sup> Having served as an expert in roughly 100 class action matters,

---

<sup>3</sup> *In re Capacitors Antitrust Litig.*, No. 3:14-CV-03264-JD, 2017 WL 9613950, at \*6 (N.D. Cal. June 27, 2017) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002)) (emphasis added).

<sup>4</sup> The Seventh Circuit has noted that a 4 multiplier implies that, *ex ante*, there was a 25% chance of achieving the \$809.5 million outcome – which seems about right, plausibly even a bit optimistic. *Florin v. Nationsbank of Georgia, N.A.*, 60 F.3d 1245, 1247 n.3 (7th Cir. 1995) (“A risk multiplier of 1.01 equates to a finding that the class counsel had better than a 99% chance of recovering its fees. The multiplier is determined by dividing 1 by the probability of success.”).

<sup>5</sup> The Settlement Agreement states that “‘Defendants’ mean Twitter, Inc. and the Individual Defendants” and that “‘Individual Defendants’ means Richard Costolo and Anthony Noto.” Settlement Agreement, *supra* note 2, at ¶¶ 1.11, 1.17.

<sup>6</sup> *McKnight v. Uber Techs., Inc.*, No. 14-CV-05615-JST, 2021 WL 4205055, at \*7 (N.D. Cal. Sept. 2, 2021) (Tigar, J.); *see also Valliere v. Tesoro Ref. & Mktg. Co. LLC*, No. 17-CV-00123-

I can testify that there are three interrelated facts that provide very strong support for the conclusion that this case represents just that “excellent result for the class”:

- *First*, and most importantly, as just noted, the class members will each recover about 10 times more than class members recover in the average securities class action. That astonishing fact alone ought to entitle Class Counsel to a healthy multiplier, but it also begs the question: how did they accomplish that?
- *Second*, it appears clear Class Counsel accomplished this excellent return for their clients by persevering – winning at every turn (motion to dismiss, class certification, summary judgment) – but as importantly, continuing to invest their resources to push the case to trial. Often counsel securing early victories will take an early settlement,<sup>7</sup> particularly because, as some scholars have opined, they plausibly receive diminishing fee and expense returns on later investments into the case, even if their clients would benefit from those investments.<sup>8</sup> Here, Class Counsel did not settle quickly, but invested tens of millions of dollars of their own money into this matter, never backing down, and pushing the Defendants to the brink of trial.
- Of course, perseverance to trial is unusual, but it is not unheard of, and it does not automatically trigger a settlement that recovers 10 times the norm. Thus, the *third* remarkable factor at play here is that Class Counsel surely had a strong case – Defendants of this magnitude, represented by such large and reputable firms, would not have overpaid to settle – yet interestingly this case does not follow on the heels of an SEC or other government investigation.

---

JST, 2020 WL 13505043, at \*10 (N.D. Cal. Dec. 16, 2020) (Tigar, J.) (“[A]wards of between one and four times the lodestar are typical in common fund cases.”); *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983, at \*14 (N.D. Cal. Dec. 18, 2018) (Tigar, J.), *aff’d sub nom. Hefler v. Pekoc*, 802 F. App’x 285 (9th Cir. 2020) (“Percentage awards in the range of one to four times the lodestar are typical in common fund cases.”).

<sup>7</sup> There is nothing inherently wrong with that – after all, the judiciary strongly favors settlement. *In re Syncor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008) (“[T]here is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.”); *see generally* 5 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 13:44 (6th ed. & Supp. 2022) [hereinafter “*Newberg and Rubenstein on Class Actions*”].

<sup>8</sup> The classic exposition of the point is John C. Coffee, Jr., *Understanding the Plaintiff’s Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 Colum. L. Rev. 669 (1986).

What these three points show is that Class Counsel (1) independently detected, investigated, and pursued this wrongdoing all on their own; (2) invested enormous sums of money on behalf of the class and risked losing all of it; and (3) secured a settlement of not only enormous magnitude, but more importantly, enabling class member recoveries in the range of 10 times the norm. As a point of comparison, in the *Wells Fargo* case,<sup>9</sup> this Court approved a 3.22 multiplier for a *settlement* class action, where class counsel had expended the same quantity of hours as here, but in just two years, to achieve a settlement fund roughly half the size of this one, that returned about half the estimated recoverable damages (15%) achieved here (24-30%). The Court aptly noted that the well-above-average *Wells Fargo* settlement “was an excellent result for the class”<sup>10</sup> in approving the fee request in that matter, a conclusion that therefore even more surely characterizes this settlement and as surely warrants a higher multiplier. The many succeeding paragraphs provide the Court significant, detailed, empirical support demonstrating the reasonableness of the proposed fee.

**I.**  
**BACKGROUND AND QUALIFICATIONS<sup>11</sup>**

2. 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

---

<sup>9</sup> *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983 (N.D. Cal. Dec. 18, 2018), *aff'd sub nom. Hefler v. Pekoc*, 802 F. App'x 285 (9th Cir. 2020).

<sup>10</sup> *Id.* at \*13.

<sup>11</sup> My full c.v. is attached as Exhibit 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, Stanford, and Yale Law Schools while a litigator in private practice 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.

3. 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 since that time I have worked to produce 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, Sixth Edition) on attorney's fees, costs, and incentive awards; 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.

4. 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 50<sup>th</sup> 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.

5. 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.

6. 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.

7. I have been retained as an expert witness in roughly 100 cases and as an expert consultant in about another 30 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, for objectors, and by courts:

- From 2018–2020, I served as an expert consultant to the Court on complex class action and fees issues in the National Prescription Opiate Litigation (MDL 2804), pending in the United States District Court for the Northern District of Ohio.
- In 2017, the United States District Court for the Eastern District of Pennsylvania appointed me 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.<sup>12</sup>
- 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

---

<sup>12</sup> *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.”).

request in a large, complex securities class action, a task I completed successfully when the Circuit summarily affirmed the decision on appeal.<sup>13</sup>

8. 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 more than 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 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.

9. Courts have often relied on my expert witness testimony in fee matters.<sup>14</sup>

---

<sup>13</sup> 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).

<sup>14</sup> See, e.g., *In re Genetically Modified Rice Litig.*, 764 F.3d 864, 872 (8th Cir. 2014); *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

10. 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 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.

11. 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. I have also reviewed the applicable case law and scholarship relevant to the issues herein.

## II. THE REQUESTED FEE IS REASONABLE

12. This Court has articulated the legal standard for a fee petition as follows:

Courts have discretion to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar. For more than two decades, the Ninth Circuit has set the benchmark for an attorneys' fee

---

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).

award in a successful class action [at] twenty-five percent of the entire common fund. Courts in the Ninth Circuit generally start with the 25 percent benchmark and adjust upward or downward depending on: [1] the extent to which class counsel achieved exceptional results for the class; [2] whether the case was risky for class counsel; [3] whether counsel's performance generated benefits beyond the cash fund; [4] the market rate for the particular field of law (in some circumstances), [5] the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work); and [6] whether the case was handled on a contingency basis. Courts often also cross-check the amount of fees against the lodestar.<sup>15</sup>

Following this Court's approach in applying Ninth Circuit fees law, the following sections consider the reasonableness of Class Counsel's requested percentage (Part II(A), *infra*); their proposed rates (Part II(B), *infra*); their hours (Part II(C), *infra*); and their proposed multiplier, in quantitative and qualitative (risks and results) terms (Part II(D), *infra*).

(A)

***The Requested Fee is Below the Ninth Circuit's 25% Benchmark,  
But Above the Norm for Percentages in Larger Fund Cases***

13. Class Counsel's requested 22.5% is below the norm across a full range of cases:
- In the Ninth Circuit, 25% is the benchmark, or normal, fee.<sup>16</sup>
  - Empirical research from one study demonstrated that, in common fund cases between 1993–2008, the mean percentage award in the Ninth Circuit was 25%<sup>17</sup> and in the Northern District of California specifically, 26%.<sup>18</sup>

<sup>15</sup> *Rodman v. Safeway Inc.*, No. 11-CV-03003-JST, 2018 WL 4030558, at \*3 (N.D. Cal. Aug. 23, 2018) (Tigar, J.) (cleaned up).

<sup>16</sup> *Vizcaino*, 290 F.3d at 1047–48.

<sup>17</sup> See Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 260 tbl.4 (2010) [hereinafter "Eisenberg & Miller II"].

<sup>18</sup> *Id.* at 259 tbl.3.

- Empirical research from a second study demonstrated that, in common fund cases between 2009–2013, the mean percentage award in the Ninth Circuit was 26%<sup>19</sup> and in the Northern District of California specifically, also 26%.<sup>20</sup>
- Empirical research from a third study demonstrated that the mean award for all settlements in the Ninth Circuit in a two-year period (2006–2007) was 23.9%.<sup>21</sup>
- Empirical research from a fourth study that focused solely on securities class actions demonstrated that the mean percentage award for all securities class action settlements from 2007–2012 was 23.8% and the median 25.0%.<sup>22</sup> The same empirical study also found that in Districts that see a high volume of securities class actions – the Northern and Central Districts of California and the Southern District of New York – the average fee award was 21.67%.<sup>23</sup>

14. Empirical research demonstrates that percentage awards tend to decrease as the size of the fund increases.<sup>24</sup> While the effect is easily demonstrated in the aggregate,<sup>25</sup> pinning down percentage awards for this level of settlement is more difficult given that relatively few settlements reach this magnitude:

- One study divided settlements by size into ten tranches and found that the mean award in the top tranche (settlements over \$175.5 million) was 12%.<sup>26</sup>

---

<sup>19</sup> Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 951 tbl.3 (2017) [hereinafter "Eisenberg & Miller III"].

<sup>20</sup> *Id.* at 950 tbl. 2.

<sup>21</sup> Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 836 tbl.9 (2010) [hereinafter "Fitzpatrick"].

<sup>22</sup> Lynn A. Baker et. al., *Is the Price Right? An Empirical Study of Fee-Setting in Securities Class Actions*, 115 Colum. L. Rev. 1371, 1389 tbl.1 (2015) [hereinafter "Baker"].

<sup>23</sup> *Id.* at 1396.

<sup>24</sup> This is referred to as the "sliding scale" or "mega-fund" concept. *See* 5 *Newberg and Rubenstein on Class Actions*, *supra* note 7, at §§ 15:80 to 15:81.

<sup>25</sup> *See id.* Graphs 1–2.

<sup>26</sup> Eisenberg & Miller II, *supra* note 17, at 265 tbl.7.

- A later version of that study, using the same methodology, found that the mean award for the top tranche (settlements over \$67.5 million) was 22.3%.<sup>27</sup>
- A third study, using the same methodology, found that the mean award in the top tranche was 18.4% (settlements over \$72.5 million).<sup>28</sup>
- That third study then broke the top tranche into five sub-tranches, with the three middle tranches reflecting mean awards of 17.9% (\$100–\$250 million), 17.8% (\$250–\$500 million) and 12.9% (\$500 million–\$1 billion); while the last data point is most closely correlated with the size of this settlement, it reflects only two underlying data points.<sup>29</sup>
- The securities class actions study found that in districts with a high volume of securities class actions, which includes the Northern District of California, fee awards for cases in the top quartile of settlements averaged 17.46%. However, the study did not provide any data as to what range of settlements the “top quartile” represents.<sup>30</sup>
- In my own dataset (described in ¶ 8 above), there are 11 similarly sized settlements (\$500 million–\$1.1 billion), with the mean percentage award across 10 of these settlements being 16.0% and the median being 15.5%.<sup>31</sup>

15. These data points support the conclusions that Class Counsel’s 22.5% request is below the Ninth Circuit benchmark, below actual awards in Northern District and Ninth Circuit cases, below or in-line with percentages awarded in other securities class actions, and higher than the percentages awarded in large cases. If the Court were limited to a percentage comparison alone, the above-average percentage for this level of settlement fund would be an important data point in assessing the request’s reasonableness. But the Court is not limited to comparing

---

<sup>27</sup> Eisenberg & Miller III, *supra* note 19, at 948 & fig.5.

<sup>28</sup> Fitzpatrick, *supra* note 21, at 839 tbl.10.

<sup>29</sup> *Id.* at 839 tbl.11.

<sup>30</sup> Baker, *supra* note 22, at 1396.

<sup>31</sup> We excluded the 11th case because the percentage award was calculated against potential benefits to a class in a way that amounted to 0.3% of those potential benefits.

percentages alone – it may undertake a lodestar cross-check, and it must also consider the relevant Ninth Circuit factors. As I have explained in my scholarship, all of these data points are more insightful, as comparing percentages across cases provides little information about class counsel’s proposed profit in this case (captured by the lodestar cross-check’s resulting multiplier) and provides no information about the particular risks class counsel shouldered or the strength of the settlement it secured for the class (captured by the Ninth Circuit’s multi-factor test).<sup>32</sup>

**(B)**

***The Requested Hourly Rates Are Reasonable***

16. 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.<sup>33</sup>

Applying these principles, the following sub-sections analyze the rates Class Counsel propose for their (1) partners and partnership-track attorneys; (2) staff attorneys; (3) contract attorneys; and (4) paralegals, and then (5) a concluding subsection analyzes the blended, or average, hourly rate across the entire lodestar. Throughout, Class Counsel’s rates are compared to rates recently approved by Courts in this District overseeing class action settlements.

---

<sup>32</sup> See 5 *Newberg and Rubenstein on Class Actions*, *supra* note 7, 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 . . . 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.”).

<sup>33</sup> *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)).

1.

***Class Counsel's Partner and Partnership-Track Hourly Rates Are Consistent With Judicially-Approved Rates in Recent Class Actions in the Northern District***

17. For purposes of this Declaration, I directed my research assistants to create a database of Northern District of California fee rates to serve as 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,<sup>34</sup> they identified (a) all class actions resulting in damages (b) terminated in the Northern District with (c) judicially approved settlements in 2021. They then reviewed the order granting approval of class counsel's fees to see if the fees included lodestar data and, if so, to see if the judge explicitly approved the proposed billing rates. This process yielded 26 total cases, listed in Exhibit D; no case meeting these criteria was disregarded. My team then reviewed class counsel's lodestar submissions in each of the 26 cases and extracted 230 individual hourly rates to employ in our analysis.<sup>35</sup>

18. Once each timekeeper's experience level had been identified, we plotted the rates, with the x-axis representing the years since the timekeeper's admission to the bar and the y-axis the timekeeper's hourly rate.<sup>36</sup> The resulting scatter plot, set forth below in Graph 1, provides a snapshot of judicially-approved hourly rates in 2021 Northern District of California class actions.

---

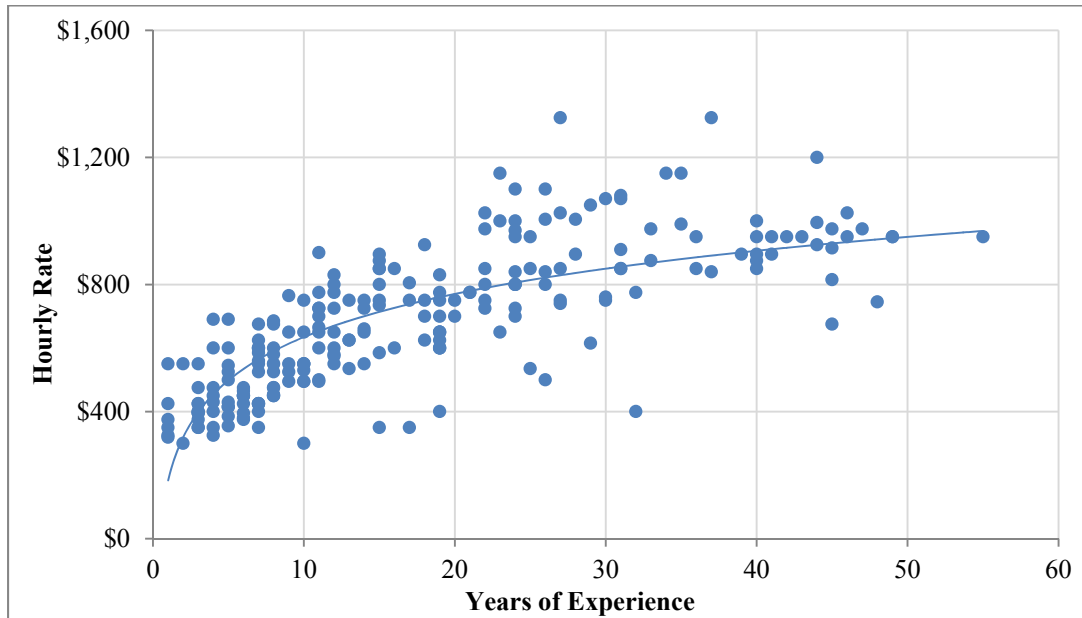
<sup>34</sup> *Civil Cases Filed, Terminated, and Pending from SY 1988 to Present*, Federal Judicial Center, <https://www.fjc.gov/research/idb/civil-cases-filed-terminated-and-pending-sy-1988-present>.

<sup>35</sup> We used all of the hourly rates in every case with two exceptions, explained in Exhibit D.

<sup>36</sup> This dataset does not include staff attorneys or contract attorneys. The reasonableness of Class Counsel's staff attorney and contract attorney rates are assessed separately in ¶¶ 25–30, *infra*.



**GRAPH 1**  
**JUDICIALLY-APPROVED HOURLY RATES IN 2021 N.D. CAL. CLASS ACTIONS**

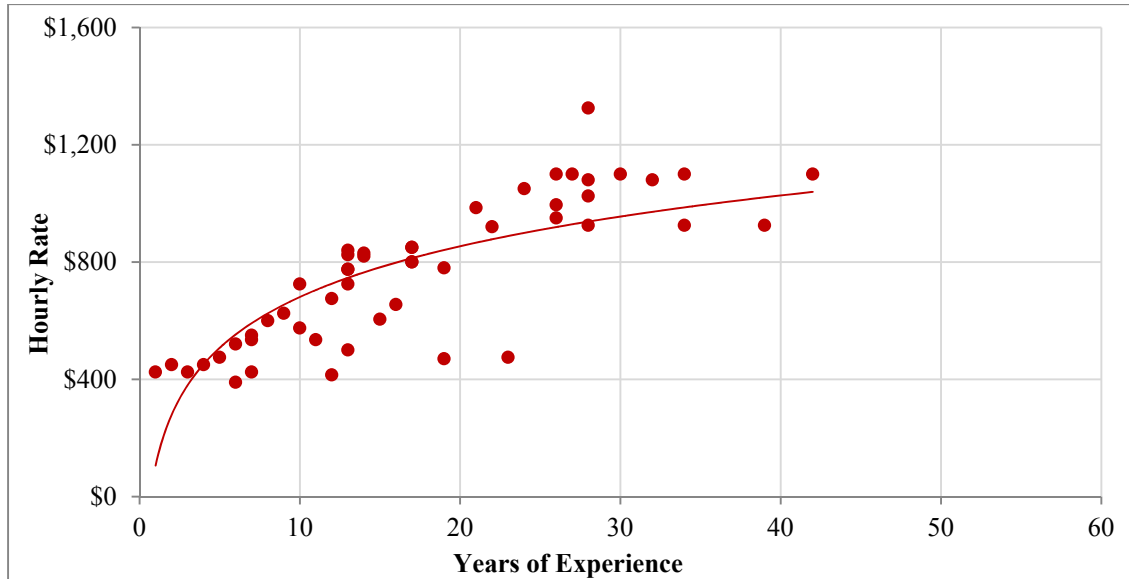


19. I next directed my research assistants to similarly plot the rates proposed by Class Counsel in this matter. Class Counsel supplied us with information on the names of 51 lawyers on a partnership track (partner, counsel, associate), their year of admission to the bar, and their proposed hourly rates.<sup>37</sup> 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 proposed billing rates, with the red trend line sketching the trend of Class Counsel’s rates across experience levels.

---

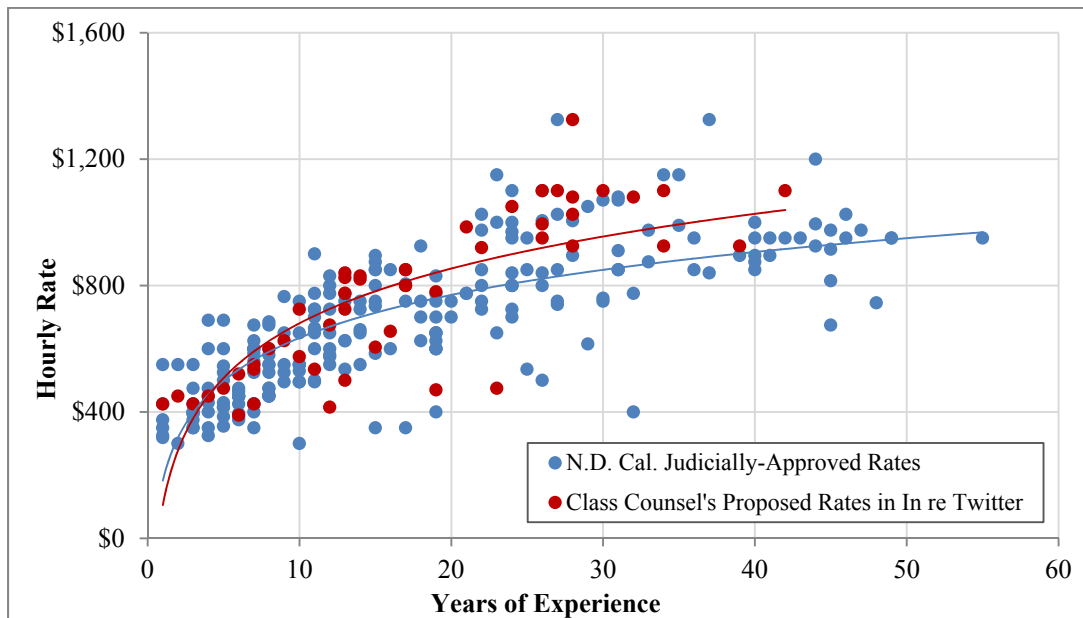
<sup>37</sup> Class Counsel utilize their rates as of September 2021 for all time spent on the litigation. This approach comports with Supreme Court precedent authorizing the use of current rates as “an appropriate adjustment for delay in payment.” *Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989).

**GRAPH 2**  
**CLASS COUNSEL’S PROPOSED HOURLY RATES**



20. 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 2021 N.D. CAL. CLASS ACTIONS**



21. As Graph 3 demonstrates, the two trend lines track one another. The proposed rates for four of Class Counsel’s 51 timekeepers – lawyers with less than five years of experience – are on average 15.1% below the Northern District trend line at those four points.<sup>38</sup> For 47 of the 51 timekeepers – the more senior lawyers – Class Counsel’s trend line is on average 9.5% above the comparison trend line at those 47 points. When the differences between the trend lines are compared at all 51 points, Class Counsel’s trend line is on average 7.6% above the trend line for rates approved in the Northern District. That Class Counsel are charging rates less than 10% above the norm is, if anything, surprising and impressive: 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 2021 comparison set predominately encompasses smaller class actions that are typically litigated by more local attorneys specializing in discrete areas like wage-and-hour cases.

## 2.

### *Class Counsel’s Hourly Rates Are Below Judicially-Approved Rates in Recent Securities Class Actions in the Northern District*

22. Given that most of the 2021 cases in our data set were not securities class actions, I also directed my research assistants to create a separate database of hourly rates found in securities class action fee petitions in the Northern District of California from 2020–2021. Again using the Federal Judicial Center’s database,<sup>39</sup> they created a database of 10 securities class

---

<sup>38</sup> We compared the distance between the two trend lines at the four points for which Class Counsel has a timekeeper and took the average of those four comparisons.

<sup>39</sup> See note 34, *supra*. Using the database, my research assistants identified (a) all securities class actions resulting in damages (b) terminated in the Northern District with (c) judicially approved

action fee petitions approved from January 1, 2020 to December 31, 2021, listed in Exhibit E, and they again then pulled from the lodestar submissions in those 10 cases 135 individual hourly rates of partners or partnership-track attorneys, all of which we employ in our analysis. In cases where plaintiffs filed a motion for fees in 2020, we adjusted the rates to 2021 dollars using the U.S. Bureau of Labor Statistics' Producer Price Index-Office of Lawyers (PPI-OL) index.<sup>40</sup>

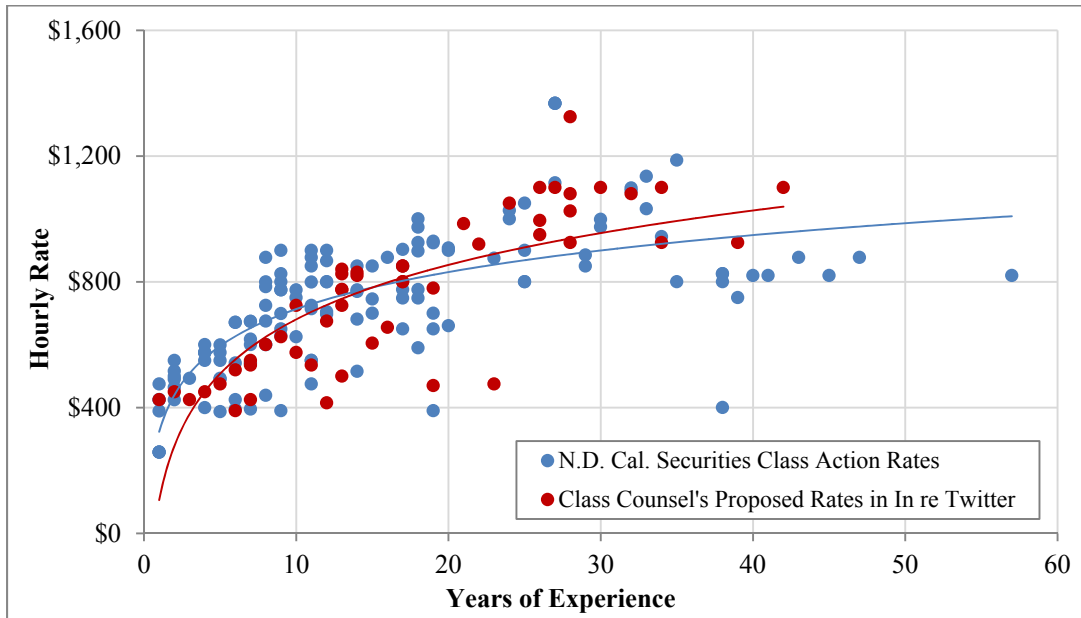
23. The resulting scatter plot, Graph 4, compares Class Counsel's proposed rates with the hourly rates in recent Northern District securities class action fee petitions in which the respective courts approved class counsel's requested fee amount.

---

settlements from 2020–2021. From these initial sets, they then reviewed the final fee approval orders to ensure that the final order accepted class counsel's fee petition. No case meeting these criteria was omitted as noted in the text. In the general dataset, as explained in ¶ 17, *supra*, we included only cases in which the court had explicitly noted its approval of the proposed hourly rates; however, given the smaller set of securities cases, we included all cases in which the court had accepted the proposed fee even if it did not comment explicitly on hourly rates.

<sup>40</sup> 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.

**GRAPH 4**  
**CLASS COUNSEL’S PROPOSED HOURLY RATES COMPARED TO**  
**HOURLY RATES IN RECENT N.D. CAL. SECURITIES CLASS ACTIONS**



24. As Graph 4 demonstrates, Class Counsel’s trend line is on average 2.8% below the trend line for the comparison set. For the 26 attorneys with fewer than 16 years of experience, Class Counsel’s trend line averages 9.9% below the comparison; for the 25 senior attorneys with 16 years of experience or more, Class Counsel’s trend line averages 4.5% above.

**3.**

***Class Counsel’s Rates for Staff Attorneys Are Below***  
***Judicially-Approved Staff Attorney Rates in Recent Class Actions in the Northern District***

25. Separate from the above analyses, we compared Class Counsel’s proposed rates for staff attorneys to those charged by other firms. While firms all have specific nomenclature for various types of attorneys, the term “staff attorney” generally applies to lawyers (a) on the firm’s salary payroll (b) typically paid full benefits like any other salaried lawyer and (c) typically [pre-Covid] housed at the firm (with the firm therefore having overhead expenses). Staff attorneys differ from associates in that they are generally not on a partnership track, but

they differ from “contract attorneys” (discussed below) in that they are salaried employees housed at the firm. Most courts have permitted class counsel to include staff attorney time in the lodestar cross-check calculation, as opposed to shifting these costs to the expense ledger.<sup>41</sup>

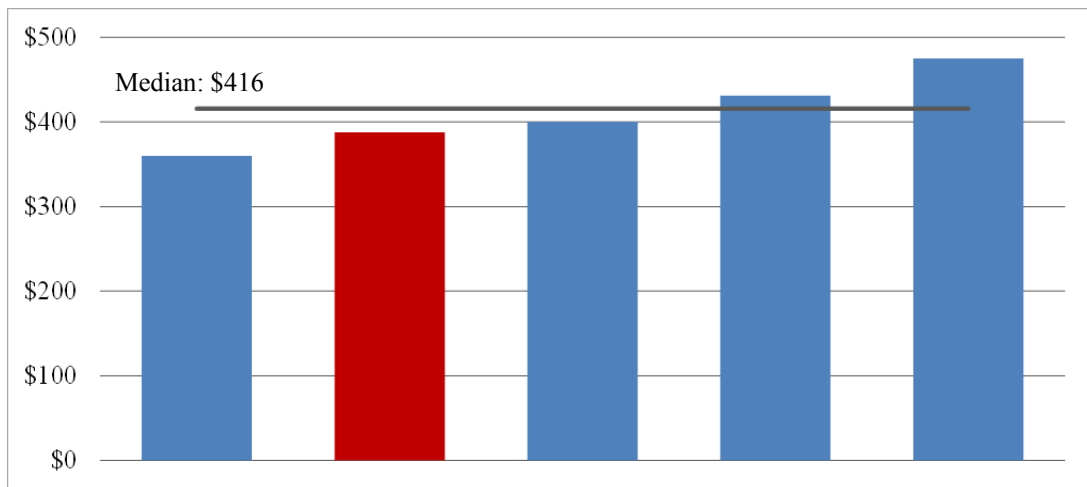
26. As staff attorneys are properly included in the lodestar, we would have included their rates in the scatterplots set forth above. However, those scatterplots graph rates as a function of experience. In contrast, staff attorney rates tend not to have the same relationship to years of admission to the bar,<sup>42</sup> perhaps because their careers are less linear in nature. Accordingly, we consider the reasonableness of their rates solely on a case-by-case basis, capturing the blended, or average, hourly rate for staff attorneys (with one case’s 2020 rates adjusted to 2021 dollars) in each of the four cases in our databases that encompassed such attorneys. That blended hourly rate is calculated by dividing the total dollar amount billed for staff attorneys in a case by the total number of hours billed for staff attorneys. The blended rate in the four comparison cases (10 timekeepers) ranged from a low of \$360 to a high of \$475, with a median rate of \$416. This is reflected in Graph 5, below, with the hourly rate in this case (\$388) highlighted in red.

---

<sup>41</sup> See, e.g., *Hefler*, 2018 WL 6619983, at \*15 (“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).

<sup>42</sup> For example, in one case, all three staff attorneys billed at \$400 per hour, despite ranging from three to 26 years of experience. See *Wong, et al. v. Arlo Technologies, et al.*, No. 5:19-cv-00372-BL (N.D. Cal. Feb. 4, 2021), ECF No. 140-43 at 4-5.

**GRAPH 5**  
**CLASS COUNSEL’S BLENDED STAFF ATTORNEY RATE COMPARED TO**  
**BLENDED STAFF ATTORNEY RATES IN RECENT N.D. CAL. CLASS ACTIONS**



27. As the Court can see in Graph 5, the staff attorney rates proposed by Class Counsel fall below the norm for the other Northern District class actions in 2020-2021. Class Counsel’s blended rate for staff attorneys (\$388) falls 6.7% below the median blended rate of the comparison group (\$416) and 6.9% below the mean (\$417).

**4.**

***Whether Contract Attorneys are Included in the Lodestar Cross-Check Calculation Has a Relatively Immaterial Impact on Class Counsel’s Ultimate Lodestar Multiplier***

28. Courts are more conflicted about whether to include contract attorney time in the lodestar cross-check calculation than they are about staff attorney time.<sup>43</sup> This is so because, unlike staff attorneys, contract attorneys are often hired through intermediaries and paid (often by the intermediary) only an hourly wage, without the benefits provided to salaried employees;<sup>44</sup>

<sup>43</sup> For a general discussion of this debate, see *Newberg and Rubenstein on Class Actions*, *supra* note 7, at § 15:41.

<sup>44</sup> Prior to Covid, it was often the case that contract attorneys might be housed off-site and thus spare a firm overhead costs, as well. These practices are in flux given the pandemic, but in this

yet contract attorneys provide legal services and, as courts have noted, the American Bar Association has approved of firms' billing clients market rates for their services.<sup>45</sup>

29. This Court, reflecting on this policy debate, has helpfully identified four differing approaches.<sup>46</sup> As applied to these facts, those approaches have the following impacts:

- Approach 1 – *Market rates* – Utilizing Class Counsel's proposed market rate of \$395/hour generates a total lodestar of \$44.00 million and a lodestar multiplier of 4.14.
- Approach 2 – *Discounted market rates* – Discounting Class Counsel's proposed market rate of \$395/hour to \$260/hour<sup>47</sup> generates a total lodestar of \$42.48 million and a lodestar multiplier of 4.29.

---

case, Class Counsel inform me that the contract attorneys were housed on site and hence Class Counsel incurred overhead costs for them consistent with overhead costs for its salaried lawyers.

<sup>45</sup> See *In re AOL Time Warner Shareholder Derivative Litigation*, No. 02 CIV. 6302 (CM), 2010 WL 363113, \*26 (S.D. N.Y. 2010) (citing ABA Formal Op. 00-420 for the proposition that “a firm may charge a markup to cover overhead and profit if the contract attorney charges are billed as fees for legal services”); *In re Enron Corp. Securities, Derivative & ERISA Litigation*, 586 F. Supp. 2d 732, 783 (S.D. Tex. 2008) (“[U]nder ABA Formal Opinion No. 00-420, an attorney may bill the contract attorney’s charges to the client as fees rather than costs when the client’s reasonable expectation is that the retaining lawyer has supervised the work of the contract lawyer or adopted that work as her own.”) (citation omitted) (internal quotation marks omitted).

<sup>46</sup> *In re Wells Fargo & Co. S’holder Derivative Litig.*, 445 F. Supp. 3d 508, 528-29 (N.D. Cal. 2020), *aff’d*, 845 F. App’x 563 (9th Cir. 2021).

<sup>47</sup> We arrived at the \$260/hour by adjusting for inflation (per the method explained in note 40, *supra*) the \$200/hour discounted rate used by the court in *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 394, 398-99 (S.D.N.Y. 2013). The *Citigroup* court generated that billing rate by taking account of the experience of the contract attorneys and the fact that their work was primarily document-review, as well as by hypothesizing what a client with significant negotiating leverage might have paid. *Id.* The *Citigroup* court discounted counsel’s rates by 57%, while using its inflated-adjusted bottom line here amounts to only a 32% discount of Class Counsel’s proposed rate, but that is solely a consequence of the very high \$466 (2013) rate the *Citigroup* lawyers proposed; the relevant comparison is the actual rate used, not the percentage of the discount itself. Put differently, Class Counsel here should not be penalized for proposing a rate far more modest than that proposed by the *Citigroup* counsel.



- Approach 3 – *Rate actually paid* – Using the number that Class Counsel reported to me was the average hourly rate they actually paid for contract attorneys generates a total lodestar of \$39.91 million and a lodestar multiplier of 4.56.
- Approach 4 – *Cost only, not in lodestar* – Similarly, removing contract attorneys from the lodestar cross-check altogether leaves a total lodestar of \$39.55 million and a multiplier of 4.60, while increasing the Class’s expense-based obligations.

30. This review shows that the various approaches to contract attorneys have some, but not a highly significant, impact on the total lodestar and lodestar multiplier, as under any approach the multiplier is in the low-to-mid 4 range. As such, it is unlikely the Court needs to render a formal legal ruling definitively adopting one of the four available methods;<sup>48</sup> that conclusion may be especially apt in that the lodestar is being employed here solely as a *cross-check* and as such, as this Court has noted, it “need entail neither mathematical precision nor bean-counting.”<sup>49</sup>

## 5.

### *Class Counsel’s Paralegal Rates are Close to the Norm*

31. My research assistants also collected information on the rates charged for paralegal work in both the Northern District general dataset and securities class action dataset described above. The blended hourly rates for paralegals in the comparison set (again calculated

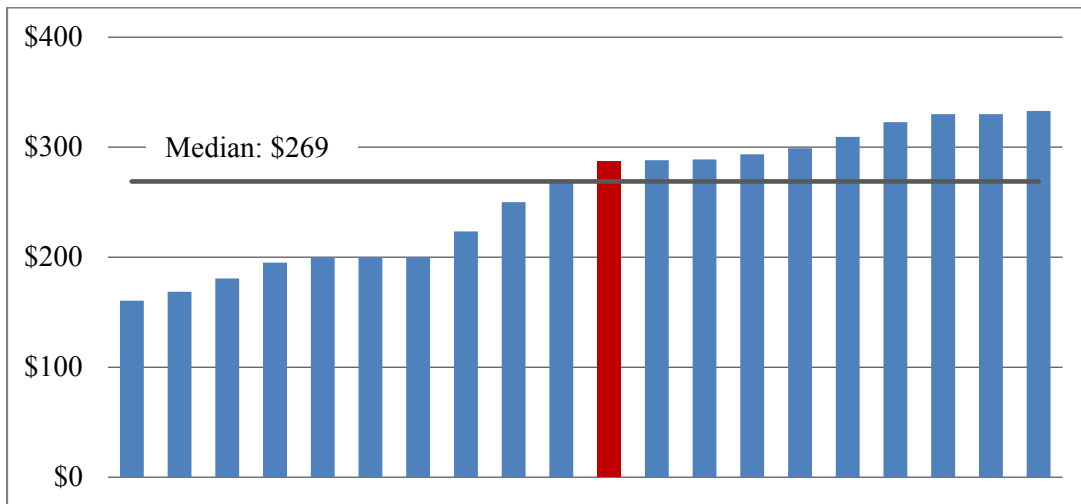
---

<sup>48</sup> *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. 1917, 2016 WL 4126533, at \*9 (N.D. Cal. Aug. 3, 2016) (Tigar, J.) (noting that court “need not weigh in on this conflict” when “the effect on the multiplier is not material”), *dismissed sub nom. In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 16-16368, 2017 WL 3468376 (9th Cir. Mar. 2, 2017).

<sup>49</sup> *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 333 (N.D. Cal. 2014) (Tigar, J.) (seeking additional information from fee applicant but not requiring “actual billing statements” and noting that “[t]he lodestar cross-check calculation need entail neither mathematical precision nor bean counting”) (quoting *Covillo v. Specialtys Cafe*, No. C–11–00594 DMR, 2014 WL 954516, at \*6 (N.D.Cal. Mar. 6, 2014)).

by dividing the total dollar amount billed for paralegals in a case by the total number of hours billed for paralegals, and again with six 2020 case rates adjusted to 2021 dollars) ranged from a low of \$160 to a high of \$333, with a median rate of \$269. This is reflected in Graph 6, below, with the blended hourly rate in this case (\$288) highlighted in red.

**GRAPH 6**  
**CLASS COUNSEL’S BLENDED PARALEGAL RATE COMPARED TO**  
**BLENDED PARALEGAL RATES IN RECENT N.D. CAL. CLASS ACTIONS**



32. As Graph 6 demonstrates, Class Counsel’s proposed rates for paralegal work are entirely normal – above, but still close to, the median case. Class Counsel’s blended paralegal rate (\$288) exceeds the median blended rate (\$269) by 7.2% and the mean rate (\$255) by 13.1%.

**6.**

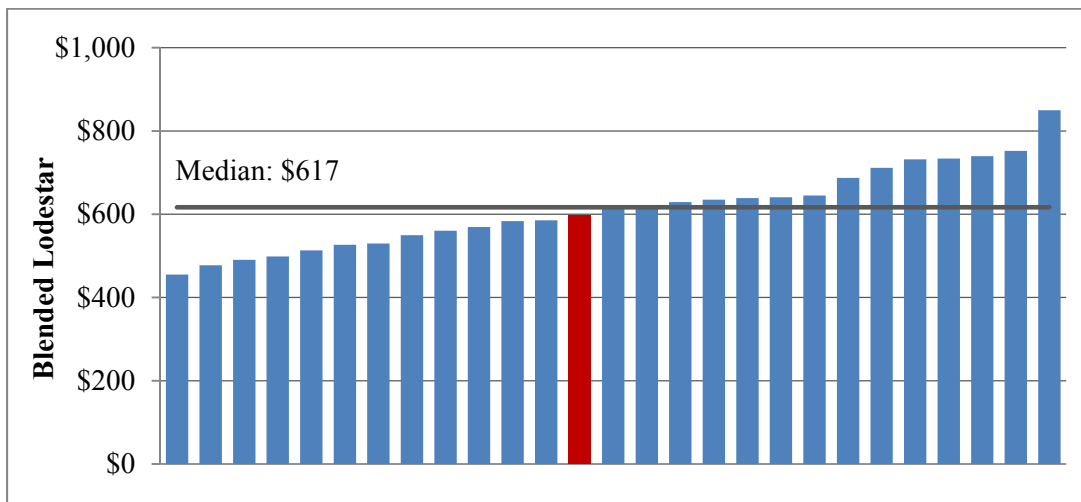
***Class Counsel’s Total Blended Hourly Rate is Below the Norm***

33. In addition to assessing the hourly rates of each lawyer, we also reviewed Class Counsel’s blended hourly rate for the entire case. The total 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, associates, staff attorneys, contract attorneys, paralegals, etc.) in the case. The resulting number provides the cost of an average hour expended on the case.

34. Graph 7, below, compares Class Counsel's blended rate to the blended rates in the 26 cases whose rates have been explicitly approved in the Northern District in 2021. The blended rate in the comparison cases ranged from a low of \$455 to a high of \$850, with a median rate of \$617, while the blended rate in this case is \$598, as highlighted by the red bar in Graph 7.

**GRAPH 7**  
**CLASS COUNSEL'S BLENDED HOURLY RATE COMPARED TO**  
**BLENDED HOURLY RATES IN N.D. CAL. COMPARISON SET**

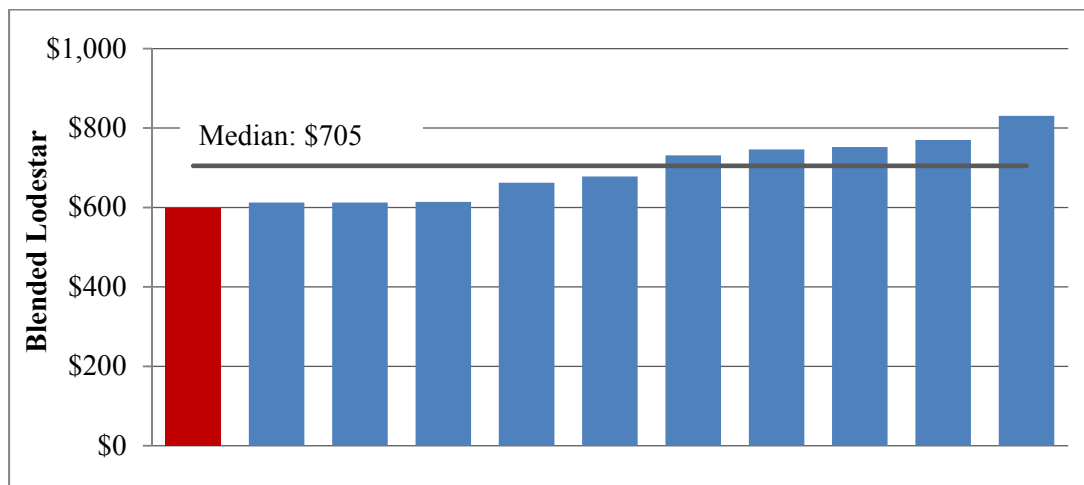


35. As evident in Graph 7, Class Counsel's \$598 rate is 3.0% below the median blended rate (\$617) and 2.6% below the mean (\$614).<sup>50</sup> This finding not only reflects the reasonableness of Class Counsel's proposed rates, but it also demonstrates that work was appropriately delegated to more cost-effective labor when appropriate.

<sup>50</sup> If the Court adopts an approach to contract attorneys that leaves them in the lodestar at a lower rate, *see* ¶ 29, *supra*, this would only serve to decrease Class Counsel's blended rate even further below the median and mean; removing contract attorneys from the lodestar altogether raises the blended rate, but only to \$635, which is 3.0% above the median and 3.4% above the mean.

36. Graph 8, below, compares Class Counsel's total blended rate to the total blended rates in the 2020-2021 Northern District securities class actions. The blended rate in the comparison actions (adjusted to 2021 dollars) ranged from a low of \$612 to a high of \$831, with a median rate of \$705, while the blended rate in this case is \$598, as highlighted in red.

**GRAPH 8**  
**CLASS COUNSEL'S BLENDED HOURLY RATE COMPARED TO BLENDED HOURLY RATE IN N.D. CAL. SECURITIES CLASS ACTION COMPARISON SET**



37. As Graph 8 demonstrates, Class Counsel's \$598 blended rate falls at the lowest end of the chart, 13.1% below the median and 12.6% below the mean.<sup>51</sup> The fact that Class Counsel's blended rate is lower than the blended rate of all 10 securities class actions with approved fee petitions again demonstrates that Counsel appropriately delegated work so as to bring the full costs of their services below that of the comparison set.

\* \* \*

<sup>51</sup> Excluding contract attorneys, Counsel's resulting \$635 blended rate falls 9.9% and 9.4% below the median and mean, respectively.

38. In sum, Class Counsel’s proposed hourly rates for partners and partnership-track attorneys are about 8% above the median of rates that have been explicitly approved in class actions generally in this District, in far more modest matters, and slightly below the median of rates in securities class actions with approved fee petitions specifically; Class Counsel’s proposed hourly rates for staff attorneys and total blended rate for the entire case are lower than rates that have been approved in the comparison sets; and Class Counsel’s proposed hourly rates for paralegals fall slightly above the median of, but nonetheless still in-line with, rates that have been approved in recent years. These are very impressive metrics for the level of lawyering required for a case of this magnitude, duration, and complexity.

(C)

***The Total Amount of Hours Billed is Reasonable***

39. 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.”<sup>52</sup> 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.”<sup>53</sup>

---

<sup>52</sup> *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992).

<sup>53</sup> *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).

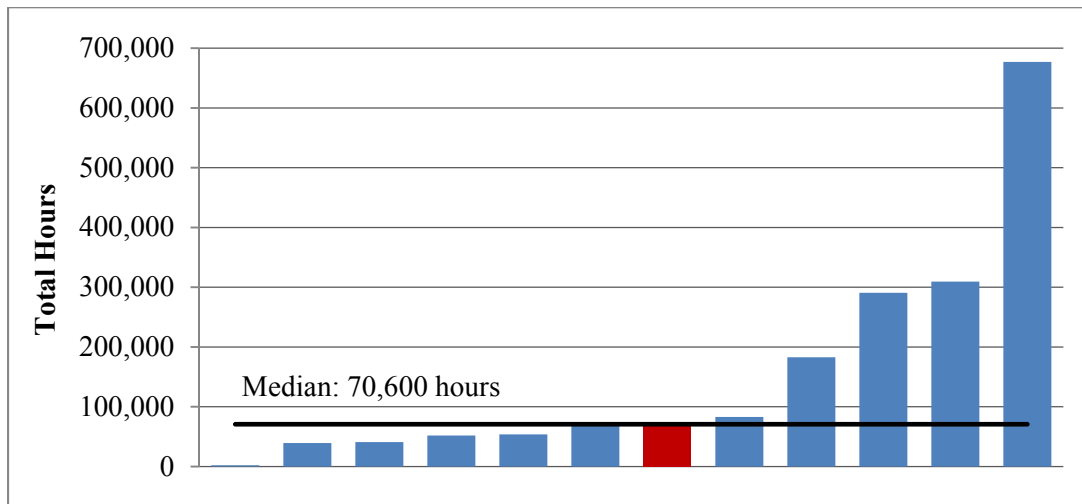
40. I examine the hours that Class Counsel billed in two ways: *first*, by a quantitative comparison to the hours expended in similarly large cases (¶¶ 41-45, *infra*); and *second*, by a qualitative analysis of the tasks undertaken (¶¶ 46-47, *infra*).<sup>54</sup>

41. *Quantitative Assessment.* Only two cases in the Northern District general dataset and securities class action dataset described above exceeded \$30 million in recovery; the cases in those datasets therefore do not helpfully address the question of how many hours it might take to achieve an \$809.5 million recovery. Accordingly, I directed my research assistants to gather data from our own database (*see* ¶ 8, *supra*) of the hours expended in cases with settlements of comparable size. Our dataset contained 11 cases with settlements sizes ranging from \$500 million to \$1.1 billion (in 2022 dollars), all of which we use in our analysis. The hours in these cases ranged from 2,042 to 677,000, depicted in Graph 9 below.

---

<sup>54</sup> 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. *Dyer*, 303 F.R.D. at 333 (Tigar, J.) (“[C]ourts may rely on summaries submitted by the attorneys and need not review actual billing records.”); *see also 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 (Tigar, J.) (noting, in context of lodestar crosscheck, that “trial courts need not, and indeed should not, become green-eyeshade accountants . . . Rather, the Court seeks to do rough justice, not to achieve auditing perfection.”) (cleaned up).

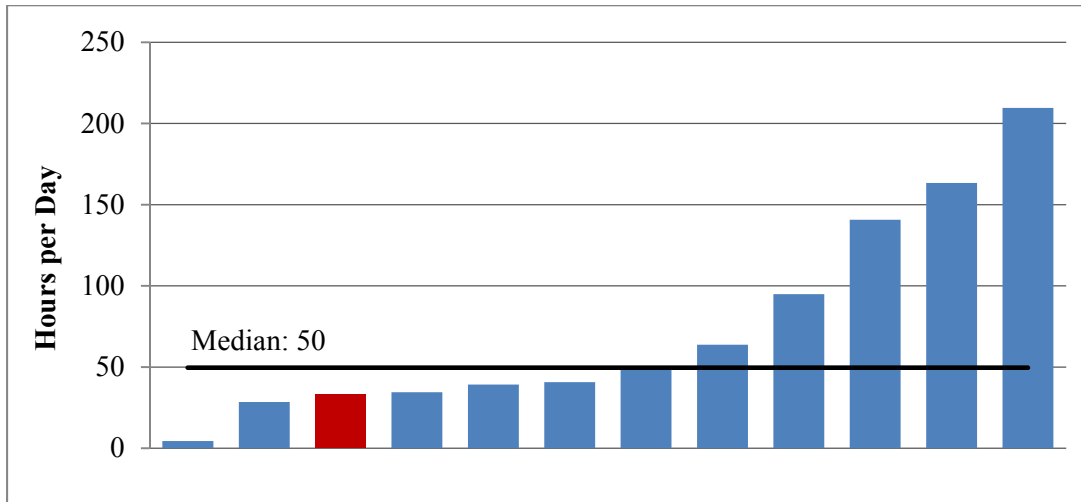
**GRAPH 9**  
**CLASS COUNSEL'S TOTAL HOURS BILLED COMPARED TO**  
**TOTAL HOURS BILLED IN CLASS SETTLEMENTS OF SIMILAR SIZE**



42. As seen in Graph 9, Class Counsel's total hours (represented by the red bar) fall in the middle of these comparably-sized settlements. Class Counsel billed 73,522 hours, while the median case in the comparison is 70,600 and the average is 163,785; even excluding the outlier case to the far right of the graph, the average of the remaining comparison cases is 112,464, more than 50% above Class Counsel's hours. This dispels any concerns that Class Counsel padded their lodestar and suggests that they performed their duties efficiently.

43. While Class Counsel's hours are therefore entirely normal, it is also worth noting that these cases spanned different total time periods. Thus, to normalize the comparison set, we divided the total hours in each case by the total number of days the case was pending, yielding the hours counsel billed each day the case was pending. The results are charted in Graph 10.

**GRAPH 10**  
**CLASS COUNSEL’S HOURS PER DAY BILLED COMPARED TO**  
**HOURS PER DAY IN CLASS SETTLEMENTS OF SIMILAR SIZE**



44. As Graph 10 demonstrates, Class Counsel’s 33 hours/day in this case is 33% below the 50 hours/day billed in the median case; Class Counsel’s 33 hours/day is also 58% lower than the 79 hours/day average across all of the comparison cases.

45. These two graphs each demonstrate that Class Counsel did not pad their lodestar with excess hours, as the total hours billed are in-line with the median and the hours/day are far lower than that needed to produce the comparison \$500 million–\$1.1 billion settlements. In short, the hours billed appear entirely reasonable – indeed, Class Counsel should be commended for their efficient production of a fund of this size.

46. *Qualitative Assessment.* Class Counsel initially filed a complaint in September 2016, about six years ago. In that time, Class Counsel have cumulatively logged about 73,550 hours of time, roughly 12,260 hours/year, or the equivalent of 5.6 lawyers working close to full



time (2,199 hours/year)<sup>55</sup> on the case throughout its duration. At first blush, that number struck me as robust, but after I reviewed all of the various aspects of Class Counsel's work in this case, it struck me as more modest than robust. Specifically, in these six years, Class Counsel's activities included:

- Identifying and understanding the Defendants' statements in press releases, filings with the SEC, and oral statements to the media, securities analysts and investors, and undertaking all the factual investigation required before filing a detailed complaint in court;
- Linking that factual investigation to the proper legal claims by researching relevant legal precedents under federal law;
- Screening potential clients and securing retention;
- Investigating, preparing, and filing the initial complaint, 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);
- Researching, drafting, and filing a consolidated amended complaint, subject to the more rigorous pleading standard mandated by the PSLRA;<sup>56</sup>
- Responding, successfully, to an initial motion to dismiss the case concerning claims based on daily active user omissions theory and the Defendants' affirmative statements about positive user engagement trends;

---

<sup>55</sup> 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 large law firms similar to those included in the NALP study.

<sup>56</sup> For a discussion, see *7 Newberg and Rubenstein on Class Actions*, *supra* note 7, at §§ 22:49 to 22:51.

- Undertaking a discovery process that, Class Counsel inform me, encompassed roughly:
  - ✓ 210,000 documents (millions of pages);
  - ✓ 27 fact witness depositions;
  - ✓ Thousands of pages of admissions and sworn interrogatory responses;
  - ✓ 23 subpoenas (26,000 additional documents); and
  - ✓ 19 expert reports from 13 experts and 14 expert depositions;
- Identifying these experts and working with them to produce expert reports in conjunction with the class certification motions, including taking and defending expert depositions;
- Researching, drafting, filing, and litigating a motion for class certification;
- Defending the class representatives' depositions in conjunction with the class certification motion;
- Arguing, successfully, the class certification motion before this Court;
- Responding, successfully, to Defendants' motion for summary judgment on all of the Plaintiffs' claims and defeating Defendants' motion for partial reconsideration of court's summary judgment order;
- Preparing the case for trial, including briefing 10 *Daubert* motions and 19 *in limine* motions; exchanging and filing trial exhibits, jury instructions, and verdict forms; and attending multiple final pretrial conferences;
- Responding, again largely successfully, to several voluminous motions concerning attempts to disqualify or limit testimony of plaintiffs' expert witnesses as well as filing motions to exclude testimonies of Defendants' experts;
- Engaging in several rounds of mediation to produce a settlement, including, Class Counsel inform me, at least three direct settlement mediations and multiple teleconferences;
- Helping to memorialize and document the settlement terms in a final settlement agreement, including releases of liability, class action notices, and claim forms;

- Shepherding the settlement agreement through preliminary approval; and
- Obtaining preliminary, and now seeking final, approval of the settlement.

47. The initial bullet point in the prior paragraph – noting the work Class Counsel undertook prior to filing the initial complaint – bears further elaboration. As I note below,<sup>57</sup> many securities fraud class action cases follow on the heels of either the announcement of an internal investigation, a restatement of corporate information, or a government investigation, but this case had none of those markers of potential fraud. Instead, Class Counsel independently developed the theory and facts supporting this case through an extensive investigation that (they inform me) predated the filing of the initial complaint by more than a year and consumed more than 400 hours on their pre-filing work. Through that investigation, Class Counsel report that they identified and interviewed dozens of former employees, including a key percipient witness (Akash Garg, who worked as Twitter’s co-head of growth during the Class Period) who confirmed many of Class Counsel’s allegations. Given these efforts – unique to a case like this that did not simply piggyback on prior public events – the normalcy of Class Counsel’s overall hours is particularly striking.

48. In sum, then, 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. That number (slightly above the median for settlements of this size and far below the mean for hours billed on a daily basis) might leave the impression that this litigation followed some easy path to pre-ordained settlement; but this qualitative review demonstrates the opposite: this was hard-fought litigation and it was hard fought all the way to the brink of trial. The outcome was never inevitable, and

---

<sup>57</sup> See ¶ 58, *infra*.

Class Counsel deserve commendation not just for achieving it, but for achieving it with such a normal number of hours.

(D)

***A Lodestar Enhancement Is Appropriate and the Fee Request's Multiplier Is Justified by the Extraordinary Circumstances Presented Here***

49. Class Counsel's fee request is about 4 times higher than their lodestar (and, as noted above, *see* ¶ 29, *supra*, up to 4.6 times their lodestar if the contract attorneys' time is fully extracted).

50. 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"),<sup>58</sup> a function captured by the title "private attorneys general."<sup>59</sup> 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 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.

51. 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

---

<sup>58</sup> 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).

<sup>59</sup> For a discussion, see William B. Rubenstein, *On What a "Private Attorney General" Is – And Why It Matters*, 57 Vand. L. Rev. 2129 (2004).

cancel the debt of the client to the lawyer) is much higher than that of conventional loans.<sup>60</sup>

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.<sup>61</sup>

52. 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.<sup>62</sup>

53. 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 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.

---

<sup>60</sup> *Ketchum v. Moses*, 17 P.3d 735, 742 (Cal. 2001) (quoting Richard A. Posner, *Economic Analysis of Law* 534, 567 (4th ed. 1992)) (internal quotation marks omitted).

<sup>61</sup> *Id.* (quoting John Leubsdorf, *The Contingency Factor in Attorney Fee Awards*, 90 Yale L.J. 473, 480 (1981)) (internal quotation marks omitted).

<sup>62</sup> *Vizcaino*, 290 F.3d at 1051 (internal quotation marks and citations omitted).

**TABLE 1**  
**EMPIRICAL DATA ON LODESTAR MULTIPLIERS IN ALL CASES**

	<b>YEARS STUDIED</b>	<b>NUMBER OF CASES</b>	<b>AVERAGE MULTIPLIER</b>
Rubenstein & Krishna <sup>63</sup>	2006–2011	790	1.42
Eisenberg, Miller & Germano <sup>64</sup>	2009–2013	294	1.48
Fitzpatrick <sup>65</sup>	2006–2007	204	1.65
Eisenberg & Miller <sup>66</sup>	1993–2008	368	1.81
Logan, Moore & Moshman <sup>67</sup>	1973–2003	1,120	3.89

54. 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.

55. All of the empirical studies with pertinent data<sup>68</sup> also show that multipliers tend to rise as the size of the class’s fund increases. Thus, in Table 2, below, I present the data on the average lodestar multiplier in cases with larger common funds. 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

---

<sup>63</sup> 5 *Newberg and Rubenstein on Class Actions*, *supra* note 7, at § 15:89 (citing William B. Rubenstein et al., *Class Action Fee Awards 2006–2011: An Empirical Study* tbl.14).

<sup>64</sup> *See Eisenberg & Miller III*, *supra* note 19, at 965 tbl. 12 (2017).

<sup>65</sup> *See Fitzpatrick*, *supra* note 21, at 833–34. This average encompasses cases using both a percentage method with a lodestar cross-check and pure lodestar cases.

<sup>66</sup> *See Eisenberg & Miller II*, *supra* note 17, at 272 tbl.14. This multiplier dataset excludes cases with a multiplier of 1, but appears to include cases with multipliers both below and above 1.

<sup>67</sup> *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 data set 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).

<sup>68</sup> Professor Fitzpatrick’s study, cited in Table 1, does not sort multiplier data by fund size.

column below), although as the Court can see, the data on “larger funds” cases primarily encompass cases far more modest than this one.

**TABLE 2**  
**EMPIRICAL DATA ON MULTIPLIERS IN CASES OF COMPARABLE SIZE**

	<b>DEFINITION OF TRANCHE</b>	<b>CASES IN TRANCHE</b>	<b>AVERAGE MULTIPLIER</b>
Eisenberg, Miller & Germano <sup>69</sup>	\$67.5 million+	35	2.72
Eisenberg & Miller <sup>70</sup>	\$175.5 million+	40	3.18
Rubenstein & Krishna <sup>71</sup>	\$44.6 million+	89	2.39
Logan, Moore & Moshman <sup>72</sup>	\$100 million+	64	4.50

56. While the multiplier sought here is higher than the average multiplier in these studies’ so-called “larger fund” cases, it is not a complete outlier. In appropriate circumstances, courts have approved percentage awards embodying lodestar multipliers at or above the range sought here. Thus, a court in this District, citing the leading Ninth Circuit case on point, has stated that “[i]n the Ninth Circuit, a lodestar multiplier of around 4 times has frequently been awarded in common fund cases such as this.”<sup>73</sup> In the Ninth Circuit decision upon which that court relied for the statement (*Vizcaino*), the Court established 25% as the benchmark percentage fee and approved a multiplier of 3.65, writing that this number “was within the range of

<sup>69</sup> See Eisenberg & Miller III, *supra* note 19, at 967 tbl.13.

<sup>70</sup> See Eisenberg & Miller II, *supra* note 17, at 274 tbl.15.

<sup>71</sup> 5 *Newberg and Rubenstein on Class Actions*, *supra* note 7, at § 15:89 (citing William B. Rubenstein et al., *supra* note 63).

<sup>72</sup> Logan, Moore & Moshman, *supra* note 67, at 167.

<sup>73</sup> *In re Capacitors*, 2017 WL 9613950, at \*6 (citing *Vizcaino*, 290 F.3d at 1051) (emphasis added).

multipliers applied in common fund cases”<sup>74</sup> and appending a list of such cases to its decision. Similarly, in Exhibit C, I provide a list of 84 cases with multipliers of 4 or greater, 53 of which are cases with multipliers of 5 or greater. This list is not meant to be either exhaustive or representative of all multipliers that courts have approved. Rather, it demonstrates that courts approve percentage awards that embody multipliers consistent with the multiplier sought here in appropriate circumstances.

57. As courts have approved fee awards embodying multipliers in the 4-4.6 range 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.”<sup>75</sup> In the following paragraphs, I sort these factors into two categories – risks and results – and consider each in turn.

58. Eight independent factors demonstrate the riskiness of this case:<sup>76</sup>

- ***This case was risky because it did not piggy-back on a government enforcement action.*** 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-

---

<sup>74</sup> *Vizcaino*, 290 F.3d at 1051; *see also Dyer v. Wells Fargo Bank, N.A.*, No. 13-CV-02858-JST, 2014 WL 5369395, at \*6 (N.D. Cal. Oct. 22, 2014) (“A 2.83 multiplier falls within the Ninth Circuit’s presumptively acceptable range of 1.0–4.0. Given the complexity and duration of this litigation, the results obtained for the class, and the risk counsel faced in bringing the litigation, the Court finds the 2.83 multiplier appropriate.”) (citation omitted).

<sup>75</sup> *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (citation omitted).

<sup>76</sup> The point is not to look at Counsel’s risks *ex post*, but rather to demonstrate the strength of the achievement compared to the risks *ex ante*.



mutual offensive issue preclusion to establish liability without litigation;<sup>77</sup> and/or as the defendant has a natural incentive to settle with the government, thereby easing the road to settlement with the class. Not this case: no government agency has pursued this set of claims against the Defendants. Class Counsel detected, investigated, theorized, and executed the entire case from scratch, as described in greater depth above.<sup>78</sup>

- ***This case was especially risky because the Defendants' liability was uncertain.*** Many class actions pursue obvious instances of wrongdoing publicized in the media, such as the BP oil spill case or the Volkswagen emissions case. These cases embody less risk because settlement is almost a given. This case is the opposite: there was no high-profile prior exposé of the Defendants' actions nor government settlement that pre-ordained a willingness to settle on the part of the Defendants.
- ***This case was especially risky because of the uncertainty of expert testimony.*** A large securities action of this type depends significantly on expert testimony, in this case both at the summary judgment stage and at trial in proving loss causation/damages and social media user metrics. So critical were the testimonies of experts in this case that the Defendants filed multiple motions to exclude the testimonies of plaintiffs' experts that could have fully ended the case had they proven successful.
- ***This case was especially risky because the issues and money at stake were so significant that the Defendants litigated especially vigorously.*** Notwithstanding Twitter's enormous valuation, it is not every day it settles a case for nearly a billion dollars. 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, throughout the litigation – lasting over five years and ending on the eve of trial – the Defendants have contested all claims alleged by the Class Representatives, and even now continue to deny any wrongdoing.
- ***This case was especially risky because of its high expense.*** Class Counsel report a lodestar and expenses above \$40 million. This means that Class Counsel have loaned the class more than \$40 million dollars – and risked losing every penny of it on the outcome of this case.
- ***This case was especially risky because Class Counsel litigated against large, well-funded Defendants.*** Twitter is a well-capitalized corporation, reaping annual revenue

---

<sup>77</sup> See, e.g., *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979).

<sup>78</sup> See ¶ 47, *supra*.

exceeding \$5 billion,<sup>79</sup> boasting an enterprise valuation of over \$30 billion.<sup>80</sup> While Class Counsel were funding this case themselves, with tens of millions of dollars of their own money, they were up against a defendant with almost unlimited resources.

- ***This case was especially risky because Class Counsel litigated against some of the largest and most powerful law firms in the world.*** Twitter exerted its financial strength by retaining high-priced counsel from Simpson Thacher & Bartlett LLP and Cooley LLP, two of the most expensive and well-respected firms in the country.<sup>81</sup> Class Counsel's risk was increased significantly by the skill, depth, resources, and tenacity of the firms they faced.
- ***Given their commitment to this highly risky case, Class Counsel were precluded from taking other, simpler, work.*** It is fair to conclude that Class Counsel's extraordinary devotion of time and resources for over five years to this complex case prevented them from pursuing simpler, bread-and-butter, actions, any of which would have had a higher expectation of settlement and hence ease of recovery of a contingent fee, possibly a well-multiplied one.

59. These eight points demonstrate what seems incontestable: Class Counsel took large risks in litigating this case from inception to settlement. Like any investor that takes large risks, these attorneys are entitled to a return on their investment, so long as the risks they took paid off. I will now turn to that analysis.

60. At least five components of this case's outcome speak to the results Class Counsel obtained in this matter.

---

<sup>79</sup> See Cision PR Newswire, *Twitter Announces Fourth Quarter and Fiscal Year 2021 Results*, <https://www.prnewswire.com/news-releases/twitter-announces-fourth-quarter-and-fiscal-year-2021-results-301479494.html> (indicating Twitter's annual revenues to be \$5.08 billion in 2021).

<sup>80</sup> See Yahoo! Finance, *Twitter, Inc. (TWTR) – Statistics*, <https://finance.yahoo.com/quote/TWTR/key-statistics/> (indicating enterprise value of \$38.2 billion for defendant Twitter as of Oct. 9, 2022).

<sup>81</sup> See Vault, *2023 Vault Law 100*, <https://legacy.vault.com/best-companies-to-work-for/law/top-100-law-firms-rankings> (ranking Simpson Thacher & Bartlett LLP as the 8th and Cooley LLP as the 19th most prestigious law firms in the United States).

- ***Counsel obtained significant monetary relief for the class.*** Put simply, \$809.5 million is an extraordinary sum. According to one published study,<sup>82</sup> this settlement represents the largest securities class action settlement in this District in almost a decade, the fourth largest securities settlement in the country in the last 5 years, and the 19th largest securities settlement since the enactment of the PSLRA in 1995.
- ***100% of the class is eligible for relief.*** The settlement agreement explains that the class, for settlement purposes, is defined as “all persons and entities that, during the period from February 6, 2015, through July 28, 2015, inclusive, purchased or otherwise acquired shares of the publicly traded common stock of Twitter and were damaged thereby.”<sup>83</sup> Any class member who meets these criteria is eligible to file a proof of claim form.
- ***Class members will receive cash not script.*** 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.<sup>84</sup> 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. . . .”<sup>85</sup> 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.
- ***Class members will receive a significant percentage of their estimated recoverable damages.*** Not only does this settlement provide cash payments to class members, the payments are significant when compared to the estimated recoverable damages: the settlement “recovers approximately 24% to 30% of the estimated recoverable damages as calculated by Plaintiffs’ damages expert.”<sup>86</sup>

---

<sup>82</sup> These data points are gleaned from *The Top 100 U.S. Class Action Settlements of All-Time*, ISS SCAS, at 13-14 (2022), <https://www.issgovernance.com/file/publications/iss-scas-top-100-us-class-action-settlements-of-all-time-dec-2021.pdf> (listing top 100 securities settlements since passage of the Private Securities Litigation Reform Act of 1995).

<sup>83</sup> Settlement Agreement, *supra* note 2, at ¶ 1.5.

<sup>84</sup> See 4 *Newberg and Rubenstein on Class Actions*, *supra* note 7, at §§ 12:7 to 12:13 (on nonpecuniary damages).

<sup>85</sup> *Manual for Complex Litigation (Fourth)* § 21.61 (2004).

<sup>86</sup> Plaintiffs’ Notice of Unopposed Motion and Motion for Preliminary Approval of Proposed Class Action Settlement and Memorandum of Points and Authority in Support Thereof, *In re*

The median settlement as a percentage of damages in securities cases with comparable claims (Rule 10b-5 cases) and size (greater than \$1 billion in damages) was 4.2% in 2021 and 2.3% from 2012–2020.<sup>87</sup> Thus, the percentage recovery obtained by Class Counsel is significantly higher (about 5.7 to 7.1 times compared to 2021; about 10.4 to 13.0 times compared to 2012–2020) than the median percentage recovery for comparable cases.

- ***The relief required significant, contested adversarial litigation against strong opposition, leaving no hint of collusion.*** The Defendants contested nearly every aspect of this lawsuit, often repeatedly. 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.”<sup>88</sup> Here, there is not a hint of collusion – this case has been nothing but adversarial since its inception, encompassing over five years of hard-fought litigation. There is, therefore, no evidence whatsoever of Counsel selling out the Class’s interest.

61. These eight risks and five results show that Class Counsel took significant risks in investing substantial capital and labor in highly adversarial litigation without the promise of any easy return on that investment, and Class Counsel shouldered that risk superbly, prevailing at each critical juncture and generating an enormously high return for the client class.

62. A final note of comparison helps illuminate Class Counsel’s remarkable achievement in this case. As noted above (*see* ¶ 2, *supra*), in the *Wells Fargo* case, this Court approved a 20% fee award embodying a multiplier of 3.22, noting the excellent result class counsel had achieved for the class. The data from that case provide strong support for the 4-

---

*Twitter Inc. Securities Litigation*, Case No. 4:16-cv-05314-JST (N.D. Cal. Jan. 7, 2022), ECF No. 653 at 13.

<sup>87</sup> Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2021 Review and Analysis*, Cornerstone Research, 6, Fig. 5 (2022), <https://www.cornerstone.com/wp-content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf>.

<sup>88</sup> *Manual for Complex Litigation (Fourth)* § 22.923 (2004).

range multiplier sought here. Although the two cases commenced at almost the same exact time (ten days apart in September 2016) and although class counsel in both cases expended almost the exact same number of hours (73,550 here vs. 73,310 there), the *Wells Fargo* matter settled in less than two years. More importantly, it settled prior to the taking of any depositions, prior to class certification, and with relatively minimal litigation. Most importantly, the class in that matter recovered only about 60% of the recovery achieved here (\$480 million vs. \$809.5 million) and only about 50% of the estimated recoverable damages that this class will receive (15% there vs. 24-30%). The litigation risks Class Counsel shouldered here and the results they achieved so far outstrip those of the 3.22-multiplier *Wells Fargo* case that they warrant a 4-level multiplier.

63. I have testified that:

- The requested fee is below the Ninth Circuit’s 25% benchmark and, although above the average percentage for large fund cases, this percentage comparison alone provides very little pertinent information.
- A lodestar cross-check demonstrates that both the hourly billing rates and total hours billed are normal.
- The resulting multiplier is one that this Court has said “might not be remarkable” if a settlement represents an “excellent result for the class” – that description fits this case like a glove, given the unique risks that Class Counsel shouldered and the record-setting results that they achieved for the class, making the resulting multiplier “not remarkable” and hence fully warranted.

In sum, it is my expert opinion that significant quantitative and qualitative data support the conclusion that Class Counsel’s fee request – 22.5% of the \$809.5 million recovery – is reasonable in the circumstances of this matter.



October 10, 2022

---

William B. Rubenstein

# **EXHIBIT A**

**PROFESSOR WILLIAM B. RUBENSTEIN**

Harvard Law School - AR323  
 1545 Massachusetts Avenue  
 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 (6<sup>th</sup> 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 (invited to present to MDL judges on recent developments in class action law and related topics (2010-2022))
- ◇ *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*. At the request of the United States District Court for the Eastern District of Pennsylvania, helped 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 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. Axiom 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 “net 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. Jung*, 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 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. SXRDR Rear 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 (6<sup>th</sup> 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, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3715068](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 “Mega-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)
- ◇ *Divvying 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*

- ◇ *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 12<sup>th</sup> 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 11<sup>th</sup> Annual National Institute on Class Actions, Chicago, Illinois, October 17, 2007
- ◇ *Using Law Professors as Expert Witnesses in Class Action Lawsuits*, ALI-ABA 10<sup>th</sup> 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 9<sup>th</sup> 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 Products Liability Litigation*, Civil Action No. 21-16228 (Ninth Circuit 2021) (pending))
- ◇ 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's firing of staff attorney (*Shahar v. Bowers*, 120 F.3d 211 (11<sup>th</sup> 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))

*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 Twitter Inc. Securities Litigation*  
Case No. 4:16-cv-05314-JST (SK)  
U.S. District Court for the Northern District of California

**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 Twitter Inc. Securities Litigation*, Case No. 4:16-cv-05314-JST (SK) (N.D. Cal.)**

1. Class Action Complaint, ECF No. 1
2. Notice of Motion and Motion of KBC Asset Management NV for Consolidation, Appointment as Lead Plaintiff and Approval of its Selection of Lead and Liaison Counsel, ECF No. 20
3. Notice of Motion and Motion of John P. Norton for Consolidation, Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel, ECF No. 27
4. National Elevator Industry Pension Fund's Notice of Motion and Motion for Consolidation, Appointment as Lead Plaintiff and Approval of Lead Plaintiff's Selection of Counsel, ECF No. 29
5. Notice of Motion and Motion of Youri Hazanov to Consolidate Related Actions, for Appointment as Lead Plaintiff and Approval of Counsel, ECF No. 38
6. Notice of Motion and Motion of John and Diane Stearns and Edward Puhalla for Consolidation, Appointment of Lead Plaintiffs, and Approval of Lead Plaintiffs' Choice of Counsel, ECF No. 42
7. Mark Wallace's Notice of Motion and Motion for: (1) Consolidation, (2) Appointment of Lead Plaintiff and (3) Approval of Selection of Counsel, ECF No. 46
8. Notice of Motion and Motion of Zeyad Almukhaizeem, Charles Cheatham, Joseph Cwierniewicz, and SNS Holding Co. for Consolidation of Related Actions, Appointment as Lead Plaintiff and Approval of Counsel, ECF No. 47
9. Order Consolidating Cases and Appointing Lead Plaintiff, ECF No. 72
10. Lead Plaintiff's Consolidated Amended Complaint for Violations of the Federal Securities Laws, ECF No. 81
11. Memorandum of Points and Authorities in Support of Twitter Defendants' Motion to Dismiss Plaintiff's Consolidated Complaint, ECF No. 91-1
12. Twitter Defendants' Request for Judicial Notice in Support of Motion to Dismiss Plaintiff's Consolidated Complaint, ECF No. 92
13. Lead Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Consolidated Amended Complaint, ECF No. 94
14. Declaration of Meghan S. B. Oliver in Support of Lead Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Consolidated Amended Complaint, ECF No. 95
15. Give the Insider Selling a Rest, Twitter, ECF No. 95-1
16. Exclusive: Twitter Execs Put Stock Sales on Ice, ECF No. 95-2

17. Lead Plaintiff's Response and Partial Objection to Defendants' Request for Judicial Notice in Support of Defendants' Motion to Dismiss the Consolidated Amended Complaint, ECF No. 96
18. Notice of Supplemental Authority in Support of Lead Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Consolidated Amended Complaint, ECF No. 97
19. Notice of Supplemental Authority in Support of Lead Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Consolidated Amended Complaint, ECF No. 103
20. Defendants' Reply Memorandum of Point and Authorities in Support of Motion to Dismiss Plaintiff's Consolidated Amended Complaint, ECF No. 104
21. Defendants' Reply Memorandum in Support of Request of Judicial Notice, ECF No. 105
22. Defendants' Supplemental Request for Judicial Notice in Support of Their Motion to Dismiss Plaintiff's Consolidated Amended Complaint, ECF No. 106
23. Lead Plaintiff's Response to Defendants' Supplemental Request for Judicial Notice in Support of Their Motion to Dismiss Plaintiff's Consolidated Amended Complaint, ECF No. 107
24. Order Granting in Part and Denying in Part Defendants' Motion to Dismiss, ECF No. 113
25. Lead Plaintiff's Notice of Motion and Motion for Class Certification, Appointment of Class Representatives, and Approval of Class Counsel, ECF No. 140
26. Declaration of Gregg S. Levin in Support of Lead Plaintiff's Notice of Motion and Motion for Class Certification, Appointment of Class Representatives, and Approval of Class Counsel, ECF No. 140-1
27. Memorandum of Points and Authorities in Opposition to Lead Plaintiff's Motion for Class Certification, ECF No. 162
28. Declaration of Alexis S. Coll-Very in Support of Defendants' Opposition to Lead Plaintiff's Motion for Class Certification, ECF No. 162-1
29. Lead Plaintiff's Reply Memorandum in Further Support of its Motion for Class Certification, Appointment of Class Representatives, and Approval of Class Counsel, ECF No. 174
30. Order Granting Class Certification, Appointment of Class Representatives, and Approval of Class Counsel, ECF No. 181
31. Joint Proposal for Dissemination of Notice of Pendency, ECF No. 234
32. Summary Notice of Pendency of Class Action, ECF No. 234-1
33. Notice of Pendency of Class Action, ECF No. 234-2
34. Declaration of Alexander Villanova of Epiq in Support of Joint Proposal for Dissemination of Notice of Pendency, ECF No. 234-3
35. [Proposed] Order Approving Class Notice and Joint Proposal for Dissemination, ECF No. 234-4
36. Order Approving Class Notice and Amended Joint Proposal for Dissemination, ECF No. 238
37. Defendants' Motion to File Under Seal (Re: Motion for Summary Judgment), ECF No. 314

38. Defendants Notice of Motion, Motion for Summary Judgment, and Memorandum of Points and Authorities in Support Thereof, ECF No. 352-3
39. Plaintiffs' Administrative Motion to File under Seal, ECF No. 362
40. Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, ECF No. 364
41. Defendants' Notice of Motion and Motion to Exclude Expert Testimony of Dr. Sam Hui; Memorandum of Points and Authorities in Support Thereof, ECF No. 374
42. Defendants' Notice of Motion and Motion to Exclude Expert Testimony of Dr. Steven P. Feinstein; Memorandum of Points and Authorities in Support Thereof, ECF No. 376
43. Plaintiffs' Opposition to Defendants' Motion to Exclude the Expert Testimony of Dr. Sam Hui, ECF No. 385
44. Plaintiffs' Opposition to Defendants' Motion to Partially Exclude the Expert Testimony of Dr. Steven P. Feinstein, ECF No. 387
45. Defendants' Reply in Support of Motion for Summary Judgment, ECF No. 398
46. Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, ECF No. 413
47. Order re: Order Denying Motions to Exclude Expert Testimony, ECF No. 422
48. Order Granting in Part and Denying in Part Motion to Strike, ECF No. 438
49. Order Denying Motion for Summary Judgment, ECF No. 478
50. Order Granting in Part and Denying in Part Motions to Exclude Expert Testimony, ECF No. 482
51. Order Granting Motion for Clarification; Addendum to Order Regarding Defendants' Motion for Summary Judgment, ECF No. 509
52. Order Granting Motion to Preclude Plaintiffs' Unpled Allegations, ECF No. 514
53. Parties' Joint Set of [Proposed] Jury Instructions, ECF No. 585
54. [Defendants' Proposed] Verdict Form, ECF No. 586
55. Plaintiffs' Proposed Verdict Form, ECF No. 587
56. Defendants' Position Statement in Support of Proposed Verdict Form, ECF No. 592
57. Plaintiffs' Position Statement in Support of Revised Proposed Verdict Form, ECF No. 593
58. Defendants' Amended Objections to Plaintiffs' Amended FRE 106 and Counter-Designations, ECF No. 597
59. Plaintiffs' Deposition Designations with Defendants' Amended Objections and Plaintiffs' Amended Objections to Defendants' Completeness and Counter-Designations, ECF No. 598
60. Defendants' Notice of Motion, Motion, and Memorandum of Points and Authorities in Support of Motion for Leave to File Motion for Reconsideration, ECF No. 611
61. Jury Questionnaire, ECF No. 620-1
62. Plaintiffs' Opposition to Defendants' Motion for Reconsideration, ECF No. 622
63. Defendants' Reply in Support of Motion for Reconsideration, ECF No. 625
64. Order Granting in Part and Denying in Part Defendants' Motion to Exclude Expert Testimony of Frank Partnoy, ECF No. 638
65. Order Denying Defendants' Motion for Reconsideration, ECF No. 639
66. Plaintiffs' Notice of Unopposed Motion and Motion for Preliminary Approval of Proposed Class Action Settlement and Memorandum of Points and Authorities in Support Thereof, ECF No. 653
67. Declaration of Gregg S. Levin in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement, ECF No. 653-1



68. Motley Rice LLC's Firm Resume, ECF No. 653-2
69. Robbins Geller Rudman & Dowd LLP's Firm Resume, ECF No. 653-3
70. Stipulation of Settlement, ECF No. 653-4
71. Stipulation of Dismissal and Mutual Release of Claims, ECF No. 653-5
72. Cornerstone Research's Securities Class Action Settlements 2019, ECF No. 653-6
73. Cornerstone Research's Securities Class Action Settlements 2020, ECF No. 653-7
74. ISS SCAS's The Top 100 U.S. Class Action Settlements of All-Time, ECF No. 653-8
75. Filed Under Seal, ECF No. 653-9
76. Declaration of Tor Gronborg in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement, ECF No. 653-10
77. Declaration of Alexander P. Villanova of Epiq in Support of Settlement Notice Plan, ECF No. 653-11
78. [Proposed] Order Preliminarily Approving Settlement and Providing for Notice, ECF No. 653-12
79. Order Preliminarily Approving Settlement and Providing for Notice, ECF No. 658

**B. *Hefler v. Wells Fargo & Co.*, Case No. 16-CV-05479-JST (N.D. Cal.)**

1. Complaint for the Violations of the Federal Securities Law, ECF No. 1
2. Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses, ECF No. 239
3. Declaration of Salvatore J. Graziano in Support of (I) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation, and (II) Lead Counsel's Motion for an Award of Attorney's Fees and Litigation Expenses, ECF No. 240
4. Exhibit 1, Declaration of Layn R. Phillips in Support of Lead Plaintiff's Motion for Final Approval of Settlement, ECF No. 240-1
5. Exhibit 2, Declaration of Andreas Zubrod, Member of the Executive Board of Union Asset Management Holding AG, in Support of: (A) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, ECF No. 240-2
6. Exhibit 3, Declaration of Alexander Villanova Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, ECF No. 240-3
7. Exhibit 4, Summary of Plaintiffs' Counsel's Lodestar and Expenses, ECF No. 240-4
8. Exhibit 4A, Declaration of Salvatore J. Graziano in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses Filed on Behalf of Bernstein Litowitz Berger & Grossmann LLP, ECF No. 240-5
9. Exhibit 4B, Declaration of Gregg S. Levin in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Motley Rice LLC, ECF No. 240-6
10. Exhibit 4C, Declaration of Shawn A. Williams in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses Filed on Behalf of Robbins Geller Rudman & Dowd LLP, ECF No. 240-7
11. Exhibit 4D, Declaration of Robert D. Klausner in Support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses Filed on Behalf of Klausner, Kaufman, Jensen & Levinson, ECF No. 240-8

12. Exhibit 5, Bernstein Litowitz Berger & Grossmann LLP Summary of all Expenses by Category, ECF No. 240-9
13. Exhibit 6, Cornerstone Research, Securities Class Action Filings, 2017 Year in Review, ECF No. 240-10
14. Exhibit 7, Insight in Economics, Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review, ECF No. 11
15. Exhibit 8, Cornerstone Research, Securities Class Action Filings, 2017 Year in Review, ECF No. 240-12
16. Exhibit 9, In re Allergan, Inc. Proxy Violation Securities Litigation, Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses, ECF No. 240-13
17. Exhibit 10, In re Pfizer Inc. Securities Litigation, Order Granting Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursements of Expenses, ECF No. 240-14
18. Exhibit 11, In re Merck & Co., Inc. Securities, Derivative & "ERISA" Litigation, Judgment Approving Class Action Settlement, ECF No. 240-15
19. Exhibit 12, New Jersey Carpenters Health Fund, et al., v. Residential Capital, LLC, et al., Order on Leader Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, ECF No. 240-16
20. Exhibit 13, In re Williams Securities Litigation, Order Awarding Aggregate Attorneys' Fees and Reimbursement of Litigation Expenses, ECF No. 240-17
21. Exhibit 14, In re DaimlerChrysler AG Securities Litigation, Order Awarding Lead Plaintiffs' Counsels' Attorneys' Fees and Reimbursement of Expenses, ECF No. 240-18
22. Exhibit 15, In re Brocade Securities Litigation, Final Order and Judgment, ECF No. 240-19
23. Exhibit 16, In re 3COM Securities Litigation, Order Awarding Attorneys Fees and Reimbursement of Expenses, ECF No. 240-20
24. Exhibit 17, Forth Worth Employees' Retirement Fund v. J.P. Morgan Chase & Co., Order Granting Lead Counsel's Application for an Award of Attorneys' Fees and Expenses and Plaintiffs' Expenses, ECF No. 240-21
25. Lead Plaintiff's and Lead Counsel's Reply Brief in Further Support of (I) Motion for Final Approval and Settlement and Plan of Allocation, (II) Motion for an Award of Attorneys' Fees and Litigation Expenses, ECF No. 249
26. Supplemental Declaration of Salvatore J. Graziano in Further Support of (I) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation, and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses, ECF No. 250
27. Exhibit 1, Jo Anna Canzoneri McCormick's Objection to Settlement, ECF No. 250-1
28. Exhibit 2, Alphonse I Johnson's Objection to Settlement, ECF No. 250-2
29. Exhibit 3, Jonathon R Elwood's Objection to Settlement, ECF No. 250-3
30. Exhibit 4, Thomas Pekoc's Objection to Settlement, ECF No. 250-4
31. Exhibit 5, Thomas L. Casey's Objection to Settlement, ECF No. 250-5
32. Exhibit 6, Brian Erne's Objection to Settlement, ECF No. 250-6
33. Exhibit 7, Susan Guzzi's Objection to Settlement, ECF No. 250-7
34. Exhibit 8, David G. Duggan's Objection to Settlement, ECF No. 250-8
35. Exhibit 9, Joseph Gray's Objection to Settlement, ECF No. 250-9

36. Exhibit 10, Supplemental Declaration of Alexander Villanova Regarding: (A) Mailing of the Notice and Claim Form; and (B) Report on Requests for Exclusion Received, ECF No. 250-10
37. Exhibit 11, Declaration of David L. Duncan, ECF No. 250-11
38. Order Granting Final Approval of Class Action Settlement and Motion for Attorneys' Fees and Expenses, ECF No. 252
39. Order Awarding Attorneys' Fees and Litigation Expenses, ECF No. 254
40. Ninth Circuit's Memorandum Dismissing Appeal, ECF No. 268

# **EXHIBIT C**

*In re Twitter Inc. Securities Litigation*  
Case No. 4:16-cv-05314-JST (SK)  
U.S. District Court for the Northern District of California

**EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN**

EXHIBIT C

List of Cases with Multipliers of 4 or More

1. *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327, 335-45 (Bankr. D. Md. 2000) (“Based on Fidelity's analysis which assumes a \$300 blended hourly rate would be reasonable, the contingent fee requested by Snyder, Weiner, as modified, of \$71.2 million would be 19.6 times the lodestar starting point....Snyder, Weiner will be awarded its requested fee in the amount of \$71.2 million for professional services as special litigation counsel for the Chapter 7 Trustee.”) (bankruptcy).
2. *Health Republic Ins. Co. v. United States*, 156 Fed. Cl. 67, 71 (2021) (awarding fees of \$185 million, representing 18.5 multiplier).
3. *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, NO. CIV.A. 03-457, 2005 WL 1213926, at \*18 (E.D. Pa. May 19, 2005) (“The Court further notes that the high lodestar multiplier (15.6) which results from the Court’s award of attorneys’ fees in this case is neutralized with respect to the reasonableness of a percentage fee award of 20% by the extraordinary support Plaintiffs have shown for counsel’s request for fees.”).
4. *Glendora Cmty. Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465, 479 (Ct. App. 1984) (“The contention of [appellant] is that the fee sought is more than 12 times the fee for which services at an hourly rate would have been obtained from an attorney specializing in condemnation (including \$8,000 for costs on appeal). Such calculations are based upon hindsight rather than reasonable expectation.”) (condemnation proceeding).
5. *In re Doral Fin. Corp. Sec. Litig.*, No. 1:05-md-01706, ECF No. 107 at 5 (S.D.N.Y. July 17, 2007) (“Lead Plaintiff’s counsel’s total lodestar is \$1,917,094.50. A 15.25% fee represents a reasonable multiplier of 10.26. Given the public policy and judicial economy interests that support the expeditious settlement of cases...the requested fee is reasonable.”).
6. *Weiss v. Mercedes-Benz*, 899 F. Supp. 1297 (D. N.J. 1995), *aff’d*, 66 F.3d 314 (3d Cir. 1995), as reported in *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 572, 592 (D.N.J. 1997) (stating that *Weiss* court had “award[ed] fee that resulted in a multiple of 9.3 times the lodestar and an average hourly rate of \$2,779.63”), *vacated on other grounds sub nom. In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998).

7. *Skochin v. Genworth Fin., Inc.*, No. 3:19-CV-49, 2020 WL 6536140, at \*11 (E.D. Va. Nov. 5, 2020) (awarding fees of \$2 million and 15% of the Settlement Class's net damage awards with a cap of \$24.5 million, representing 9.05 multiplier).
8. *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 182 (D. Mass. 1998) ("If a lodestar approach were used, the actual amount of attorney's fees of class counsel calculated by multiplying the number of hours worked by the hourly billing rate totals \$826,665.00, such that the requested attorney's fees would constitute a lodestar multiplier of 8.9 percent. After hearing, and some hand-wringing, the Court concludes that the fee is not unreasonable under the common fund doctrine.") (class action within bankruptcy).
9. *Cosgrove v. Sullivan*, 759 F. Supp. 1667, 167 n.1 (S.D.N.Y. 1991) ("Under these circumstances, we set the prevailing counsel's fee at \$1,000,000.00...[t]he total 'lodestar' in this case, which represents hours worked multiplied by a reasonable hourly rate, is \$114,398.00.") (8.74 multiplier).
10. *Halcom v. Genworth Life Ins. Co.*, No. 3:21-CV-19, 2022 WL 2317435, at \*13 (E.D. Va. June 28, 2022) ("Taking all of these considerations into account, the 8.4x multiplier is acceptable and the requested attorney fees are reasonable.").
11. *Muchnick v. First Federal Savings & Loan Association of Philadelphia*, No. CIV.A. 86-1104, 1986 WL 10791, at \*1 (E.D. Pa. Sept. 30, 1986) ("Although the lodestar in this case is approximately \$30,000.00, counsel seeks an attorneys' fee of \$250,000.00 . . . I conclude that the requested fee is eminently reasonable under the circumstances of this case and can be justified under the lodestar method of calculation") (8.33 multiplier).
12. *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, Civil Action No. 05-11148-PBS, 2009 WL 2408560, at \*2 (D. Mass. Aug. 3, 2009) ("Balancing all the factors under the crosscheck approach, I award the amount of \$70,000,000, which represents a multiplier of about 8.3 times lodestar, and about 20 percent of the common fund.").
13. *Santos v. Camacho*, No. CIV. 04-00006, 2008 WL 8602098, at\*39 (D. Guam Apr. 23, 2008) ("Based on the significant results achieved through the efforts of Class Counsel in creating the funds for settlement and in light of case law, the court should find that this factor weighs strongly in favor of granting counsel a multiplier of 8."), *aff'd Simpao v. Gov't of Guam*, 369 F. App'x 837, 840 (9th Cir. 2010).
14. *Yuzary v. HSBC Bank USA, N.A.*, No. 12 CIV. 3693 PGG, 2013 WL 5492998, at \*11 (S.D.N.Y. Oct. 2, 2013) ("Here, the lodestar sought by Class Counsel, approximately 7.6 times, falls within the range granted by courts and equals the 31.7% being sought. While this multiplier is near the higher end of the range of multipliers that courts have allowed, this should not result in penalizing plaintiffs' counsel for achieving an early settlement, particular where, as here, the settlement amount is substantial.").

15. *Hainey v. Parrott*, No. 1:02-CV-733, 2007 WL 3308027, at \*1-2 (S.D. Ohio Nov. 6, 2007) (“[C]ounsel’s lodestar fee calculation is approximately \$241,000...[i]n consideration of the above factors, the Court finds that an award of attorney’s fees of 30% of the common fund, or \$1.8 million, is appropriate in this case.”) (7.47 effective multiplier).
16. *In re Boston and Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A.*, 778 F.2d 890 (1st Cir. 1985) (awarding a “final fee of \$232,310” contrasted with “hourly fees of \$33,110,” implying a multiplier of 7.0x) (bankruptcy).
17. *In re Rite Aid Corp. Sec. Litigation*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (“Based on the \$31,660,328.75 proposed fee award and the \$4,549,824.75 lodestar, we conclude that plaintiffs’ counsel requests approval of a fee award with a 6.96 multiplier.”).
18. *Steiner v. Amer. Broadcasting Co., Inc.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (“Based on class counsel’s total hours, the lodestar multiplier was approximately 6.85. Although this multiplier is higher than those in many common fund cases, it still falls well within the range of multipliers that courts have allowed.”) (internal citations omitted).
19. *Ramirez v. Lovin’ Oven Catering Suffolk, Inc.*, No. 11 CIV. 0520 JLC, 2012 WL 651640 (S.D.N.Y. Feb. 24, 2012) (granting fees equal to 6.8 times lodestar).
20. *Riveras v. Bilboa Rest. Corp.*, No. 17-CV-4430-LTS-BCM, 2018 WL 8967112, at \*1 (S.D.N.Y. Dec. 14, 2018) (finding 6.7 multiplier reasonable in FLSA action).
21. *In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1106 (D. Minn. 2009) (“Using the Court-calculated lodestar, this fee would represent a multiplier of nearly 6.5. The Court finds this multiplier appropriate.”).
22. *Nieman v. Duke Energy Corp.*, No. 312CV00456MOCDS, 2015 WL 13609363, at \*2 (W.D.N.C. Nov. 2, 2015) (“The amount of the settlement and the efficiency of counsel in reaching such a resolution reinforce an upward variance from a 4.5 multiplier, but not an 8.0 multiplier. Considering all of the arguments presented, the court finds that the work accomplished in this case—which was substantial—is reasonably compensated by an 18% fee when the *Johnson* factors are considered and then crosschecked.”) (6.43 multiplier).
23. *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 482 (S.D.N.Y. 2013) (“Here, the lodestar sought by Class Counsel, approximately 6.3 times, falls within the range granted by courts and equals the one-third percentage being sought. While this multiplier is near the higher end of the range of multipliers that courts have allowed, this should not result in penalizing plaintiffs’ counsel for achieving an early settlement, particular

where, as here, the settlement amount is substantial.”).

24. *Spartanburg Reg'l Health Servs. Dist., Inc. v. Hillenbrand Indus., Inc.*, No. 7:03-cv-02141, ECF Nos. 377 (D. S.C. Aug. 15, 2006) (approving fee request noting multiplier “slightly above six”); ECF No. 338-5 (providing data showing 6.22 multiplier).
25. *Stevens v. SEI Investments Co.*, No. CV 18-4205, 2020 WL 996418, at \*13 (E.D. Pa. Feb. 28, 2020) (“Class Counsel’s request for \$2,266,666.00 (one-third of the settlement amount) will result in Class Counsel receiving approximately 6.16 times the lodestar. Courts frequently approve attorneys’ fees awards for amounts in excess of the calculated lodestar. Indeed, multiples ranging from 1 to 8 are often used in common fund cases.”).
26. *Kane Cty., Utah v. United States*, 145 Fed. Cl. 15, 20 (2019) (“In order to equal one third of the total recovery, this lodestar amount must be subjected to a multiplier of approximately 6.13, which is within the range courts have approved in common fund cases.”).
27. *Wenzel v. Colvin*, No. EDCV 11-0338 JEM, 2014 WL 3810247, at \*4 (C.D. Cal. Aug. 1, 2014) (“The \$1,000 per hour rate constitutes a multiplier of 6.06 over counsel’s normal hourly rate, consistent with cases that reward excellent results.”).
28. *In re Credit Default Swaps Antitrust Litig.*, No. 13MD2476 (DLC), 2016 WL 2731524, at \*17 (S.D.N.Y. Apr. 26, 2016) (“The loadstar calculation submitted by Class Counsel totals over \$41 million as of April 1, reflecting over 93,000 hours of work by Class Counsel. This amount is equivalent to a loadstar multiple of just over 6.”).
29. *In re Cardinal Health Inc. Securities Litigations*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (“From the Court’s analysis of the previous factors, the Court has found that approximately 18% is a reasonable award, which would yield a lodestar multiplier of six.”).
30. *In re Krispy Kreme Doughnuts, Inc. Sec. Litig.*, No. 1:04-cv-00416, ECF No. 203 (M.D. N.C. Feb. 15, 2007) (approving fee request); ECF No. 193 at 17 (stating fee request embodied multiplier of “approximately 6”).
31. *Ladewig v. Arizona Dep’t of Revenue*, 204 Ariz. 352, 359, 63 P.3d 1089, 1096 (Ariz. Tax Ct. 2003) (“In this case, the Court believes that in light of the lengthy delay in recovery, and the high risks assumed by counsel, that a lodestar multiplier of 6 is appropriate.”).
32. *In re RJR Nabisco, Inc. Securities Litigation*, No. 88 Civ. 7905(MBM), 1992 WL 210138, at \*5-6 (S.D. N.Y. Aug. 14, 1992) (“[T]he requested fees total six times the value of the time spent by plaintiffs’ counsel, what is referred to as the lodestar amount, which amount he says equals the total fees of all defense counsel. . . . [T]he award of a percentage fee in common fund cases such as this is consistent with the



better and increasingly prevailing view in such cases, the requested percentage lies well within the limits awarded in similar cases, plaintiffs' counsel have not taken a free ride on the efforts of a government agency and the settlement was skillfully negotiated.”).

33. *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F. Supp. 3d 265, 271 (S.D.N.Y. 2020) (“Class Counsel’s requested fee represents a lodestar multiplier of 5.85, which is within the range of acceptable multipliers.”).
34. *Williams v. Rohm & Haas Pension Plan*, No. 04-0078-SEB, 2010 WL 4723725 (S.D. Ind. Nov. 12, 2010), *aff’d*, 658 F.3d 629 (7th Cir. 2011) (awarding fees of \$43.5 million, representing 5.85 multiplier).
35. *In re Mercedes-Benz Emissions Litigation*, No. 216CV881KMESK, 2021 WL 7833193, at \*16 (D.N.J. Aug. 2, 2021) (“The requested fee award results in applying a multiplier of 5.67, within the range of multipliers typically awarded in the Third Circuit.”), *adopted in full*, *In re Mercedes-Benz Emissions Litigation*, No. 2:16-cv-00881 (D.N.J. Sept. 20, 2021), ECF No. 345.
36. *Athale v. Sinotech Energy Ltd.*, No. 11 CIV. 05831 (AJN), 2013 WL 11310686, at \*9 (S.D.N.Y. Sept. 4, 2013) (“This amounts to a lodestar multiplier of 5.65, which although high, is not unreasonable under the particular facts of this case.”).
37. *In re Charter Commc’ns, Inc., Sec. Litig.*, No. 4:02-CV-1186 CAS, 2005 WL 4045741, at \*22 (E.D. Mo. June 30, 2005) (“Here fees of 20% of the settlement yield a 5.61 multiplier, which is within the range of multipliers awarded in comparable complex cases.”).
38. *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 198 (S.D.N.Y. 1997) (“Under such circumstances, a 5.5 times lodestar based on the \$3,482,571.75 time charges appears reasonable.”).
39. *Kang v. Wells Fargo Bank, N.A.*, No. 17-CV-06220-BLF, 2021 WL 5826230, at \*18 (N.D. Cal. Dec. 8, 2021) (awarding fees of \$21,053,146.92, representing 5.49 multiplier).
40. *Geneva Rock Prod., Inc. v. United States*, 119 Fed. Cl. 581, 595 (2015), *rev’d on other grounds*, *Longnecker Prop. v. United States*, No. 2015-5045, 2016 WL 9445914 (Fed. Cir. Nov. 14, 2016) (“In this case, an award 5.39 times the lodestar is reasonable under RCFC 23(h), given the complexity of the litigation, the diligent and skillful work by class counsel, and the pendency of the case for over six years.”).
41. *Arrington v. Optimum Healthcare IT, LLC.*, No. CV 17-3950, 2018 WL 5631625, at \*10 (E.D. Pa. Oct. 31, 2018) (“When calculated against the requested fee of \$1,633,333.33, the lodestar multiplier is 5.3. . . . However, in this case, class counsel undertook significant risk to achieve a substantial settlement amount, and should not be penalized for settling the case early in the litigation. We are satisfied with the

reasonableness of the requested fee and we will approve class counsel's request for \$1,633,333.33 in attorneys' fees.”).

42. *Rawa v. Monsanto Co.*, No. 4:17CV01252 AGF, 2018 WL 2389040, at \*9 (E.D. Mo. May 25, 2018), on appeal (noting that fee award had “corresponding lodestar multiplier of 5.3” that was “quite high compared to similar cases in this circuit” but finding it not “too high”).
43. *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) (“In this case, dividing the \$14 million fee request by the lodestar figure yields a multiplier of about 5.3. A review of the case law indicates that while that figure is toward the high end of acceptable multipliers, it is not atypical for similar fee-award cases.”).
44. *Merkner v. AK Steel Corp.*, No. 1:09-CV-423-TSB, 2011 WL 13202629, at \*5 (S.D. Ohio Jan. 10, 2011) (“Applying the rates requested with regard to the hours reflected in the Declarations of Mr. Coleman and Ms. Wallace yields a lodestar figure of \$1,699,467. In light of the \$9.1 million sought, the ‘lodestar multiplier’ would be 5.3. This multiplier is acceptable under the facts and circumstances of this case.”).
45. *Di Giacomo v. Plains All Am. Pipeline*, No. CIV.A.H-99-4137, 2001 WL 34633373, at \*11 (S.D. Tex. Dec. 19, 2001) (“This court finds that 5.3 is an acceptable multiplier in light of the particular facts of this case, discussed more fully below.”).
46. *Arp v. Hohla & Wyss Enterprises, LLC*, No. 3:18-CV-119, 2020 WL 6498956, at \*7 (S.D. Ohio Nov. 5, 2020) (“The multiplier on Class Counsel’s lodestar is approximately 5.29 before accounting for any additional work. This is within the acceptable range.”).
47. *Pinzon v. Jony Food Corp.*, No. 18-CV-105 (RA), 2018 WL 2371737, at \*3 (S.D.N.Y. May 24, 2018) (“Although it is a close question, the settlement here falls within a reasonable range. According to the documentation and calculations submitted by Plaintiff’s counsel, their lodestar amounts to \$5,053. Even accepting the hours and fees requested by Plaintiff’s counsel as accurate and reasonable, the fee award requested here has a lodestar multiplier of 5.23. This multiplier is on the high end of those generally allowed in this Circuit, but it is not unheard of ... The Court thus approves the proposed attorneys’ fees under the percentage of the fund method.”).
48. *Craft v. Cty. of San Bernardino*, 624 F. Supp. 2d 1113, 1123 (C.D. Cal. 2008) (“The plaintiffs’ request in this case for 25% of the class fund would result in a fee of \$6,375,000, which is a multiplier of approximately 5.2 times the \$1.2 Million lodestar in this case. The Court has concluded that it will award Class Counsel 25% of the class fund, and addresses the reasons for doing so below.”).
49. *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 347 (S.D.N.Y. 2014) (noting that, “A fee award of 25% of the fund or \$11,475,000 would represent a multiplier of 5.2 of the lodestar” and approving 25% award).

50. *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 791 (S.D. Tex. 2008) (“[T]he Court finds that the exceptional obstacles to recovery that were present here, and the remarkable success obtained by Lead Counsel’s skill and experience make this a rare and exceptional case warranting the application of the requested 5.2 multiplier under a lodestar cross-check or enhancement under a lodestar analysis.”) (internal quotation marks and citation omitted).
51. *Zeltser v. Merrill Lynch & Co.*, No. 13 CIV. 1531 FM, 2014 WL 4816134, at \*10 (S.D.N.Y. Sept. 23, 2014) (stating that “the lodestar sought by Class Counsel, approximately 5.1 times the fees sought, falls within the range granted by courts” and approving award).
52. *Ferrick v. Spotify USA Inc.*, No. 16-CV-8412 (AJN), 2018 WL 2324076, at \*10 (S.D.N.Y. May 22, 2018) (finding that fee amounting to a 5.02 multiplier would “adequately compensate Class Counsel, and it recognizes the complexity of the case, the risks involved in the litigation, the efforts of Class Counsel and the quality of representation provided, and the benefits to the class from the settlement”).
53. *In re Fernald Litig.*, No. C-1-85-149, 1989 WL 267038, at \*5 (S.D. Ohio Sept. 29, 1989) (“We conclude, therefore, that plaintiffs’ class counsel are entitled to twenty (20%) percent of the common fund created or an equivalent multiplier of five.”).
54. *Fleisher v. Phoenix Life Ins. Co.*, No. 11-CV-8405 (CM), 2015 WL 10847814, at \*18 (S.D.N.Y. Sept. 9, 2015) (“Based on the requested fee (\$13,500,000), class counsel’s aggregate lodestar yields a ‘crosscheck’ multiplier of 4.87. This is well within the range of crosscheck multipliers awarded in this circuit.”).
55. *Perez v. Rash Curtis & Assocs.*, No. 4:16-CV-03396-YGR, 2021 WL 4503314, at \*5 (N.D. Cal. Oct. 1, 2021) (“That said, and given the recovery to the class, the Court will authorize distribution of thirty-seven percent of the Settlement Amount to account for the fact that one of the two cases did in fact go to trial and under the agreement with plaintiff Perez, class counsel could have sought authorization of forty percent for that matter. Thirty-seven percent totals \$27,972,000 which increases class counsel’s lodestar to 4.8 and will address, in part, class counsel’s independent decision to enter into a litigation funding agreement.”).
56. *Meijer, Inc. v. 3M*, No. CIV.A. 04-5871, 2006 WL 2382718, at \*24 (E.D. Pa. Aug. 14, 2006) (“[T]he Court finds that, given the facts of this case, the requested lodestar multiplier of 4.77 is acceptable and does not call for a reduction in Plaintiffs’ Counsel’s requested attorneys’ fees award.”).
57. *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 633 (N.D. Cal. 2021), *appeal dismissed*, No. 21-15555, 2021 WL 2660668 (9th Cir. June 22, 2021), and *aff’d*, No. 21-15553, 2022 WL 822923 (9th Cir. Mar. 17, 2022) (“Reducing the fee here to \$97,500,000, reduces the multiplier to 4.71. This is more in line with

comparable settlements, still sufficiently and appropriately generous, and more reasonable in the circumstances here. The results obtained and the risks at trial warrant a higher-end multiplier of 4.71, but not more.”).

58. *Cornwell v. Credit Suisse Grp.*, No. 08-CV-03758(VM), 2011 WL 13263367, at \*2 (S.D.N.Y. July 20, 2011) (“Lead Plaintiffs’ counsel’s total lodestar is \$4,049,631.50. A 27.5% fee represents a multiplier of 4.7. Given the public policy and judicial economy interests that support the expeditious settlement of cases, the requested fee is reasonable.”) (citation omitted).
59. *In re Xcel Energy, Inc., Sec., Derivative & “ERISA” Litig.*, 364 F. Supp. 2d 980, 999 (D. Minn. 2005) (approving lodestar multiplier of 4.7 for securities class action component, because “[u]nder these circumstances, the court concludes that the 25% attorney fee, when cross-checked against a lodestar multiplier of 4.7, is reasonable;” also approving lodestar multiplier of 2.16 for ERISA component).
60. *Bodnar v. Bank of Am., N.A.*, No. CV 14-3224, 2016 WL 4582084, at \*6 (E.D. Pa. Aug. 4, 2016) (“The collective lodestar for Class Counsel is \$1,933,795.95. Accordingly, an award of 33% of the Settlement Fund or \$9,075,000 results in a multiplier here of 4.69. Given the nature, complexity, and potential duration of this Action, as detailed above, the risk of non-recovery, the value of the social benefit, and the extraordinary results in light of the obstacles, the court finds that the multiplier is appropriate and reasonable, including when compared to awards in other cases in this court and Circuit.”).
61. *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (“Finally, in ‘cross-checking’ the percentage fee against the lodestar-multiple, it clearly appears that the modest multiplier of 4.65 is fair and reasonable.”).
62. *Flores v. Express Servs., Inc.*, No. CV 14-3298, 2017 WL 1177098, at \*4 (E.D. Pa. Mar. 30, 2017) (“The counsel fee request of \$1,895,362.33 results in a multiplier of 4.6, that is a requested fee which is 4.6 times the lodestar amount. This multiplier is reasonable . . .”).
63. *Holleran v Rita Medical Systems, Inc.*, No. RG06302394, 2007 WL 7759253 (Cal.Super. Oct. 04, 2007) (“Counsel for Plaintiffs seek fees in the total amount of \$290,000, which represents a multiplier of 4.57. The agreed fees sought are substantially higher than the lodestar, but presumably reflect the contingent risk of the case to class counsel, the benefits of certainty and of limiting its own attorneys’ fees to Angiodynamics, and other factors.”).
64. *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA, 2015 WL 2438274, at \*7 & 8 n.3 (N.D. Cal. May 21, 2015) (stating that, “[c]onsidering all of the facts and circumstances, the Court, in its discretion, concludes that [one firm] deserves a multiplier of 2 and [second firm] deserves a multiplier of 5.5” and noting that net result is a total multiplier of 4.53).

65. *Municipal Authority of Town of Bloomsburg v. Commonwealth of Pennsylvania*, 527 F. Supp. 982, 1000 (M.D. Pa. 1981) (“The multiplier of 4.5 requested by Petitioners will be applied to the lodestar fee despite the facts that such a multiplier is extremely high and appears to be probably without precedent. It is warranted only because of the peculiar facts of this case.”).
66. *Deloach v. Philip Morris Companies*, No. 1:00CV01235, 2003 WL 23094907, at \*11 (M.D.N.C. Dec. 19, 2003) (“A multiplier of 4.45, in conjunction with an adjusted lodestar of \$15,914,905.50, results in a fee award of \$70,821,329.48. This figure represents a reasonable fee for the services provided by Plaintiffs’ Co-Lead Counsel in this case.”).
67. *Rabin v. Concord Assets Group, Inc.*, No. 89 Civ. 6130, 1991 WL 275757 (S.D. N.Y. Dec. 19, 1991) (“The requested attorneys’ fees of \$2,544,122.78 represents a multiplier of 4.4 to the lodestar figure based on time (which this Court finds to have been reasonably expended) and at various hourly rates (which this Court finds to be reasonable for the particular attorneys performing services).”).
68. *Krakauer v. Dish Network, L.L.C.*, No. 1:14-CV-333, 2018 WL 6305785, at \*6 (M.D.N.C. Dec. 3, 2018) (“In sum, a 4.39 multiplier is reasonable for this case.”).
69. *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 16-CV-03698-NC, 2018 WL 2183253, at \*7 (N.D. Cal. May 11, 2018) (“This amount requires a risk multiplier of 4.375 to reach the \$3.5 million Plaintiffs seek. Though on the high end, this multiplier falls within the range of reasonableness.”).
70. *Monserate v. Tequipment, Inc.*, No. 11 CV 6090 RML, 2012 WL 5830557, at \*4 (E.D.N.Y. Nov. 16, 2012) (“In sum, I find that a fee award of \$465,000 which provides a 4.34 multiplier of the reduced lodestar and constitutes fifteen percent of the \$3,100,000.00 Settlement Fund, is a fair and reasonable fee under *Goldberger* and related cases and should adequately compensate class counsel for its time and effort, for the risk it faced in this case, and for the high quality of its representation. Moreover, that reduced fee award will allow additional monies to be distributed to class members.”).
71. *Demaria v. Horizon Healthcare Servs., Inc.*, No. 2:11-CV-07298 (WJM), 2016 WL 6089713, at \*5 (D.N.J. Oct. 18, 2016) (“Although a lodestar multiplier of 4.3 is large, it is not unreasonable.”).
72. *In re VeriFone Holdings, Inc. Sec. Litig.*, No. C-07-6140 EMC, 2014 WL 12646027, at \*2 (N.D. Cal. Feb. 18, 2014) (“[A]lthough the lodestar cross-check though reveals a high multiplier—4.3 compared to the Ninth Circuit’s observation that over 80% of multipliers fall between 1.0 and 4.0—other courts have awarded multipliers in excess of 4.0, and the Court finds that the multiplier here is acceptable in light of the very substantial risks involved and Lead Plaintiff’s risk and extensive work on the case.”).

73. *Buccellato v. AT & T Operations, Inc.*, No. C10-00463-LHK, 2011 WL 3348055, at \*2 (N.D. Cal. Jun. 30, 2011) (“The resulting multiplier of 4.3 is reasonable in light of the time and labor required, the difficulty of the issues involved, the requisite legal skill and experience necessary, the excellent and quick results.”).
74. *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (“Even assuming a value of one dollar per share, the 4.3 lodestar multiplier would be proper in this case.”).
75. *Patti’s Pitas, LLC v. Wells Fargo Merch. Servs., LLC*, No. 1:17-CV-04583 (AKT), 2021 WL 5879167, at \*5 (E.D.N.Y. July 22, 2021) (“Dividing the \$12 million fee request by Class Counsel’s lodestar yields an implied ‘multiplier’ of approximately 4.26. This is within the range of multipliers approved during lodestar cross checks of percentage-of-fund awards.”).
76. *Shannon v. Hidalgo County Board of Comm’r*, No. 08-369 (D. N.M. June 4, 2009) (4.2 multiplier) (“Class Counsel are awarded reasonable attorneys’ fees, costs and gross receipts tax in the total amount of \$333,333, to be paid forthwith from the settlement fund.”).
77. *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, No. 2:06-CV-01797-MSG, 2015 WL 12843830, at \*6 (E.D. Pa. Oct. 15, 2015) (“A 27.5% fee award would equate to a lodestar multiplier of approximately 4.12. Such a multiplier is within the range of those frequently awarded in common fund cases.”).
78. *In re GSE Bonds Antitrust Litig.*, No. 19-CV-1704 (JSR), 2020 WL 3250593, at \*5 (S.D.N.Y. June 16, 2020) (“A fee award of 20% of the settlement fund, or \$77.3 million, thus represents a multiplier of 4.09 of this lodestar. Although on the high end, a 4.09 multiplier is within the range of what has considered reasonable by courts.”).
79. *Koch v. Desert States Emps. & UFCW Unions Pension Plan*, No. CV-20-02187-PHX-DJH, 2021 WL 6063534, at \*7 (D. Ariz. Dec. 22, 2021) (“For the reasons stated in the Court’s Order approving the Settlement Agreement and herein, a 4.0 multiplier of the Court’s calculated lodestar is appropriate for Class Counsel in this particular case.”).
80. *Uschold v. NSMG Shared Servs., LLC*, No. 18-CV-01039-JSC, 2020 WL 3035776, at \*16 (N.D. Cal. June 5, 2020) (“A multiplier of 4 is warranted here based on the contingent nature of the fee agreement and Mr. Benjamin’s explanation at the final approval hearing that this action required the majority of his firm’s resources and attention since January 2018. The high end multiplier is warranted because it would result in a percentage of recovery of 12.9% of the Gross Settlement Amount, which is below “the usual range” awarded in common fund cases.”).
81. *Hillson v. Kelly Servs. Inc.*, No. 2:15-CV-10803, 2017 WL 3446596, at \*6 (E.D. Mich. Aug. 11, 2017) (“Here, as discussed, the risk in this case was considerable but not

extraordinary. A multiplier of 4 would seem to adequately account for that risk.”).

82. *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-CV-3066-JEC, 2012 WL 12540344, at \*5 (N.D. Ga. Oct. 26, 2012) (“Here, the requested fee would represent a multiplier of approximately four times lodestar, which is well within the range of approved fees.”).
83. *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359-60 (S.D.N.Y. 2003) (“When combined with the attorneys’ fees awarded pursuant to the Citigroup Settlement, the amount sought is equivalent to a lodestar multiple of 4.0. . . . As no objection remains to the amount of costs sought by Lead Counsel, and the expenses do not appear facially unreasonable, the application for reimbursement of expenses is approved.”).
84. *In re Cenco Inc. Sec. Litig.*, 519 F. Supp. 322, 327 (N.D. Ill. 1981) (“Accordingly, the lodestar rate and expenses sought are reasonable. Further, the court finds that a multiple of 4 accurately takes into account the factors discussed above and awards Sachnoff attorneys’ fees in the amount of \$893,450.00 plus \$41,300.00 for paralegals and \$24,783.32 in expenses.”).

# **EXHIBIT D**



*In re Twitter Inc. Securities Litigation*  
Case No. 4:16-cv-05314-JST (SK)  
U.S. District Court for the Northern District of California

**EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN**

EXHIBIT D

List of Included Northern District California Class Actions  
Affirming Hourly Rates in Fee Awards in 2021

1. *Alabsi v. Savoya, LLC*, No. 4:18-cv-06510 (N.D. Cal. Apr. 15, 2021), ECF No. 110.
2. *Askar v. Health Providers Choice, Inc.*, No. 5:19-cv-06125 (N.D. Cal. Oct. 18, 2021), ECF No. 49.
3. *Atkinson v. Minted, Inc.*, No. 3:20-cv-03869 (N.D. Cal. Dec. 17, 2021), ECF No. 65.
4. *Baird v. BlackRock Institutional Trust Company*, No. 4:17-cv-01892 (N.D. Cal. Nov. 3, 2021), ECF No. 490.
5. *Bakhtiar v. Information Resources, Inc.*, No. 4:17-cv-04559 (N.D. Cal. Feb. 10, 2021), ECF No. 148.
6. *Del Castillo v. Community Child Care Council of Santa Clara County, Inc.*, No. 5:17-cv-07243 (N.D. Cal. Oct. 20, 2021), ECF No. 282.
7. *Elder v. Hilton Worldwide Holdings, Inc.*, No. 4:16-cv-00278 (N.D. Cal. Feb. 4, 2021), ECF No. 167.
8. *Haralson v. U.S. Aviation Services Corp.*, No. 4:16-cv-05207 (N.D. Cal. Feb. 3, 2021), ECF No. 106.
9. *Harrison v. Bank of America*, No. 3:19-cv-00316 (N.D. Cal. Nov. 24, 2021), ECF No. 89.
10. *Hubbard v. RCM Technologies (USA), Inc.*, No. 4:19-cv-06363 (N.D. Cal. Oct. 28, 2021), ECF No. 48.
11. *In re Apple Inc. Device Performance Litigation*, No. 5:18-md-02827 (N.D. Cal. Mar. 17, 2021), ECF No. 609.<sup>1</sup>

---

<sup>1</sup> This case included time records from dozens of law firms, encompassing hundreds of hourly rates; we included in the study only the rates of all 37 relevant time-keepers reflected in the fee submissions of the two co-lead counsel law firms, as these firms' time accounted for the majority of the total lodestar. See, e.g., Supplemental Declaration of Mark J. Dearman in Support of Plaintiffs' Reply in Further Support of Motion for Attorneys' Fees, Expenses, and Service

12. *In re Dropbox Securities Litigation*, No. 5:19-cv-06348 (N.D. Cal. Dec. 8, 2021), ECF No. 135.
13. *In re E-3 Systems Litigation*, No. 4:19-cv-01453 (N.D. Cal. June 8, 2021), ECF No. 67.
14. *In re Facebook Biometric Information Privacy Litigation*, No. 3:15-cv-03747 (N.D. Cal. Feb. 26, 2021), ECF No. 537.
15. *Joh v. American Income Life Insurance Company*, No. 3:18-cv-06364 (N.D. Cal. Jan. 7, 2021), ECF No. 80.
16. *Miguel-Sanchez v. Mesa Packing, LLC*, No. 5:20-cv-00823 (N.D. Cal. Oct. 20, 2021), ECF No. 59.
17. *Miner v. ITT Educational Services, Inc.*, No. 3:16-cv-04827 (N.D. Cal. Mar. 19, 2021), ECF No. 79.
18. *Moreno v. Capital Building Maintenance & Cleaning Services, Inc.*, No. 4:19-cv-07087 (N.D. Cal. Sep. 10, 2021), ECF No. 43.
19. *Morrison v. American National Red Cross*, No. 4:19-cv-02855 (N.D. Cal. Jan. 8, 2021), ECF No. 54.
20. *Newirth v. Aegis Senior Communities LLC*, No. 4:16-cv-03991 (N.D. Cal. Aug. 23, 2021), ECF No. 227.
21. *Philips v. Munchery Inc.*, No. 3:19-cv-00469 (N.D. Cal. Feb. 1, 2021), ECF No. 68.
22. *Pygin v. Bombas, LLC*, No. 4:20-cv-04412 (N.D. Cal. Nov. 29, 2021), ECF No. 61<sup>2</sup>.

---

Awards, ECF No. 553, *In re Apple Inc. Device Performance Litigation*, No. 5:18-md-02827 (N.D. Cal. Nov. 20, 2020). The Court approved all of the proposed rates in its final approval order. *In re Apple Inc. Device Performance Litig.*, No. 5:18-MD-02827-EJD, 2021 WL 1022866, at \*8 (N.D. Cal. Mar. 17, 2021). After we completed the rate study, the Ninth Circuit vacated and remanded the final approval order and fee decision on other grounds; nothing in the Circuit's decision casts doubt upon the reasonableness of the hourly rates. *See In re Apple Inc. Device Performance Litig.*, No. 21-15758, 2022 WL 4492078 (9th Cir. Sept. 28, 2022).

<sup>2</sup> In this case, we excluded two specific hourly rates because the Court, although approving the rates, noted that the fee submission had not included adequate information about the attorneys' experience as to two timekeepers. *See Order Granting Motion for Final Approval of Class Action Settlement and Granting Motion for Fees, Costs, and Services Award and Entering Final Judgment*, ECF No. 61 at 10-11 & n.4, *Pygin v. Bombas, LLC*, No. 4:20-cv-04412 (N.D. Cal. Nov. 29, 2021).

23. *Siddle v. Duracell Company*, No. 3:19-cv-00568 (N.D. Cal. Apr. 19, 2021), ECF No. 124.
24. *Stonehocker v. Kindred Healthcare Operating, LLC*, No. 4:19-cv-02494 (N.D. Cal. Apr. 27, 2021), ECF No. 71.
25. *Taafua v. Quantum Global Technologies, LLC*, No. 5:18-cv-06602 (N.D. Cal. Feb. 16, 2021), ECF No. 57.
26. *Villafan v. Broadspectrum Downstream Services Inc*, No. 3:18-cv-06741 (N.D. Cal. Apr. 8, 2021), ECF No. 150.

# **EXHIBIT E**

*In re Twitter Inc. Securities Litigation*  
Case No. 4:16-cv-05314-JST (SK)  
U.S. District Court for the Northern District of California

**EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN**

**EXHIBIT E**

List of Included Northern District California Securities Class Actions  
Affirming Fee Awards in 2020-2021

1. *Derchi-Russo v. Finisar Corporation*, No. 5:11-cv-01252 (N.D. Cal. Feb. 16, 2021), ECF No. 214.
2. *In re Dropbox Securities Litigation*, No. 5:19-cv-06348 (N.D. Cal. Dec. 8, 2021), ECF No. 135.
3. *In re Restoration Robotics, Inc. Securities Litigation*, No. 5:18-cv-03712 (N.D. Cal. Sept. 9, 2021), ECF No. 127.
4. *In re Tezos Securities Litigation*, No. 3:17-cv-06779 (N.D. Cal. Aug. 28, 2020), ECF No. 262.
5. *In re WageWorks, Inc., Securities Litigation*, No. 4:18-cv-01523 (N.D. Cal. Aug. 20, 2021), ECF No. 187.
6. *Malhotra v. Sonim Technologies, Inc.*, No. 3:19-cv-06416 (N.D. Cal. Mar. 5, 2021), ECF No. 115.
7. *Plant v. Jaguar Animal Health, Inc.*, No. 3:17-cv-04102 (N.D. Cal. May 27, 2021), ECF No. 97.
8. *Vataj v. Johnson*, No. 4:19-cv-06996 (N.D. Cal. Nov. 5, 2021), ECF No. 137.
9. *Wong v. Arlo Technologies, Inc.*, No. 5:19-cv-00372 (N.D. Cal. Apr. 19, 2021), ECF No. 152.
10. *Yaron v. Intersect ENT, Inc.*, No. 4:19-cv-02647 (N.D. Cal. Nov. 5, 2021), ECF No. 80.