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DISTRICT COURT

CLARK COUNTY, NEVADA

ANGEL LUIS RODRIGUEZ, JR., individually and as a representative of the class, Plaintiff, vs. NATIONAL CREDIT CENTER, LLC. Defendant.	Case No.: A-23-869000-B Dept. No.: 16 HEARING REQUESTED **PLAINTIFF'S MOTION & MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARD**

Plaintiff Angel Luis Rodriguez, Jr. ("Plaintiff") and Class Counsel respectfully move the Court to approve the following to be distributed from the Gross Settlement Fund: (1) an award of attorneys' fees in the amount of $10,000,000; (2) reimbursement of Class Counsel's out-of-pocket documented expenses in an amount not to exceed $110,453.55; and (3) $25,000 as a service award to Plaintiff. In addition, the Court should approve reimbursement to the Settlement Administrator for the costs associated with notice and claims administration. Defendant National Credit Center, LLC ("Defendant" or "NCC") does not oppose the relief sought in this Motion.

MEMORANDUM

Plaintiff Angel Luis Rodriguez, Jr. ("Plaintiff") and Class Counsel have investigated and litigated this Fair Credit Reporting Act ("FCRA") action on a contingency fee basis without compensation for their time or reimbursement of their expenses. Class Counsel and Plaintiff's work and resources ultimately secured historic relief for Settlement Class Members[1]: a total of $30 million in monetary consideration (the "Total Monetary Relief")[2], along with significant and valuable changes to NCC's reporting practices. Because these results could not have been attained absent Class Counsel's resources and skill, nor Plaintiff's active participation, the relief sought in this Motion should be granted.

First, the Court should grant Class Counsel's request for attorneys' fees in the amount of $10,000,000. Under the preferred percentage-of-the-fund (or percentage) method, Class Counsel's request amounts to one-third of the Total Monetary Relief provided by the Settlement. As set forth in more detail below and in the accompanying declaration of Brian T. Fitzpatrick, Professor of Law at Vanderbilt University, this percentage is well in line with prevailing fee practices in Nevada courts, FCRA class actions, and courts nationwide. (*See generally* Declaration of Brian T. Fitzpatrick attached hereto as Exhibit "1" ("Fitzpatrick Declaration" or "Fitzpatrick Decl.").) The

[1] Capitalized terms used and not defined in this Memorandum have the same meaning as those ascribed to them in the Settlement Agreement (or "S.A."), which was filed with the Court on June 20, 2024 as Exhibit 1 to the Appendix to the Declaration of E. Michelle Drake (the "June 20, 2024 Appendix").

[2] The Total Monetary relief is composed of NCC's first payment of $27 million into the Gross Settlement Fund and its second payment of $3 million into the Supplemental Settlement Fund.

request is particularly reasonable here in light of the injunctive relief that Class Counsel secured, which forbids Defendant from engaging in name-only matching to the Office of Foreign Assets Control's ("OFAC") Specially Designated Nationals and Blocked Persons list ("OFAC List")—and which, on its own, is valued to be worth at least $18 million. (Exhibit 2 to June 20, 2024 Appendix, June 13, 2024 Declaration of Stan V. Smith, Ph.D. ¶ 21 ("Smith Decl.").) When the monetary value of the injunctive relief is considered, Class Counsel's requested fee equates to only 21% of the Settlement's total value, a percentage which is lower than most fee awards in class action cases. (Ex. "1" Fitzpatrick Decl. ¶¶ 20-21.) In addition to being consistent with prevailing practices, Class Counsel's request is also supported by their expertise, the complexity of this action, and the exceptional results achieved. Finally, while not required, a lodestar cross-check confirms the reasonableness of the request. In short, the requested fee should be approved.

Second, Class Counsel's request to be reimbursed up to $110,453.55 for their documented, out-of-pocket expenses, all incurred in litigating this matter and ultimately achieving the excellent results for the Settlement Class, should be granted. Class Counsel's reasonable costs are precisely the type that courts typically reimburse. The Court should reimburse them here.

Third, the Court should approve Plaintiff's request for a $25,000 service award. Plaintiff has played a hands-on role in this litigation, by, for example, responding to extensive discovery requests and staying engaged through lengthy settlement negotiations. Further, he has at all times been the *only* named plaintiff; without Plaintiff's willingness to pursue his claims on a classwide basis, Class Members likely would have recovered *nothing* for the conduct challenged in this lawsuit, and would not have benefitted from the policy changes required by the Settlement.

Fourth, the Court should reimburse the Administrator for the costs of distributing notice and administering the Settlement. Class Counsel will provide a more detailed accounting of these costs, and a more detailed request, in the forthcoming Motion for Final Approval.

For the foregoing reasons, discussed further herein, the Motion should be granted.

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BACKGROUND[3]

I. Class Counsel Have Worked Diligently on Behalf of Settlement Class Members on a Contingent Basis.

Class Counsel is comprised of experienced attorneys from two distinguished law firms: Berger Montague PC ("Berger Montague") and Eglet Adams Eglet Ham Henriod ("Eglet Adams"). Berger Montague is among only a small handful of firms that routinely litigate significant FCRA class actions. (*See* Declaration of E. Michelle Drake attached hereto as Exhibit "2" ("Drake Decl.") ¶¶ 32-41; *see also* Exhibit 4 to June 20, 2024 Appendix, Firm Resume.) Class Counsel from Berger Montague are highly experienced FCRA practitioners who collectively have decades of experience in litigating complex FCRA class actions. (Ex. "2" Drake Decl. ¶¶ 32-41.) They have secured many tens of millions of dollars in settlements for FCRA clients, and recently obtained final approval of the second-largest class action settlement in the 54-year-history of the FCRA. (*Id.* ¶ 39.)

Meanwhile, Eglet Adams is a preeminent Nevada law firm that has been repeatedly recognized for its consumer rights advocacy and for consistently obtaining substantial verdicts at trial. (*See* Declaration of Richard K. Hy attached hereto as Exhibit "3" ("Hy Decl.") ¶ 3.) The firm has significant experience litigating high-profile cases with proven results. The firm's attorneys consistently receive accolades for their work, including recognition by the National Association of Distinguished Counsel, the American Society of Legal Advocates, and Super Lawyers. (*Id.* ¶ 6.)

Class Counsel have invested significant time and resources in this matter for nearly two years. (Ex. "2" Drake Decl. ¶¶ 4-28.) Much of their work is not evident based solely on a review of the docket, as a great deal of the litigation took place outside of the courtroom. All told, Class Counsel:

[3] The history of this litigation, as well as an overview of the key terms of the Settlement Agreement, are set forth in the Memorandum in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement & Preliminary Certification of Settlement Class, on Order Shortening Time ("Motion for Preliminary Approval").

- investigated Plaintiff's claims, beginning in October 2022, and drafted and filed the class action complaint;
- negotiated a protective order (ECF No. 29, Prot. Order);
- briefed Plaintiff's then-opposed motion to remand, which was later withdrawn (ECF No. 32, Plf.'s Mot. for Remand; ECF No. 35, Plf.'s Not. of Withdrawal of Mot. for Remand);
- prepared Plaintiff's initial disclosures, and analyzed Defendant's initial disclosures;
- served multiple sets of written discovery (including requests for production ("RFPs"), interrogatories, and a request for admission), and analyzed NCC's responses (and many rounds of supplemental responses) thereto;
- prepared responses to Defendant's discovery requests—26 RFPs and 21 interrogatories—which required extracting text messages from Plaintiff's phone and producing documents;
- engaged in near-weekly meet and confers during the fall and early winter of 2023 to work through the Parties' discovery disputes;
- reviewed and analyzed documents produced by Defendant;
- negotiated the production of multiple iterations of complex data sets, with millions of records, each of which came with dozens of data points, as well as the code behind Defendant's matching algorithms;
- analyzed Defendant's voluminous data production and source code (i.e., the computer code which conducted the matching to the OFAC List at issue in this litigation), which required retaining (and overseeing the work of) two experts;
- retained an expert forensic and financial consultant to analyze NCC's finances;
- began preparing motions to compel on a number of discovery disputes that had crystallized, including regarding NCC's net worth and pre-tax profits;
- prepared for and completed a Fed. R. Civ. P. 30(b)(6) deposition of NCC;
- scheduled, and began preparing for, several depositions of NCC's witnesses;
- issued subpoenas (for documents and/or testimony) to seven third parties;
- met and conferred with counsel for many of these third parties and negotiated the production of—and thereafter closely analyzed—responsive documents;

- prepared for and attended three full-day mediations with third-party neutral Rodney Max, continued arms-length negotiations to finalize a terms sheet, and subsequently drafted the 34-page Settlement Agreement and all exhibits thereto;
- prepared the Notice Plan, which involved soliciting and vetting multiple proposals, and working with Defendant to obtain necessary data;
- drafted the Motion for Preliminary Approval and other related documents;
- prepared for, traveled to and from, and argued the Preliminary Approval Hearing;
- supervised the Settlement Administrator; and
- assisted Class Members who reached out with questions about the Settlement.

(*Id.* ¶¶ 4-22.)

Class Counsel have worked without compensation or reimbursement for their time and out-of-pocket expenses. (*Id.* ¶¶ 23-24.) Before taking the case, Class Counsel negotiated a customary contingency fee agreement ("Retainer Agreement") with Plaintiff, which states, in relevant part:

> [Class Counsel] agree to seek a reasonable attorneys' fee which may be determined as a percentage (customarily one-third) of the value of all monetary and Non-Monetary Relief (as defined below) provided by the settlement or judgment. Alternatively, at their election, [Class Counsel] may seek a higher amount so long as the fee is reasonably based on the value and quality of the work performed, the results achieved, and applicable law…
>
> [Plaintiff] acknowledges and agrees that any settlement, award, or judgment may also include relief of a non-monetary nature that inures to [Plaintiff]'s and/or the applicable class's benefit, or otherwise accomplishes [Plaintiff]'s objectives, in whole or in part, in pursuing the Claim ("Non-Monetary Relief").

(*Id.* ¶ 23.) Class Counsel negotiated the above with the understanding that this would be an appropriate incentive for them to take on the financial risks involved. (*Id.* ¶ 24.) Class Counsel also agreed to advance all costs. (*Id.*) If Class Counsel did not successfully resolve this matter, they would have been paid nothing. To date, Class Counsel have incurred a total of $110,453.55 in costs, largely on expert, mediation, and filing fees. (*Id.* ¶ 28; *see also* Ex. "3" Hy Decl. ¶ 7.)

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II. Plaintiff Has Played a Hands-On Role in this Litigation and Remained Committed to Securing Classwide Relief.

Plaintiff has been highly involved in bringing this case to a successful resolution. Among other things, he: (1) first identified, and contacted Class Counsel about, his potential claims; (2) assisted Class Counsel in the investigation of his claims; (3) reviewed and approved the complaint for filing; (4) responded to 47 written discovery requests; (5) had his personal cell phone forensically imaged; (6) produced many documents, including sensitive financial documents and personal text messages; (7) regularly conferred with Class Counsel; (8) made himself available to Class Counsel throughout settlement negotiations; (9) reviewed and approved the Settlement Agreement; and (10) attended the Preliminary Approval Hearing. (Declaration of Angel Luis Rodriguez, Jr. attached hereto as Exhibit "4" ("Rodriguez Decl.") ¶¶ 2, 7; *see also* Ex. "2" Drake Decl. ¶ 30.) In addition, Plaintiff was ready and willing to testify at deposition and/or trial. (Ex. "4" Rodriguez Decl. ¶ 8.)

From the outset, Plaintiff knew that his involvement in this case might require significant time and energy, as well as intrusion into his personal affairs. (*Id.* ¶ 9.) Plaintiff felt strongly about obtaining justice—including injunctive relief—for others who were impacted by NCC's reporting practices. (*Id.* ¶ 6.) He was determined to file the case and see it through to classwide resolution to secure meaningful relief for other aggrieved consumers. (*Id.*) Additionally, Plaintiff is, and always has been, the *only* class representative in this matter. Without Plaintiff's initiative and commitment, Class Members likely would have received nothing for the conduct at issue in this case. (Ex. "2" Drake Decl. ¶ 31.) Finally, as part of the Settlement, Plaintiff signed a broader release than other Class Members, releasing *all* of his claims against NCC. (Ex. "4" Rodriguez Decl. ¶ 9.)

ARGUMENT

I. Class Counsel's Request for Attorneys' Fees Should be Approved.

Under the percentage method, Class Counsel seek a fee that amounts to one-third of the Total Monetary Value provided under the Settlement or, alternatively—and taking into account the significant injunctive relief that Class Counsel secured—21% of the Settlement's total value.

This request is in line with prevailing fee award practices and is reasonable under Nevada law. Moreover, although not necessary to perform, a lodestar cross-check confirms that the requested fee is reasonable. Class Counsel's request should be approved.

A. Governing Law

"In Nevada, 'the method upon which a reasonable fee is determined is subject to the discretion of the court,' which 'is tempered only by reason and fairness.'" *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864 (2005) (citation omitted). "Accordingly, in determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.* (citations omitted).

"[W]hichever method is chosen as a starting point, [] the court must continue its analysis by considering the requested amount in light of the factors enumerated by this court in *Brunzell v. Golden Gate National Bank* [, 85 Nev. 345 (1969)]." *Id.* at 864-65. In *Brunzell*, the Nevada Supreme Court listed the factors generally relevant to determining the reasonableness of an attorney fee award as including: "(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; [and] (4) the result: whether the attorney was successful and what benefits were derived." *Brunzell*, 85 Nev. at 349. *See also Shepard v. Shac, LLC*, 2022 WL 17223174, at *9 (Nev. Dist. Ct. Sep. 28, 2022) (applying *Brunzell* factors to determine that class counsel's requested fee award was reasonable); *In re Kitec Fitting Litigation*, 2009 WL 1817622 (Nev. Dist. Ct. Mar. 16, 2009) (similar).

B. The Percentage Method, and Class Counsel's Request, are Appropriate

The Court should use the prevailing percentage method in determining Class Counsel's fees, and conclude that Class Counsel's request is well in line with fee awards in similar actions.

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i. In a Common Fund Case, the Percentage Method is Best

In a common fund case, "th[e] [ ] Court has the discretion to apply either the lodestar method or the percentage-of-the-fund method in calculating a fee award." *In re Kitec*, 2009 WL 1817622, ¶ 51. As between these two methods, however, the percentage method is generally preferred. As this Court has recognized:

> The percentage-of-the-fund approach is the modern trend and majority approach in common fund fee award jurisprudence. Courts and commentators alike have recognized that the percentage-of-recovery approach is preferable in cases involving a common fund because it permits "the judge to focus on a showing that the fund conferring a benefit on the class resulted from the lawyers' efforts" rather than "collateral disputes over billing," it "better respects" the United States Supreme Court's admonition in *Hensley v. Eckerhart* that a request for attorney's fees should not result in a second major litigation," and "it more closely aligns the interests of the class and its counsel."

Id. ¶ 52 (internal citations omitted).

Mr. Fitzpatrick, Professor of Law and author of "the most comprehensive examination of federal class action settlements and attorneys' fees that has ever been published," further explains why the lodestar method has become disfavored:

> Over time, [] the lodestar approach fell out of favor in common fund class actions. It did so largely for two reasons. First, courts came to dislike the lodestar method because it was difficult to calculate the lodestar; courts had to review voluminous time records and the like. Second—and more importantly—courts came to dislike the lodestar method because it did not align the interests of class counsel with the interests of the class; class counsel's recovery did not depend on how much the class recovered, but, rather, on the number of hours that could be spent on the case. That is, the lodestar method rewarded dragging cases out and discouraged timely settlements.

(*See* Ex. "1" Fitzpatrick Decl. ¶ 10.)

Due to these pitfalls with the lodestar method, "[t]he percentage approach has become the preferred method for awarding fees to class counsel in common fund cases precisely because it corrects the deficiencies of the lodestar method." (*Id*. ¶ 12.) He continues:

> [The percentage method] is less cumbersome to calculate, and, more importantly, it aligns the interests of class counsel with the interests of the class because the more the class recovers, the more class counsel recovers. This is why private parties—including sophisticated corporations—that hire lawyers on a contingency

> basis almost always use the percentage method over the lodestar method.
>
> In light of the well-recognized disadvantages of the lodestar method and the well-recognized advantages of the percentage method, it is my opinion that current practices are sound: the percentage method should be used whenever the value of the settlement or judgment can be reliably calculated; the lodestar method should be used only where that value cannot be reliably calculated and the percentage method is therefore not feasible or when the method is required by law.

(*Id.* ¶¶ 12-13 (internal citations omitted).)

For all of the above reasons, the Court should use the percentage method here. Doing so would be less cumbersome for the Court, align the interests of Class Counsel with the Class, and reward—rather than punish—Class Counsel for achieving an early, and substantial, settlement in this action, thereby providing immediate and certain relief to Class Members while avoiding the risks and delay that would come with drawn-out litigation.

ii. Class Counsel's Requested Fee Percentage is Reasonable

Not only is the percentage method here appropriate, but so too is the specific percentage that Class Counsel seeks: either 33.3% of the Total Monetary Relief, or approximately 21% of the Settlement's total value, when considering the practice changes that NCC must implement under the Settlement.

As set forth in the Fitzpatrick Declaration, courts around the country, including Nevada state courts, commonly award one-third (or higher amounts) of a settlement fund as attorneys' fees. (*See id.* ¶¶ 21-22.) *See also Elazar v. Berry*, 129 Nev. 1112 (2013) (affirming 40% fee award); *Shepard*, 2022 WL 17223174, at *6 ("Nevada courts have issued fee awards up to the 40% range."); *Neville, Jr. v. Terrible Herbst, Inc.*, 2021 WL 7907388, at *1 (Nev. Dist. Ct. Oct. 15, 2021) (awarding attorneys one-third of gross settlement amount in fees); *Young v. Gallery Night Club, LLC*, 2014 WL 2663170, at *3 (Nev. Dist. Ct. Feb. 21, 2014) (same); *Lupei v. Optisource Intern., Inc.*, 2014 WL 4064120, at *4 (Nev. Dist. Ct. Feb. 06, 2014) (same).

In addition, courts in FCRA class actions routinely award fees that amount to one-third of the settlement fund. *See, e.g.*, *McIntyre v. RealPage, Inc.*, 2023 WL 2643201, at *3, n.5 (E.D. Pa. Mar. 24, 2023) (awarding counsel 33.33% of settlement fund, explaining that award is "squarely

within the range of awards found to be reasonable by the courts") (citation omitted); *In Re: TransUnion Rental Screening Solutions, Inc. FCRA Litigation*, No. 1:20-md-02933-JPB, ECF No. 146 (N.D. Ga. Oct. 3, 2023) (granting class counsel one-third of common fund in fees); *Long v. Se. Pennsylvania Transportation Auth.*, 2021 WL 10343501, at *5 (E.D. Pa. Oct. 8, 2021) ("Class Counsel's request for one-third of the fund is reasonable and well within the range of fee awards in similar cases."); *Tweedie v. Waste Pro of Fla., Inc.*, 2021 WL 5843111, at *8 (M.D. Fla. Dec. 9, 2021) (approving attorneys' fee request of one-third of the settlement fund); *Bankhead v. First Adv. Background Services Corp.*, No. 1:17-cv-02910-LMM, ECF No. 56 (N.D. Ga. Sept. 19, 2019) (same); *Moore v. Aerotek, Inc.*, 2017 WL 2838148, at *6 (S.D. Ohio June 30, 2017), *R&R adopted*, 2017 WL 3142403 (S.D. Ohio July 25, 2017) (approving class counsel's request for one-third of settlement in fees, noting that "the one-third fee requested falls within the typical range for such cases"); *Flores v. Express Servs., Inc.*, 2017 WL 1177098, at *3 (E.D. Pa. Mar. 30, 2017) (awarding class counsel 32.96% of the total common fund in fees); *Ford v. CEC Ent. Inc.*, 2015 WL 11439033, at *6 (S.D. Cal. Dec. 14, 2015) (awarding class counsel one-third of common fund in fees); *Johnson v. Midwest Logistics Sys. Ltd.*, 2013 WL 2295880, at *6 (S.D. Ohio May 24, 2013) (concluding that requested fee of one-third of settlement fund was reasonable, explaining that "[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery") (citation omitted); *Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 420 (E.D. Pa. 2010) (concluding that class counsel's requested fee of 33.1% of settlement fund was reasonable).

Moreover, both the Settlement Agreement and Plaintiff's Retainer Agreement authorize Class Counsel to seek one-third of the monetary relief provided by the Settlement, and Class Counsel's intention to seek such an award was included in the notices provided to the Class, to which no objection has been received to date. (Ex. "2" Drake Decl. ¶ 23; *see also* S.A. ¶ 2.2.) These facts further confirm that Class Counsel's request here is appropriate. *See, e.g., Henry v. Little Mint, Inc.*, 2014 WL 2199427, at *11–12 (S.D.N.Y. May 23, 2014) (awarding one-third of gross settlement in fees where named plaintiffs' retainer agreements, as well as the settlement agreement, authorized a fee award in that amount, and class members received notice that class

counsel would seek such a fee); *Rocker v. SC&E Administrative Services, Inc.*, 2007 WL 5682176 (Nev. Dist. Ct. Apr. 10, 2007) (approving request for fees in amount "which was fully disclosed in the notice to the Class").

Finally, Class Counsel's requested fee is especially reasonable in light of the impressive injunctive relief that Class Counsel secured. In order to encourage class counsel to obtain injunctive relief, which can be the most important relief provided in a class action settlement, "court[s] should find some way to reward class counsel for negotiating non-monetary relief; otherwise, class action lawyers will not waste their time doing so, even when it would be beneficial to the class." (Ex. "1" Fitzpatrick Decl. ¶ 18.) As explained furth by Mr. Fitzpatrick:

> As for non-monetary relief, courts take two approaches on fees. Some courts try to attach a value to the relief and then add it to the cash portion of the settlement to obtain a total settlement valuation. Other courts do not try to value it and instead just increase the percentage they award to class counsel from the cash portion of the settlement alone.

(*Id.* (citation omitted).)

Here, if the Court seeks to reward Class Counsel for securing meaningful injunctive relief, and to encourage class counsel in other actions to do the same, it may either: (1) factor the $18 million in injunctive relief into the total value of the Settlement, in which case Class Counsel's requested fee of $10 million would represent just 21% of that value—which "is lower than over two-thirds of all fee awards in class action cases" (*id.* ¶ 22; *see also* Smith Decl. ¶ 21); or (2) decline to value the injunctive relief, and instead award Class Counsel a larger portion of the Total Monetary Relief. *See Long*, 2021 WL 10343501, at *5 (concluding that request for one-third of common fund in fees was "reasonable and well within the range of fee awards in similar cases," and noting that the request "does not incorporate the monetary value of the [injunctive] relief available under the settlement"). Either way, Class Counsel's request for $10 million in fees is reasonable and justifiable.

In sum, the percentage of Class Counsel's requested fee award—33.3% of the Total Monetary Relief, and approximately 21% of the Settlement's total value—should be approved.

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C. Class Counsel's Requested Fee Award Satisfies the *Brunzell* Factors

Class Counsel's request is also supported by the *Brunzell* factors.

i. Class Counsel are highly experienced, educated, skilled, and respected

The first *Brunzell* factor, which addresses the ability and standing of counsel, supports Class Counsel's requested fee. *Brunzell*, 85 Nev. at 349. Class Counsel, from both Berger Montague and Eglet Adams, are experienced and skilled in complex class actions and consumer litigation. (*See generally* Ex. "2" Drake Decl.; Ex. "3"Hy Decl.)

Berger Montague has been recognized by courts for its skill and experience in handling major complex litigation, and its lawyers—including Class Counsel—have been commended by federal courts throughout the country over many years for their litigation proficiency, expertise, and high-quality work. (*See* Ex. "2" Drake Decl. ¶¶ 32-41.) Not only that, but Class Counsel from Berger Montague are experienced and nationally recognized leaders in class action litigation under the FCRA, in particular. (*Id.* ¶¶ 34-41.) Collectively, E. Michelle Drake, John G. Albanese, Zachary M. Vaughan, Ariana B. Kiener, and Sophia M. Rios of Berger Montague have decades of experience litigating FCRA class actions, have secured tens of millions of dollars in settlements for FCRA clients, and currently serve as counsel of record (including as lead or co-lead counsel) in many active FCRA cases throughout the country. (*Id.*) They also have expertise in FCRA class actions involving OFAC reporting, specifically: they have successfully moved for class certification in one such action, and, in another, recently secured final approval of the second-largest class action settlement in the history of the FCRA. *See Fernandez v. RentGrow, Inc.*, 341 F.R.D. 174, 206, n.25 (D. Md. 2022) (certifying class and describing Berger Montague as "a law firm that "specializes in class action litigation and [] one of the preeminent class action law firms in the United States.") (internal citation omitted); *Fernandez v. CoreLogic Credco, LLC.*, 2024 WL 3209391, at *16 (S.D. Cal. June 24, 2024) (finally approving class action settlement and describing Class Counsel from Berger Montague as "nationally recognized leaders in FCRA class action litigation").

Eglet Adams exclusively represents plaintiffs, and specializes in complex civil litigation, mass torts, and class action litigation in federal and state courts. (*See* Ex. "3" Hy Decl. ¶ 4.) The

firm is dedicated to protecting consumers' rights, such as when they are injured by false or misleading advertising, defective products, and various other unfair trade practices. (*Id.*) Notably, Eglet Adams has obtained more multi-million-dollar verdicts than any other law firm in Nevada. (*Id.* ¶ 5.) It obtained the largest injury verdicts in the United States, in 2010 and 2013, and in 2011, it obtained the third-largest verdict in the United States, which involved Nevadans hurt by negligent drug manufacturers. (*Id.*) *Chanin et al. v. Teva Parenteral Medicines Inc. et al.*, Case No. A-10-571172 in the Eighth Judicial District Court, Clark County, Nevada ($505,100,00 verdict); *Meyer v. Health Plan of Nevada Inc. et al.*, Case No. A-13-583799 and related cases in the Eighth Judicial District Court, Clark County, Nevada ($524,000,000 verdict); and *Sacks et al. v. Sicor Inc. et al.*, Case No. A-10-572315 and related cases, in the Eighth Judicial District Court, Clark County, Nevada ($182,600,000 verdict). The firm currently represents the State of Nevada, along with 20 other local governments, in litigation related to the opioid epidemic, and has secured over $1.1 billion in settlements, one of the highest per capita recovery amounts achieved by any state. (Ex. "3" Hy Decl. ¶ 5.)

Moreover, the firm's attorneys have earned many accolades for their outstanding work and commitment to achieving justice for their clients. (*Id.* ¶ 6.) Robert Eglet leads the trial team at the firm and is lead trial counsel on all major cases. He has served as lead trial counsel in over 125 civil jury trials with 31 verdicts in excess of a million dollars. (*Id.*) Robert Adams heads the mass torts division. Mr. Adams was recognized by the National Association of Distinguished Counsel as the Nation's Top One Percent Trial Lawyers in 2015. He was named as one of the Top 100 Litigation Lawyers by the American Society of Legal Advocates in 2013 and again in 2015. (*Id.*) Richard Hy focuses primarily on complex civil litigation, including mass torts and class actions. He received The National Trial Lawyers Top 40 Under 40 in 2019 and the Top 100 Civil Plaintiff Lawyers award in 2019-2023. (*Id.*) Super Lawyers also selected him as a Mountain States Rising Star from 2020-2023. (*Id.*)

All told, Class Counsel's experience and skill, along with their strong reputations, weigh in favor of their fee request here. *See, e.g., Shepard*, 2022 WL 17223174, at *9 (concluding that this factor weighed in favor of requested fee where class counsel was "responsible for obtaining

tens of millions of dollars in settlements and judgments for his clients"); *In re Arena Resources, Inc.*, 2010 WL 7877145, at *13 (Nev. Dist. Ct. Sep. 30, 2010) (finding this *Brunzell* factor satisfied where "has demonstrated a level of familiarity and experience in class action litigation such that this Court is satisfied with their ability and standing").

ii. This complex class action involves difficult and important issues

The second *Brunzell* factor, which considers "the character of the work to be done," including "its difficulty, its intricacy, its importance, [and the] time and skill required," also weighs in favor of Class Counsel's requested fee award. *Brunzell*, 85 Nev. at 349.

Class actions are "not particularly common" and are "not handled by most litigation attorneys." *Murray v. A Cab Taxi Service LLC*, 2019 WL 6615395, at *2 (Nev. Dist. Ct. Feb. 06, 2019). But, even setting aside the general complexities introduced when a case is filed as a class action, "this case also posed substantial additional and difficult litigation issues besides its class action nature." *Id.* In particular, Defendant has raised many defenses, including that its OFAC reports do not constitute "consumer reports," as defined under the FCRA, and that its report on Plaintiff was not inaccurate. (*See, e.g.*, ECF No. 9, Def.'s Ans. ¶¶ 3, 5, 33, 37, 48, 55-58.) While Plaintiff disagrees, and was prepared to rebut NCC's positions, the reality is that few courts (and certainly none that are binding on this Court) have decided the precise legal and factual issues that would have been presented here. *See, e.g., In re Arena Resources*, 2010 WL 7877145, at *13 (finding this *Brunzell* factor supported requested class counsel fee where "[t]h[e] case included an issue of first impression"). Responding to, for example, NCC's certain motion for summary judgment on the foregoing issues would have been difficult, requiring significant time and skill. And, there was no guarantee that Class Counsel's efforts would have paid off. Indeed, a federal district court recently granted summary judgment to a consumer reporting agency, finding that the "OFAC Indicators" included in the agency's report on plaintiff were not "inaccurate" under the FCRA, even though they contained a "Warning" indicating, incorrectly, that plaintiff was on the OFAC List. *See Torres v. Equifax Info. Servs.*, LLC, 2024 WL 3297843, at *7 (M.D. Pa. Apr. 17, 2024).

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In addition, to recover for Plaintiff and the Class, Class Counsel ultimately would have had to prove not only that NCC's OFAC reports are governed by the FCRA, and were inaccurate, but also that NCC violated the FCRA willfully. *See* 15 U.S.C. § 1681n(a)(1). Proving willfulness under the FCRA is an "onerous task with a highly uncertain outcome." *Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 474-76 (W.D. Va. 2011). *See also Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 679 (D. Md. 2013) ("Defendant continues to deny liability for any alleged FCRA violations; although Plaintiffs may believe that Domino's conduct violated the FCRA, 'there is always a risk that the Court or a jury will disagree,' and instead determine that Domino's did not act 'willfully' within the meaning of the FCRA.") (citation omitted); *Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 415–16 (E.D. Pa. 2010) (acknowledging that there was a serious "risk of not establishing liability" where, "[t]o prevail at trial, Plaintiffs would need to succeed on their claims that Sterling willfully violated the FCRA by including reports of arrest records on the credit reports of Class members," but "[e]ven assuming *arguendo* that its practice did violate the FCRA, Sterling has continually and vigorously asserted that its practice was not willful"). Indeed, FCRA plaintiffs can lose on this standard even after a successful verdict at trial. *See Smith v. LexisNexis Screening Sols., Inc.*, 837 F.3d 604, 611 (6th Cir. 2016).

Had the Parties here not settled, this case also would have involved expensive factual and expert discovery, and contentious motion practice. NCC has already produced multiple complex data sets, with millions of records, as well as the code behind its matching algorithms for its OFAC products. If this case had proceeded in litigation, Class Counsel would have had the onerous and intricate task of further parsing this data, and, surely, additional data that Defendant would have produced. This would have involved overseeing additional work from expert witnesses, as well as obtaining highly technical deposition testimony—from NCC's corporate representatives, current and former employees, and experts. In addition to discovery and expert discovery, the Parties would have had to brief class certification, summary judgment, and pre-trial motions, not to mention preparing for trial, and the inevitable appeals that would have ensued.

Perhaps the best indication of the "character of the work to be done" in this case, and the difficulty, intricacy, time, and skill that would be involved, comes from a class action that Class

Counsel from Berger Montague recently settled, where, like here, the plaintiff alleged that the defendant had willfully violated the FCRA by inaccurately matching hundreds of thousands of consumers to entries on the OFAC List. That case settled only after class certification had been fully briefed, and after the parties had completed a total of 23 depositions (with plaintiff having moved for leave to take additional depositions), exchanged expert and rebuttal reports for a total of 10 experts, and completed significant motion practice. (Ex. "2" Drake Decl. ¶ 39 n.1.)

Lastly, the importance of this case cannot be overstated. In bringing this action, Class Counsel sought to vindicate the rights of hundreds of thousands of consumers under the FCRA—most of whom, absent the class action mechanism, would likely never see any form of justice for NCC's challenged conduct. *See Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 123 (E.D. Pa. 2005) (stating about FCRA class action, "the type of litigation undertaken by class counsel here, which addresses important consumer concerns that would likely be ignored without such class action lawsuits, must be encouraged."); *White v. E-Loan, Inc.*, 2006 WL 2411420, at *9 (N.D. Cal. Aug. 18, 2006) ("W]ithout class actions, there is unlikely to be any meaningful enforcement of the FCRA by consumers whose rights have been violated."). Securing justice, in the form of monetary relief and practice changes, for such individuals, who otherwise likely would not have had access to it, is "of presumptively great public importance." *Murray*, 2019 WL 6615395, at *2. Moreover, by granting Class Counsel's reasonable fee request here, and compensating them appropriately for the numerous risks involved, this Court would ensure qualified and talented attorneys continue to take on these important cases. *See Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 765 (S.D. W. Va. 2009) ("[P]ublic policy generally favors attorneys' fees that will induce attorneys to act and protect individuals who may not be able to act for themselves.").

All in all, "the character, intricacy, difficulty and importance of the work" that was required of Class Counsel here "was far above that of a typical litigation matter." *Id. See also In re Arena Resources*, 2010 WL 7877145, at *13.

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iii. Class Counsel dedicated significant skill, time, and attention to litigating and resolving this matter, all on a contingency basis

Class Counsel's request is also reasonable under the third *Brunzell* factor, which considers "the work actually performed by the lawyer: the skill, time and attention given to the work." *Brunzell*, 85 Nev. at 349.

For nearly two years, Class Counsel have dedicated tremendous skill, time, and attention to investigating, litigating, and eventually resolving this matter. Class Counsel engaged in voluminous and often contentious discovery, and began preparing numerous motions to compel; pursued aggressive third party discovery; negotiated the production of, and thereafter analyzed, complicated data regarding millions of reports, as well as the matching algorithms that had produced them; retained and managed two experts to analyze those data and algorithms; retained and oversaw an additional expert to analyze NCC's finances; deposed NCC's corporate witness; began preparing for several depositions of additional witnesses; and engaged in lengthy settlement negotiations, which involved three full-day mediation sessions and ultimately led to monetary relief for hundreds of thousands of consumers. (*See supra* § Background, I.) Class Counsel also negotiated the precise terms of the 34-page Settlement Agreement, drafted notices to consumers explaining the Settlement, and supervised the Administrator's effectuation of the Notice Plan.

To date, on the above tasks and many others, Class Counsel have expended more than 1,567 hours on this matter. Class Counsel remain fully prepared to spend whatever hours are necessary to bring this case to a satisfactory conclusion. And, importantly, they are doing so on a fully contingent basis—which demonstrates their commitment to Plaintiff and the Class. *Rocker*, 2007 WL 5682176 ("Class Counsel subjected themselves to this contingent fee market risk in this all or nothing contingent fee case wherein the necessity and financial burden of private enforcement makes the requested award of appropriate."). The amount and quality of Class Counsel's work, in light of the very real risk of no recovery, support their requested fee award. *See, e.g.*, *Shepard*, 2022 WL 17223174, at *8 (concluding that the fact that "Class Counsel expended hundreds of hours of work by the firm's attorneys" "overwhelmingly support[ed]" class counsel's requested fee award); *In re Arena Resources*, 2010 WL 7877145, at *13 ("Plaintiff's

counsel has declared that a large amount of work was performed in this case...The work performed resulted in a negotiated settlement which provided substantial benefit to the class. This Court is satisfied with the amount and quality of work actually performed in this case in considering the negotiated fee.").

iv. The results Class Counsel have obtained are exceptional

Finally, the fourth *Brunzell* factor, which considers "the result," confirms that Class Counsel's requested fee award is reasonable. *Brunzell*, 85 Nev. at 349. In a common fund case like this, "[t]he factor given the greatest emphasis is the size of the fund created, because 'a common fund is itself the measure of success and represents the benchmark from which a reasonable fee will be awarded.'" *In re Kitec*, 2009 WL 1817622 (citation omitted).

Here, there is no question that Class Counsel have obtained an outstanding recovery. To Class Counsel's knowledge, the Total Monetary Relief of $30 million is the fourth-largest recovery in the history of the FCRA.[4] Even considering the large class size here, this result is still larger than many FCRA settlements reached on behalf of comparable or even larger classes. *See, e.g., Rubio-Delgado v. Aerotek, Inc.*, No. 16-cv-1066, ECF No. 121 (S.D. Ohio Jul. 25, 2017) (finally approving settlement with $15 million common fund to be distributed among 654,436 class members); *Duncan v. JPMorgan Chase Bank, N.A.*, 2016 WL 4411551, at *1 (W.D. Tex. June 17, 2016) (finally approving settlement with $8.75 million common fund for approximately 2.2 million class members); *Domonoske*, 790 F. Supp. 2d at 477 (finally approving settlement with $9.95 million common fund for 3,025,689 class members).

Not only that, but the Settlement uses the "FCRA gold standard, providing direct cash payments with no claim required and barring reversion back to [Defendant]." *Reyes v. Experian Info. Sols., Inc.*, 856 F. App'x 108, 110 (9th Cir. 2021). *All* Settlement Class Members who can be reached will *automatically* receive a cash payment. (Ex. "2" Drake Decl. ¶ 20.) Further, those who complete a simple Claim Form attesting to having been harmed by NCC's reporting will receive

[4] The Settlement amount is also larger than any FCRA recovery achieved by the Federal Trade Commission or the Consumer Financial Protection Bureau. (Ex. "2" Drake Decl. ¶ 42.)

an additional payment of up to $1,500. This is an impressive result, particularly in light of the fact that the FCRA allows for statutory damages of $100 to $1,000 for each willful violation. 15 U.S.C. § 1681n(a)(1). *See, e.g., Stewart v. Accurate Background, LLC*, 2024 WL 1221968, at *2 (N.D. Cal. Mar. 20, 2024) (granting final approval of FCRA class action settlement in which all class members will receive an automatic payment, those who submit a "simple attestation of harm" will receive additional payment, and no amount will revert to defendant); *Fernandez*, 2024 WL 3209391, at *15 (concluding that class action settlement that "is represented to be one of the largest recoveries in the history of the FCRA" "confers substantial benefits upon the settlement classes").

Further, the Settlement provides substantive non-monetary relief, as well, requiring NCC to implement practice changes to directly address Plaintiff's claims. This injunctive relief—estimated to be worth at least $18 million, Smith Decl. ¶ 21—further enhances the Settlement's benefits to the Class. *See, e.g., Fernandez*, 2024 WL 3209391, at *15 (concluding that "the results achieved weigh in favor of granting Class Counsel's requested fee award" where "not only does the settlement here provide monetary relief to members of the class, it also directly addresses the claims at issue in this case by providing substantive non-monetary relief"). And, importantly, this relief could only have been achieved in the settlement context, as courts generally hold that the FCRA does not provide private plaintiffs with an avenue to seek litigated injunctive relief. *See Ramirez v. MGM Mirage, Inc.*, 524 F. Supp. 2d 1226, 1236-37 (D. Nev. 2007).

In sum, Class Counsel "was able to successfully negotiate a substantial settlement award" for Plaintiff and the Class. *Shepard*, 2022 WL 17223174, at *10.

D. A Lodestar Cross-Check Confirms that the Requested Fee Is Reasonable

Finally, a lodestar cross-check confirms that Class Counsel's requested fee is appropriate. Such a cross-check is not necessary to perform, and, as indicated above, comes with certain downfalls.[5] As Mr. Fitzpatrick explains, a lodestar cross-check "is a minority practice nationwide,"

[5] *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) ("[T]he lodestar create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item fee audits.") (citation omitted); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050, n.5 (9th Cir. 2002) ("The lodestar method is merely a cross-check on the reasonableness of a percentage figure, and

and "for good reason": "[T]he lodestar crosscheck reintroduces through the back door all of the bad incentives of the lodestar method that the percentage method tried to correct. In particular, the lodestar crosscheck, just like the lodestar method, rewards class counsel for dragging cases out and discourages timely settlement." (Ex. "1" Fitzpatrick Decl. ¶ 24.)

In any event, the lodestar cross-check here supports Class Counsel's request. Class Counsel's cumulative lodestar, using current reasonable hourly rates, is approximately $1,192,309, which results in a multiplier of 8.39.[6] (Ex. "2" Drake Decl. ¶ 26; *see also* Ex. "3" Hy Decl. ¶ 7.) Although perhaps on the higher end, "the multiplier here would fall well within the range of multipliers found in previous cases." (Ex. "1" Fitzpatrick Decl. ¶ 25); *see also In re Merry–Go–Round Enterprises, Inc.*, 244 B.R. 327 (Bankr. D. Md. 2000) (approving 40% award for $71 million fund awarded, resulting in lodestar multiplier of 19.6); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 WL 1213926, at *18 (E.D. Pa. May 19, 2005) (approving multiplier of 15.6); *Lloyd v. Navy Fed. Credit Union*, 2019 WL 2269958, at *13 (S.D. Cal. May 28, 2019) (approving fee request that resulted in multiplier of around 10.96); *Skochin v. Genworth Fin., Inc.*, 2020 WL 6536140, at *9–10 (E.D. Va. Nov. 5, 2020) (describing multiplier of 9.05 as "not outside of the realm of reasonableness"); *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 182 (D. Mass. 1998) (approving multiplier of 8.9); *Cosgrove v. Sullivan*, 759 F. Supp. 166, 167 n. 1, 169 (S.D.N.Y.1991) (awarding multiplier of 8.74); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736, n.44 (E.D. Pa. 2001) (approving multiplier of 4.5–8.5, which the court described as "handsome but unquestionably reasonable"); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (approving multiplier of

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it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement."); *In re Cardinal Health Inc. Sec. Litigations*, 528 F. Supp. 2d 752, 761 (S.D. Ohio 2007) ("The lodestar method has been rightly criticized for generating avoidable hours, discouraging early settlement, and burdening district judges with the tedious task of auditing time records.").

[6] These figures do not account for the time that Class Counsel will spend continuing to oversee administration of the Settlement, responding to additional Class Member inquiries, preparing the forthcoming Motion for Final Approval, and traveling to and from, and arguing, the Final Approval Hearing.

about 8.3); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Yuzary v. HSBC Bank USA, N.A.*, 2013 WL 5492998, at *11 (S.D.N.Y. Oct. 2, 2013) (approving multiplier of 7.6 and explaining that "[w]hile 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 [*sic*] where, as here, the settlement amount is substantial.").

All told, Class Counsel's fee request is reasonable under both the percentage method and a lodestar cross-check, and should be granted.

II. Class Counsel's Litigation Costs Are Reasonable and Should Be Reimbursed

Next, Class Counsel should be reimbursed for their litigation expenses. "When the class action successfully recovers a fund for the benefit of a class, it is long-settled that the attorneys who created that class recovery are entitled to be reimbursed from the common fund for their reasonable litigation expenses...." *In re Kitec,* 2009 WL 1817622 (citation omitted).

Here, Class Counsel's expenses went primarily towards expert, mediation, and filing fees. (Ex. "2" Drake Decl. ¶ 28; *see also* Ex. "3" Hy Decl. ¶ 7.) These out-of-pocket expenses "were necessarily incurred in prosecuting this action on behalf of the Class," and should therefore be approved for reimbursement. *Shepard*, 2022 WL 17223174, at *7. Indeed, courts routinely find that these types of expenses are reasonable and should be reimbursed. *See, e.g., Rocker*, 2007 WL 5682176 (awarding class counsel more than $380,000 for reimbursement of costs and expenses because their "expenses consist of the ordinary legal expenses normally billed to a client, such as deposition expenses, photocopying expenses, expert costs, legal research charges and service and filing expenses"); *In re Kitec*, 2009 WL 1817622 (explaining that "Class Counsel is entitled to a reimbursement of the expenses advanced by Class Counsel on behalf of the Class," and, after reviewing itemized expenses, reimbursing class counsel more than $840,000 in costs); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1048–49 (N.D. Cal. 2008) (expenses "relate[d] to photocopying, printing, postage and messenger services, court costs, legal research on Lexis and Westlaw, experts and consultants, and the costs of travel for various attorneys and their staff

throughout the case" reimbursable); *In re Immune Response Secs. Litig.*, 497 F. Supp. 2d 1166, 1177-8 (S.D. Cal. 2007) (mediation expenses, expert fees, legal research, copies, postage, filing fees, messenger, and federal express costs reimbursable). This Court should find the same here.

III. Given Plaintiff's Active Role in the Litigation and Dedication to the Settlement Class, the Requested Service Award Should be Granted.

Next, a service award of $25,000 to Plaintiff is reasonable and should be approved. "Enhancement 'awards are fairly typical in class actions' and are intended to 'compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action and, sometimes, to recognize their willingness to act as a private attorney general.'" *Dent v. ITC Serv. Grp., Inc.*, 2013 WL 5437331, at *9 (D. Nev. Sept. 27, 2013) (citation omitted). Class representatives "have typically done something the absent class members have not—stepped forward and worked on behalf of the class." 5 Newberg and Rubenstein on Class Actions § 17:3 (6th ed.). Service awards therefore "may be necessary to ensure that class representatives are…rewarded both for the value of their claims (like all other class members) but also for their unique service to the class." *Id.*

Here, Plaintiff—who has at all times been the *only* class representative in this case—has offered a unique service to the Class. He has expended considerable time and effort in this matter by, for example, investigating his claims, reviewing and approving the complaint, having his personal cell phone imaged, responding to extensive discovery requests and producing numerous documents (including personal text messages and financial records), participating in multiple rounds of settlement negotiations, reviewing settlement materials, and regularly conferring with Class Counsel. (*See* Ex. "4" Rodriguez Decl. ¶ 7.) Despite the time commitment required, and the considerable intrusion into his personal affairs (including making a forensic image of his personal cell phone), Plaintiff remained committed to achieving meaningful relief, both monetary and injunctive, for all Settlement Class Members—which he did. (*Id.* ¶¶ 6, 9.) And, as part of the Settlement, Plaintiff signed a much broader release than the release that applies to absent Settlement Class Members. (*Id.* ¶ 9; *see also* S.A. ¶ 5.3.1.)

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Due to his unwavering commitment to the Class, and the time and attention he has dedicated to this case for nearly two years, Plaintiff is entitled to a $25,000 service award. *See, e.g., Thomas v. Nevada Yellow Cab Corp.*, 2018 WL 6930577, at *2 (Nev. Dist. Ct. Oct. 11, 2018) (approving service award in the amount of $25,000 for each of two class representatives, for a total amount of $50,000); *Shepard*, 2022 WL 17223174, at *5 (approving $25,000 service award to each of three class representatives); *Johnson v. U.S. Bank Nat'l Ass'n*, 2020 WL 13652583, *3 (S.D. Cal. Aug. 20, 2020) (approving $15,000-$25,000 service awards to class representatives in part because they executed broader general release than other class members).

IV. The Costs of Settlement Administration, for Which Class Counsel Will Provide More Detail as Administration Progresses, Should be Reimbursed.

Finally, and as Class Counsel will set forth in more detail in the forthcoming Motion for Final Approval, the Administrator should be reimbursed for the costs of administering the Settlement, costs which are routinely reimbursed in class actions. *See, e.g., Thomas v. Nevada Yellow Cab Corp.*, 2018 WL 6930577, at *2 (Nev. Dist. Ct. Oct. 11, 2018) (approving payment of costs to claims administrator); 4 Newberg and Rubenstein on Class Actions § 12:20 (6th ed.) ("The[] costs of paying the claims administrator, processing the claims, providing notice to the class, and generally administering the settlement is typically deducted from the settlement fund."). That the Administrator would seek reimbursement for these costs, pursuant to the Settlement Agreement, was included in notices to the Class. To date, no Class Member has objected to this provision of the Settlement. The Administrator currently estimates that the total costs of settlement administration will be approximately $1,199,926. (Declaration of Ritesh Patel ¶ 6 attached hereto as Exhibit "5.") This is a slight increase over the Administrator's initial estimate at preliminary approval, "due in large part to the costs associated with the increase in the number of class members as well as a larger projected check mailing." (*Id.*) Class Counsel will provide an updated accounting, as well as a more detailed request for reimbursement for the Administrator, with the Motion for Final Approval.

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CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court direct the following to be distributed from the Gross Settlement Fund: (1) an award of attorneys' fees in the amount of $10,000,000; (2) reimbursement of Class Counsel's out-of-pocket documented expenses in an amount not to exceed $110,453.55; and (3) $25,000 as a service award to Plaintiff. Plaintiff also respectfully requests that the Court approve reimbursement to the Settlement Administrator for the costs associated with notice and claims administration, the details of which will be more fully set forth in Plaintiff's forthcoming Motion for Final Approval.

Dated: September 4, 2024

/s/ Richard K. Hy

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET ADAMS EGLET HAM HENRIOD, and that on September 4, 2024, I caused the foregoing **PLAINTIFF'S MOTION & MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARD** to be e-filed and e-served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court e-Filing System, in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

/s/ Jennifer Lopez
An Employee of EGLET ADAMS
EGLET HAM HENRIOD

EGLET ADAMS
EGLET HAM HENRIOD

EXHIBIT 1

DISTRICT COURT
CLARK COUNTY, NEVADA

Angel Luis Rodriguez, Jr. v. National Credit Center, LLC

No. A-23-869000-B

DECLARATION OF BRIAN T. FITZPATRICK

I. Background and qualifications

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

2. My teaching and research at Vanderbilt have focused on class action litigation. I teach the Civil Procedure, Federal Courts, and Complex Litigation courses. In addition, I have published a number of articles on class action litigation in such journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the NYU Journal of Law & Business, the Fordham Law Review, and the University of Arizona Law Review. My work has been cited by numerous courts, scholars, and media outlets such as the New York Times, USA Today, and Wall Street Journal. I have also been invited to speak about class action litigation at symposia and other events, such as the ABA National Institute on Class Actions in 2011, 2015, 2016, 2017, 2019, 2023, and 2024, as well as the ABA Annual

Meeting in 2012 and 2022. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. In 2015, I was elected to membership in the American Law Institute.

3. In December 2010, I published an article in the Journal of Empirical Legal Studies entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811 (2010) (hereinafter "Empirical Study"). This article is still the most comprehensive examination of federal class action settlements and attorneys' fees that has ever been published. Unlike other studies of class actions, which have been confined to securities cases or based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine *every* class action settlement approved by a federal court over a two-year period, 2006-2007. *See id*. at 812-13. As such, not only is my study based on an unbiased sample of settlements, but the number of settlements included in my study is several times the number of settlements per year that has been identified in any other empirical study of class action settlements: over this two-year period, I found 688 settlements, including 54 from the Eleventh Circuit alone. *See id*. at 817. I presented the findings of my study at the Conference on Empirical Legal Studies at the University of Southern California School of Law in 2009, the Meeting of the Midwestern Law and Economics Association at the University of Notre Dame in 2009, and before the faculties of many law schools in 2009 and 2010. This study has been relied upon by a number of courts, scholars, and testifying experts.[1] I will draw upon *Empirical Study*, which I attach as Exhibit 2, in this Declaration.

[1] *See, e.g.*, *In re Stericycle Sec. Litig.*, 35 F.4th 555, 561 (7th Cir. 2022) (relying on article to assess fees); *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (same); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 2022 WL 4329646, at *5 (D. Mass., Sep. 19, 2022) (same); *de la Cruz v. Manhattan Parking Group*, 2022 WL 3155399, at *4 (S.D.N.Y., Aug. 8, 2022) (same); *Kukorinis v. Walmart*, 2021 WL 8892812, at *4 (S.D.Fla., Sep. 21, 2021) (same); *Kuhn v. Mayo Clinic Jacksonville*, No. 3:19-cv-453-MMH-MCR, 2021 WL 1207878, at *12-13 (M.D. Fla. Mar. 30, 2021) (same); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MD 2262 (NRB), 2020 WL 6891417, at *3 (S.D.N.Y. Nov. 24, 2020) (same); *Shah v. Zimmer Biomet Holdings, Inc.*,

4. In addition to my empirical works, I have also published many papers on what law-and-economics can tell us about how to create the best incentives for attorneys and others in class action litigation. *See, e.g.*, Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 Ford. L. Rev. (2021) (hereinafter "Fiduciary Judge"); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?*, 158 U. Pa. L. Rev. 2043 (2010) (hereinafter "Class Action Lawyers"). Much of this work is found in a book published in 2019 by the University of Chicago Press entitled THE CONSERVATIVE CASE FOR CLASS ACTIONS. The thesis of the book is that a so-

No. 3:16-cv-815-PPS-MGG, 2020 WL 5627171, at *10 (N.D. Ind. Sept. 18, 2020) (same); *In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020) (same); *In re Wells Fargo & Co. S'holder Derivative Litig.*, No. 16-cv-05541-JST, 2020 WL 1786159, at *11 (N.D. Cal. Apr. 7, 2020) (same); *Arkansas Teacher Ret. Sys. v. State St. Bank & Trust Co.*, No. CV 11-10230-MLW, 2020 WL 949885, 2020 WL 949885, at *52 (D. Mass. Feb. 27, 2020), *appeal dismissed sub nom. Arkansas Tchr. Ret. Sys. v. State St. Corp.*, No. 20-1365, 2020 WL 5793216 (1st Cir. Sept. 3, 2020) (same); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *34 (N.D. Ga. Jan. 13, 2020) (same); *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. 3:07-cv-05634-CRB, 2019 WL 6327363, at *4-5 (N.D. Cal. Nov. 26, 2019) (same); *Espinal v. Victor's Cafe 52nd St., Inc.*, No. 16-CV-8057 (VEC), 2019 WL 5425475, at *2 (S.D.N.Y. Oct. 23, 2019) (same); *James v. China Grill Mgmt., Inc.*, No. 18 Civ. 455 (LGS), 2019 WL 1915298, at *2 (S.D.N.Y. Apr. 30, 2019) (same); *Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 407 (S.D.N.Y. 2019) (same); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 14-CV-7126 (JMF), 2018 WL 6250657, at *2 (S.D.N.Y. Nov. 29, 2018) (same); *Rodman v. Safeway Inc.*, No. 11-cv-03003-JST, 2018 WL 4030558, at *5 (N.D. Cal. Aug. 23, 2018) (same); *Little v. Washington Metro. Area Transit Auth.*, 313 F. Supp. 3d 27, 38 (D.D.C. 2018) (same); *Hillson v. Kelly Servs. Inc.*, No. 2:15-cv-10803, 2017 WL 3446596, at *4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, No. 14-1374, 2017 WL 2884535, at *23, *27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, No. 15–3509, 2017 WL 1021025, at *9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, No. 13MD2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp 3d 1217, 1246 (D.N.M. 2016); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, No. 3:07-cv-5944 JST, 2016 WL 721680, at *42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, No. MDL 2328, 2015 WL 4528880, at *19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11–cv–4462, 2015 WL 2147679, at *2-4 (N.D. Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11–cv–4462, 2015 WL 1399367, at *3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 797 (N.D. Ill. 2015) (same); *In re Neurontin Marketing and Sales Practices Litig.*, 58 F.Supp.3d 167, 172 (D. Mass. 2014) (same); *Tennille v. W. Union Co.*, No. 09–cv–00938–JLK–KMT, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Fed. Nat'l Mortg. Association Sec., Derivative, and "ERISA" Litig.*, 4 F. Supp. 3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Prod. Liab. Litig.*, No. 11–1546, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 98-99 (D.D.C. 2013) (same); *In re Se. Milk Antitrust Litig.*, No. 2:07–CV 208, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, No. 10 C 816, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

called "private attorney general" is superior to the public attorney general in enforcing the rules that free markets need in order to operate effectively, and that courts should appropriately incentivize class action lawyers to encourage this private attorney general behavior. I will also draw upon this work in this Declaration.

5. I have been asked by class counsel to opine on whether the attorneys' fees they have requested here are in line with prevailing practices in class action cases. In order to formulate my opinion, I reviewed a number of documents provided to me by class counsel; I have attached a list of these documents in Exhibit 3. As I explain, it is my opinion that class counsel's fee request here is in line with prevailing practices.

II. Case background

6. The plaintiff here was falsely identified by defendant National Credit Center, LLC ("NCC" or "Defendant") as a match on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List ("OFAC List") in violation of the Fair Credit Reporting Act ("FCRA"). He filed his complaint in April 2023 on behalf of a putative class, and, while the case was removed and a motion to remand was pending, the parties exchanged discovery and reached a class-wide settlement. On July 17, 2024, the Court preliminarily certified a settlement class and approved the Settlement Agreement.

7. The settlement class includes "[a]ll individuals who were the subject of an NCC OFAC Screen" that "[NCC] disseminated to a third party from May 5, 2020, through the Execution Date." Settlement Agreement ¶ 2.37. Pursuant to the Settlement Agreement, the class will release NCC from, among other things, "all claims . . . under the FCRA, any federal law or the law of any state . . . arising out of, or related in any way to any and all the allegations in the Complaint in this action, including Defendant's reporting of an NCC OFAC Screen." *Id*. at ¶ 2.8. In exchange,

NCC will pay the class $30 million in cash to be distributed: 1) to class members with out-of-pocket losses who file claim forms, and 2) pro rata to other class members automatically (i.e., without claim forms); none of this money can revert back to Defendant. *See id.* at ¶ 5.2. In addition, NCC has agreed to make several changes to its business practices that should minimize the number of persons falsely identified as matches to the OFAC List in the future. *See id.* at ¶ 5.1. Class counsel's expert has estimated that these changes will save future consumers at least $18 million in time and other inconvenience.

8. Class counsel are now moving for an award of fees of $10 million. As I explain below, it is my opinion that this request is in line with prevailing fee award practices.

III. Choosing a methodology

9. This is a so-called "common fund" settlement, where class counsel has created a fund to benefit the class members, and the common law of unjust enrichment compels the Court to decide how much of the fund it is fair to ask class members to pay to class counsel.

10. At one time, courts that awarded fees in common fund class action cases did so using the familiar "lodestar" method. *See* Fitzpatrick, *Class Action Lawyers, supra,* at 2051. Under this approach, courts awarded class counsel a fee equal to the number of hours they worked on the case (to the extent the hours were reasonable), multiplied by a reasonable hourly rate, as well as by a discretionary multiplier that courts often based on the risk of non-recovery and other factors. *See id.* Over time, however, the lodestar approach fell out of favor in common fund class actions. It did so largely for two reasons. First, courts came to dislike the lodestar method because it was difficult to calculate the lodestar; courts had to review voluminous time records and the like. Second—and more importantly—courts came to dislike the lodestar method because it did not align the interests of class counsel with the interests of the class; class counsel's recovery did not

depend on how much the class recovered, but, rather, on the number of hours that could be spent on the case. That is, the lodestar method rewarded dragging cases out and discouraged timely settlements. *See id.* at 2051-52.

11. According to *Empirical Study*, the lodestar method is now used to award fees in only a small percentage of class action cases. *See* Fitzpatrick, *Empirical Study*, *supra*, at 832 (finding the lodestar method used in only 12% of settlements). The other large-scale academic study of class action fees, authored over time by Geoff Miller and the late Ted Eisenberg, agrees with my findings. *See* Theodore Eisenberg et al., *Attorneys' Fees in Class Action Settlements: 2009-2013*, 92 N.Y.U. L. Rev. 937, 945 (2017) ("Eisenberg-Miller 2017") (finding lodestar method used less than 7% of the time since 2009); Theodore Eisenberg & Geoffrey P. Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 267 (2010) ("Eisenberg-Miller 2010") (finding lodestar method used only 13.6% of the time before 2002 and less than 10% of the time thereafter and before 2009).

12. The more common method of calculating attorneys' fees today is known as the "percentage-of-the-fund" or "percentage" method. Under this approach, courts select a percentage of the settlement fund that they believe is fair to class counsel, multiply the settlement amount by that percentage, and then award class counsel the resulting product. The percentage approach has become the preferred method for awarding fees to class counsel in common fund cases precisely because it corrects the deficiencies of the lodestar method: it is less cumbersome to calculate, and, more importantly, it aligns the interests of class counsel with the interests of the class because the more the class recovers, the more class counsel recovers. *See* Fitzpatrick, *Class Action Lawyers, supra,* at 2052. This is why private parties—including sophisticated corporations—that hire lawyers on a contingency basis almost always use the percentage method over the lodestar method.

See, e.g., David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 Ala. L. Rev. 335, 360 (2012); Herbert M. Kritzer, RISKS, REPUTATIONS, AND REWARDS 39-40 (1998).

13. In light of the well-recognized disadvantages of the lodestar method and the well-recognized advantages of the percentage method, it is my opinion that current practices are sound: the percentage method should be used whenever the value of the settlement or judgment can be reliably calculated; the lodestar method should be used only where that value cannot be reliably calculated and the percentage method is therefore not feasible or when the method is required by law. This is not just my view, but the view of other leading class action scholars. *See* Principles of the Law of Aggregate Litigation § 3.13 (2010) (cmt. b) ("Although many courts in common-fund cases permit use of either a percentage-of-the-fund approach or a lodestar . . . most courts and commentators now believe that the percentage method is superior."). Because there is sufficient cash in this settlement to support class counsel's fee request, it is my opinion, the percentage method should be used here. I will therefore proceed under that method.

IV. The elements of the percentage method

14. Under the percentage method, courts must: 1) calculate the value of the benefits conferred by the litigation and then 2) select a percentage of that value to award to counsel.

15. When calculating the value of the benefits, most courts include any benefits conferred by the litigation, whether cash relief, non-cash relief, attorneys' fees and expenses, or administrative expenses. Although some of these things do not go directly to the class, they facilitate compensation to the class (e.g., notice and administration expenses), provide future savings to the class, and/or deter defendants from future misconduct by making defendants pay more when they cause harm. Thus, in my opinion, it is appropriate to include them all in the

denominator of the percentage method. *See also* Principles of the Law of Aggregate Litigation, *supra*, § 3.13(b) ("[A] percentage of the fund approach should be the method utilized in most common-fund cases, with the percentage being based on both the monetary and nonmonetary value of the judgment or settlement.").

16. When selecting the percentage, courts usually examine a number of factors. The factors vary by jurisdiction. *See* Fitzpatrick, *Empirical Study, supra*, at 832. The Nevada Supreme Court has yet to prescribe a set of factors of this jurisdiction, but all jurisdictions tend to focus on two considerations more than any others: 1) the percentages awarded by other courts and 2) the results achieved by class counsel compared to the risks.

V. Applying the percentage method to this settlement

17. Let me begin with the valuation of the settlement benefits. Defendant will pay $30 million in cash; none of that money can revert back to it. In addition, Defendant agreed to change its business practices to minimize the number of individuals that will be falsely identified as matches to the OFAC List in the future.

18. As for non-monetary relief, courts take two approaches on fees. Some courts try to attach a value to the relief and then add it to the cash portion of the settlement to obtain a total settlement valuation. Other courts do not try to value it and instead just increase the percentage they award to class counsel from the cash portion of the settlement alone. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) ("[W]here the value to individual class members of benefits deriving from injunctive relief can be accurately ascertained[,] courts [may] include such relief as part of the value of a common fund for purposes of applying the percentage method of determining fees. When this is not the case, courts should consider the value of the injunctive relief obtained as a 'relevant circumstance' in determining what percentage of the common fund

class counsel should receive as attorneys' fees . . . ."). From the perspective of fostering the best incentives for class counsel, the important point is that the court should find some way to reward class counsel for negotiating non-monetary relief; otherwise, class action lawyers will not waste their time doing so, even when it would be beneficial to the class.

19. Here, either approach is open to the Court. First, class counsel have retained an expert that has calculated that NCC's practice changes will save future consumers at least $18 million in time and other inconveniences. The Court could add this valuation to the $30 million in cash to reach a total settlement value of $48 million, and calculate the percentage fee therefrom. Alternatively, the Court could simply value the settlement at $30 million in cash and reward class counsel for the practice changes they negotiated by increasing the percentage of the fee accordingly. In my opinion, it does not matter which approach the Court takes here. As I explain, either way, granting the fee request would be in line with prevailing practices.

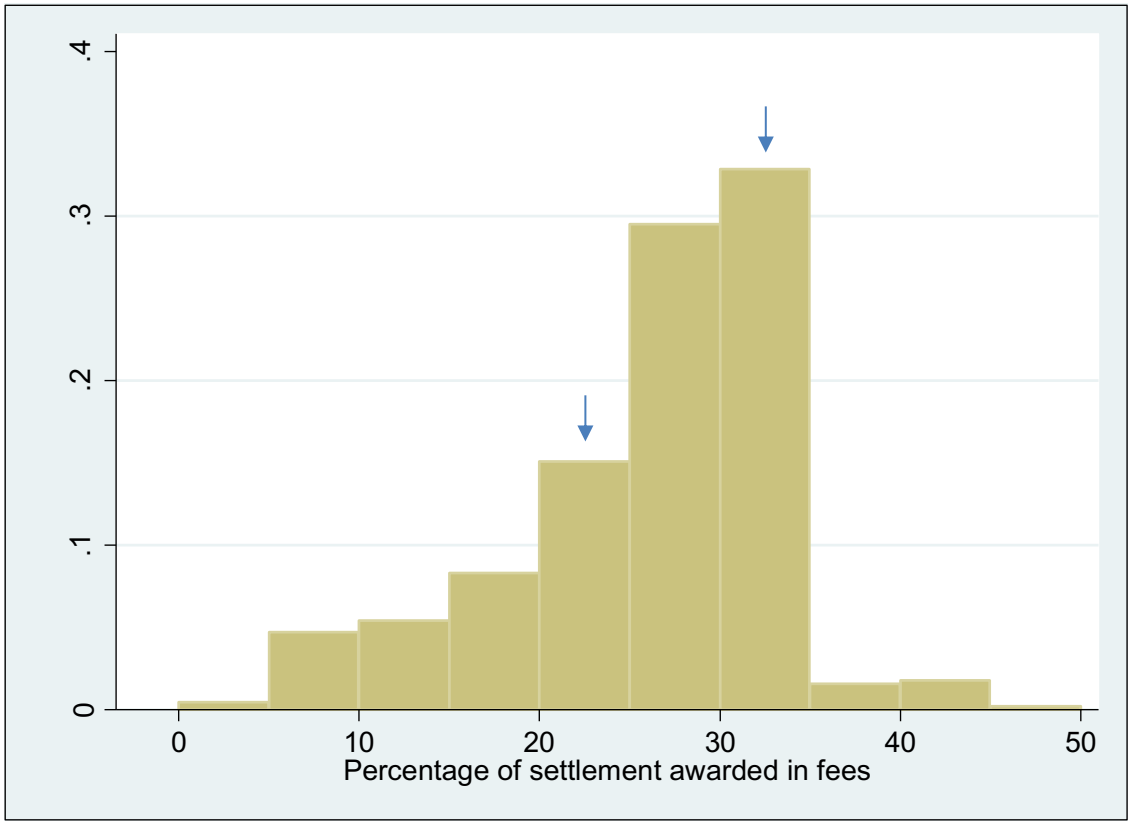
20. Let me turn now to the percentage. Class counsel's $10 million fee request would comprise 21% of the settlement value if the value of the practice changes are included and 33.3% if it is not. Either way, the percentage would be in line with nationwide practices in light of the factors most courts focus on: 1) the percentages other courts have awarded and 2) the results class counsel achieved versus the risks.

21. Consider first data on the percentages other courts have awarded. According to *Empirical Study,* the most common fee percentages awarded are 25%, 30%, and 33%. *See* Fitzpatrick, *Empirical Study,* at 838 (fig. 6). The mean and median was 25.4% and 25%, respectively. *See id.* at 833-34. My study included in the denominator of the fee percentage any non-monetary relief the court included in its valuation of the settlement; thus, my numbers permit an apples-to-apples comparison to the fee request in this case whatever the Court decides to do

here. This means the fee request here is either: 1) below average if the value of the practice changes is included in the settlement valuation, or 2) above average, but well within the mainstream, if it is not included. It should be noted that the other large-scale studies of class action fees largely agree with my findings, with the possibility that the mean and median percentages are even higher in recent years. *See Eisenberg-Miller 2017*, *supra*, at 951 (finding mean and median of 27% and 29% nationwide since 2009); *Eisenberg-Miller 2010*, *supra*, at 260 (finding mean and median of 24% and 25% nationwide before 2009).

22. The data can be depicted graphically. In Figure 1, below, I show the distribution of all of the percentage-method fee awards in my study. The Figure shows what fraction of settlements (y-axis) had fee awards within each five-point range of fee percentages (x-axis); each bar includes the number on its left edge and excludes the number on its right edge. I included two arrows depicting this fee request, one for 21% if the practice changes are included in the settlement, and one for 33.3% if they are not. As the Figure shows, at 21%, the request is lower than over two-thirds of all fee awards in class action cases. Even at 33.3%, the request is in the most commonplace fee range awarded in class action cases. Moreover, as I explain next, the results obtained by class counsel are hardly commonplace; they are well above average, particularly in light of the many risks posed by this litigation.

Figure 1: Percentage-method fee awards among all federal courts, 2006-2007



23. Consider next the results obtained by class counsel in light of the risks class counsel faced. To begin with, it is important to note that only a small minority of the settlements depicted in Figure 1—23%—included any injunctive relief like the settlement here does. *See* Fitzpatrick, *Empirical Study, supra*, at 824 (tbl. 3). Thus, on that point alone, class counsel has achieved above-average results. Moreover, as I noted above, if the value of the practice changes negotiated by class counsel is not added to the settlement valuation, then it would be in line with prevailing practices to increase the fee percentage the court would otherwise award from the cash portion of the settlement. In my opinion, that alone would justify granting a 33.3% fee request here. But even the cash portion of the settlement is above average. Although there are no empirical studies of recoveries in FCRA class actions, the FCRA calls for statutory damages, and the theoretical maximum damages are always very large in statutory damages class actions. But it is also true

that it is hard to collect statutory damages on a class-wide basis due to constitutional concerns with excessive damages. As such, in my experience, even the very best cases often settle for pennies on the dollar. But not class counsel: here, the cash portion of the settlement alone recovered between 7% and 70% of the theoretical maximum damages. Moreover, under the Settlement Agreement, this cash will be distributed to class members automatically; i.e., without requiring class members to file claim forms. Both the recovery and the automatic distribution are unusual for FCRA settlements. And class counsel achieved all of this despite serious litigation risks. Not only was it possible that the Court would never certify a class for litigation purposes, but it is not even clear that OFAC reports are covered by the FCRA; indeed, some courts have found that they are not. Moreover, statutory damages are only available if the defendant "willfully" violated the FCRA, and proving willfulness is always a tall order. In short, class counsel did an incredible job with what they had to work with.

24. Let me finally say a word about class counsel's lodestar. Some courts "crosscheck" class counsel's requested fee percentage against their lodestar. But this is a minority practice nationwide. *See id.* at 833 (finding that only 49% of courts consider lodestar when awarding fees with the percentage method); *Eisenberg-Miller 2017*, *supra*, at 945 (finding percent method with lodestar crosscheck used 38% of the time versus 54% for percent method without lodestar crosscheck). And it is the minority practice for good reason: the lodestar crosscheck reintroduces through the back door all of the bad incentives of the lodestar method that the percentage method tried to correct. In particular, the lodestar crosscheck, just like the lodestar method, rewards class counsel for dragging cases out and discourages timely settlement. For example, if class counsel believes a court will crosscheck their fee percentage by capping it at a multiple of their lodestar, class counsel will simply want to bill more hours until the percentage they seek will fall under the

cap. For this reason, real clients do not use lodestar crosschecks when they hire lawyers on contingency, *see* Fitzpatrick, *A Fiduciary Judge, supra*, at 1167, and the courts that follow a market-based approach to class action fees have all but banned them, *see, e.g., Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) ("The . . . argument . . . that any percentage fee award exceeding a certain lodestar multiplier is excessive . . . echoes the 'megafund' cap we rejected in *Synthroid*."). If class members would never contract for such an arrangement on their own, why should courts force it upon them in class actions? Given that courts are supposed to act as "fiduciaries" for absent class members, the answer is again clear to me: they should not. *See, e.g.*, Fitzpatrick, *Fiduciary Judge*, *supra*, at 1154-55.

25. Nonetheless, class counsel have asked me to address how their lodestar multiplier compares to those in other cases. It is true the lodestar multiplier that would result here if the Court grants class counsel's fee request would be higher than usual, *see* Fitzpatrick, *Empirical Study, supra*, at 834, and this remains true even factoring in that larger settlements like this one tend to result in larger multipliers, *see Eisenberg-Miller 2010*, *supra*, at 274. But it is also true that the multiplier here would fall well within the range of multipliers found in previous cases. For example, in merely the two years of *Empirical Study*, I found multipliers up to 10.3. *See* Fitzpatrick, *Empirical Study, supra*, at 834. In other years, there are many that are even higher. *See, e.g.*, *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1252 (Del. 2012) (awarding fee with a 66 multiplier); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002) (noting multipliers of up to 19.6); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. Civ.A. 03–4578, 2005 WL 1213926, at *18 (E.D. Pa. May 19, 2005) (awarding fee with 15.6 multiplier); *Lloyd v. Navy Fed. Credit Union*, 2019 WL 2269958, at *13 (S.D. Cal. May 28, 2019) (awarding fee even though "[t]he Court is aware that a lodestar cross-check would likely result in a multiplier

of around 10.96"); *In re Doral Financial Corp. Securities Litigation*, No. 05-cv-04014-RO (S.D.N.Y. Jul. 17, 2007) (awarding fee with 10.26 multiplier); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Bais Yaakov of Spring Valley v. Peterson's Nelnet, LLC*, No. 11-cv-00011 (D.N.J. Jan. 26, 2015) (awarding fee with 8.91 multiplier); *Raetsch v. Lucent Tech., Inc.*, No. 05-cv-05134 (D.N.J., Nov. 8., 2010) (awarding fee with 8.77 multiplier); *Thacker v. Chesapeake Appalachia, L.L.C.*, No. 07-cv-00026 (E.D.Ky. Mar. 3, 2010) (awarding fee with 8.47 multiplier); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, No. 05-11148-PBS, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (awarding fee with 8.3 multiplier).

26. For all these reasons, I believe granting the fee award requested here would be in line with prevailing practices.

27. My compensation for this declaration was a flat fee in no way dependent on the outcome of class counsel's fee petition.

Nashville, TN

September 1, 2024

Brian T. Fitzpatrick

Exhibit 1

BRIAN T. FITZPATRICK

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ACADEMIC APPOINTMENTS

VANDERBILT UNIVERSITY LAW SCHOOL, *Milton R. Underwood Chair in Free Enterprise*, 2020 to present
- *FedEx Research Professor*, 2014-2015
- *Professor of Law*, 2012 to present
- *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Complex Litigation, Federal Courts
- Hall-Hartman Outstanding Professor Award, 2008-2009 & 2023-2024
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

HARVARD LAW SCHOOL, *Visiting Professor*, Fall 2018
- Classes: Civil Procedure, Litigation Finance

FORDHAM LAW SCHOOL, *Visiting Professor*, Fall 2010
- Classes: Civil Procedure

EDUCATION

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

UNIVERSITY OF NOTRE DAME, B.S., Chemical Engineering, *summa cum laude*, 1997
- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

CLERKSHIPS

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

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

EXPERIENCE

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

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

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

BOOKS

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

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

BOOK CHAPTERS

Climate Change and Class Actions in CLIMATE LIBERALISM: PERSPECTIVES ON LIBERTY, PROPERTY, AND POLLUTION (Jonathan Adler, ed., Palgrave Macmillan 2023)

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

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

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

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

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

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

ACADEMIC ARTICLES

Agency Costs in Third Party Litigation Finance Reconsidered, THEORETICAL INQUIRIES IN LAW (forthcoming 2024) (with Will Marra)

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

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

Many Minds, Many MDL Judges, 84 L. & CONTEMP. PROBLEMS 107 (2021)

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

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

Originalism and Natural Law, 79 FORD. L. REV. 1541 (2011)

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

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

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

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

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

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

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

Strict Scrutiny of Facially Race-Neutral State Action and the Texas Ten Percent Plan, 53 Baylor L. Rev. 289 (2001)

ACADEMIC PRESENTATIONS

Non-Securities Class Action Settlements in CAFA's First Eleven Years, Conference of the European Society for Empirical Legal Studies, Universidad Miguel Hernandez, Elche, Spain (June 21, 2024)

Litigation Financing, Contemporary Issues in Complex Litigation Conference, Northwestern Law School, Chicago, IL (Mar. 7, 2024) (panelist)

Non-Securities Class Action Settlements in CAFA's First Eleven Years, George Mason Law School, Arlington, VA (Feb. 6, 2024)

Agency Costs in Third Party Litigation Finance Reconsidered, Third Party Litigation Funding: The Past, The Present, and The Future Conference, Tel Aviv University Buchmann Faculty of Law, Tel Aviv, Israel (June 14, 2023)

Non-Securities Class Action Settlements in CAFA's First Eleven Years, University of Florida Law School, Gainesville, FL (Feb. 6, 2023)

Entrapment of the Little Guy: Resisting the Erosion of Investor, Employee and Consumer Protections, Institute for Law and Economic Policy, San Diego, CA (Jan. 27, 2023)

A New Source of Data for Non-Securities Class Actions, William & Mary Law School, Williamsburg, VA (Nov. 10, 2022)

Can Courts Avoid Politicization in a Polarized America?, American Bar Association Annual Meeting, Chicago, IL (Aug. 5, 2022) (panelist)

A New Source of Data for Non-Securities Class Actions, Seventh Annual Civil Procedure Workshop, Cardozo Law School, New York, NY (May 20, 2022)

Resolution Issues in Class Actions and Mass Torts, Miami Law Class Action & Complex Litigation Forum, University of Miami School of Law, Miami, FL (Mar. 11, 2022) (panelist)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Is the Future of Affirmative Action Race Neutral?, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

The Mass Tort Bankruptcy: A Pre-History, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

The End of Class Actions?, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

Toward a More Lawyer-Centric Class Action?, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

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

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

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

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

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

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

The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

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

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

Originalism and Summary Judgment, Georgetown Law School, Washington, DC (Apr. 5, 2010)

Theorizing Fee Awards in Class Action Litigation, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

Originalism and Summary Judgment, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

The End of Objector Blackmail?, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

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

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

Alternatives To Affirmative Action After The Michigan Civil Rights Initiative, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

OTHER PUBLICATIONS

Racial Preferences Won't Go Easily, WALL ST. J. (June 1, 2023)

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

The Right Way to End Qualified Immunity, THE HILL (June 25, 2020)

I Still Remember, 133 HARV. L. REV. 2458 (2020)

Proposed Reforms to Texas Judicial Selection, 24 TEX. R. L. & POL. 307 (2020)

The Conservative Case for Class Actions?, NATIONAL REVIEW (Nov. 13, 2019)

9th Circuit Split: What's the math say?, DAILY JOURNAL (Mar. 21, 2017)

Former clerk on Justice Antonin Scalia and his impact on the Supreme Court, THE CONVERSATION (Feb. 24, 2016)

Lessons from Tennessee Supreme Court Retention Election, THE TENNESSEAN (Aug. 20, 2014)

Public Needs Voice in Judicial Process, THE TENNESSEAN (June 28, 2013)

Did the Supreme Court Just Kill the Class Action?, THE QUARTERLY JOURNAL (April 2012)

Let General Assembly Confirm Judicial Selections, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

"Tennessee Plan" Needs Revisions, THE TENNESSEAN (Feb. 3, 2012)

How Does Your State Select Its Judges?, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

On the Merits of Merit Selection, THE ADVOCATE 67 (Winter 2010)

Supreme Court Case Could End Class Action Suits, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

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

Confirmation "Kabuki" Does No Justice, POLITICO (July 20, 2009)

Selection by Governor may be Best Judicial Option, THE TENNESSEAN (Apr. 27, 2009)

Verdict on Tennessee Plan May Require a Jury, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

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

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

Disorder in the Court, LOS ANGELES TIMES (Jul. 11, 2007)

Scalia's Mistake, NATIONAL LAW JOURNAL (Apr. 24, 2006)

GM Backs Its Bottom Line, DETROIT FREE PRESS (Mar. 19, 2003)

Good for GM, Bad for Racial Fairness, LOS ANGELES TIMES (Mar. 18, 2003)

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

OTHER PRESENTATIONS

Abstention, Tennessee Attorney General's Office Continuing Legal Education, Nashville, TN (Apr. 13, 2022)

The Need for New Lower Court Judgeships, 30 Years in the Making, Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Feb. 24, 2021)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROFESSIONAL ASSOCIATIONS

Referee, Journal of Legal Studies
Referee, Journal of Law, Economics and Organization
Referee, Journal of Empirical Legal Studies
Referee, Supreme Court Economic Review
Reviewer, Aspen Publishing
Reviewer, Cambridge University Press
Reviewer, University Press of Kansas
Reviewer, Palgrave Macmillan

Reviewer, Oxford University Press
Reviewer, Routledge
Member, American Law Institute
Member, American Bar Association
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights, 2009-2015
Board of Directors, Tennessee Stonewall Bar Association, 2012-2022
American Swiss Foundation Young Leaders' Conference, 2012
Bar Admission, District of Columbia & California (inactive)

COMMUNITY ACTIVITIES

Board of Directors, Beacon Center of Tennessee, 2018-present; Board of Directors, Nashville Ballet, 2011-2017 & 2019-2022; Nashville Talking Library for the Blind, 2008-2009

Exhibit 2

JOURNAL OF
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An Empirical Study of Class Action Settlements and Their Fee Awards

*Brian T. Fitzpatrick**

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

I. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Prior Empirical Studies of Class Action Settlements

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

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

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

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

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

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

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

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

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

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

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

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

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

[19]Id. at 258–59.

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

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

III. Federal Class Action Settlements, 2006 and 2007

As far as I am aware, there has never been an empirical study of all federal class action settlements in a particular year. In this article, I attempt to make such a study for two recent years: 2006 and 2007. To compile a list of all federal class settlements in 2006 and 2007, I started with one of the aforementioned lists of securities settlements, the one maintained by RiskMetrics, and I supplemented this list with settlements that could be found through three other sources: (1) broad searches of district court opinions in the Westlaw and Lexis databases,[25] (2) four reporters of class action settlements—*BNA Class Action Litigation Report*, *Mealey's Jury Verdicts and Settlements*, *Mealey's Litigation Report*, and the *Class Action World* website[26]—and (3) a list from the Administrative Office of Courts of all district court cases

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

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

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

[23]Id. at 47, 51.

[24]Id. at 61–62.

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

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

coded as class actions that terminated by settlement between 2005 and 2008.[27] I then removed any duplicate cases and examined the docket sheets and court orders of each of the remaining cases to determine whether the cases were in fact certified as class actions under either Rule 23, Rule 23.1, or Rule 23.2.[28] For each of the cases verified as such, I gathered the district court's order approving the settlement, the district court's order awarding attorney fees, and, in many cases, the settlement agreements and class counsel's motions for fees, from electronic databases (such as Westlaw or PACER) and, when necessary, from the clerk's offices of the various federal district courts. In this section, I report the characteristics of the settlements themselves; in the next section, I report the characteristics of the attorney fees awarded to class counsel by the district courts that approved the settlements.

A. Number of Settlements

I found 688 settlements approved by federal district courts during 2006 and 2007 using the methodology described above. This is almost the exact same number the Eisenberg-Miller study found over a *16*-year period in both federal *and* state court. Indeed, the number of annual settlements identified in this study is *several times* the number of annual settlements that have been identified in any prior empirical study of class action settlements. Of the 688 settlements I found, 304 were approved in 2006 and 384 were approved in 2007.[29]

B. Defendant Versus Plaintiff Classes

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

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

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

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

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

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

C. Settlement Subject Areas

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

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

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

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

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

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

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

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

Although the Eisenberg-Miller study through 2008 is not directly comparable on the distribution of settlements across litigation subject areas—because its state and federal court data cannot be separated (more than 10 percent of the settlements were from state court[34]) and because it excludes settlements in fee-shifting cases—their study through 2008 is the best existing point of comparison. Interestingly, despite the fact that state courts were included in their data, their study through 2008 found about the same percentage of securities cases (39 percent) as my 2006–2007 data set shows.[35] However, their study found many more consumer (18 percent) and antitrust (10 percent) cases, while finding many fewer labor and employment (8 percent), employee benefits (6 percent), and civil rights (3 percent) cases.[36] This is not unexpected given their reliance on published opinions and their exclusion of fee-shifting cases.

D. Settlement Classes

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

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

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

[35]Id. at 262.

[36]Id.

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

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

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

[40]521 U.S. 591 (1997).

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

E. The Age at Settlement

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

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

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

SOURCE: PACER.

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

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

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

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

F. The Location of Settlements

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

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

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

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

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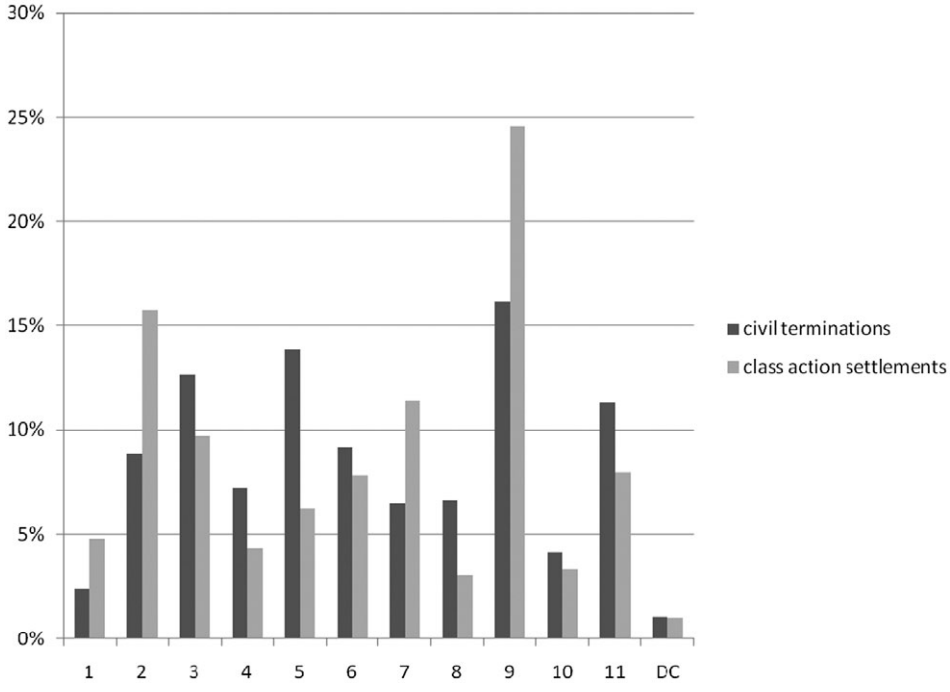
[43]See Eisenberg & Miller, supra note 15, at 59–60.

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

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

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

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



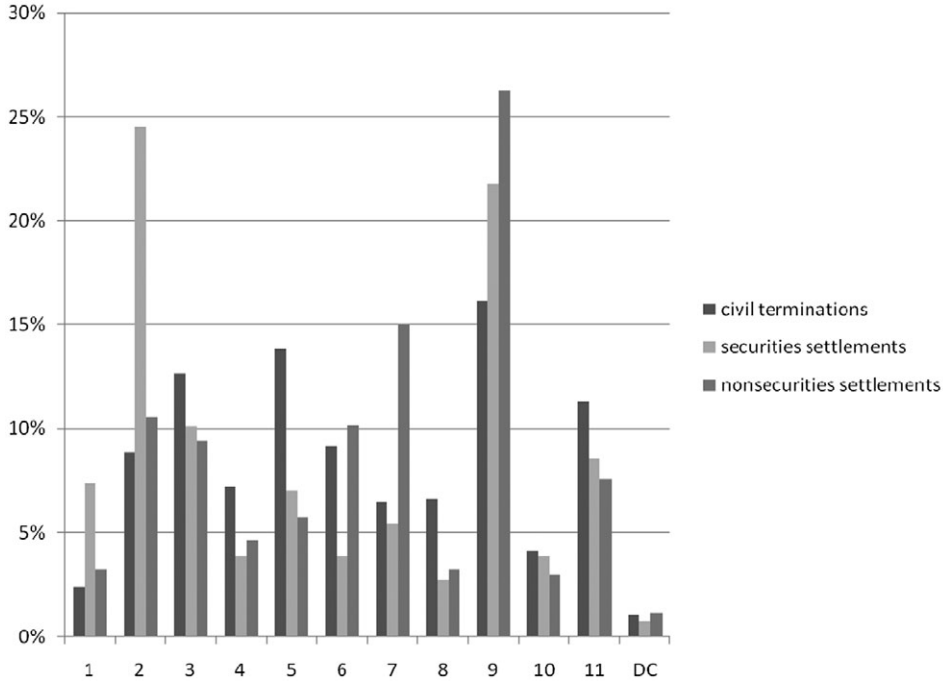
SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <http://www.uscourts.gov/stats/index.html>).

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

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

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

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



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

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

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

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

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

G. Type of Relief

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

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

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

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

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

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

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[49]See Fed. R. Civ. P. 23(b).

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

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

H. Settlement Money

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

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

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

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

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

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

includes all determinate[52] payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.[53] I did not attempt to assign a value to any relief that was not valued by the district court (even if it may have been valued by class counsel). It should be noted that district courts did not often value in-kind or injunctive relief—they did so only 18 percent of the time—and very little of Table 4—only $1.3 billion, or 4 percent—is based on these valuations. It should also be noted that the amounts in Table 4 reflect only what defendants *agreed to pay*; they do not reflect the amounts that defendants *actually paid* after the claims administration process concluded. Prior empirical research has found that, depending on how settlements are structured (e.g., whether they awarded a fixed amount of money to each class member who eventually files a valid claim or a pro rata amount of a fixed settlement to each class member), defendants can end up paying much less than they agreed.[54]

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

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

The significant discrepancy between the two years is largely attributable to the 2006 securities settlement related to the collapse of Enron, which totaled $6.6 billion, as well as to the fact that seven of the eight 2006–2007 settlements for more than $1 billion were approved in 2006.[55] Indeed, it is worth noting that the eight settlements for more than $1

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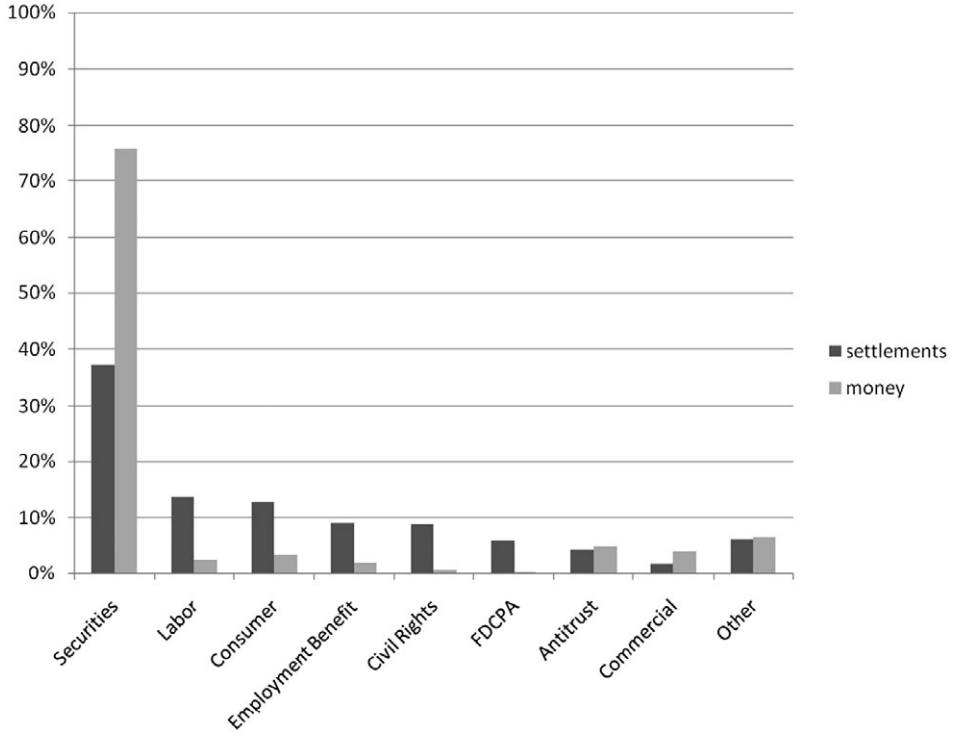
[52]For example, I excluded awards of a fixed amount of money to each class member who eventually filed a valid claim (as opposed to settlements that awarded a pro rata amount of a fixed settlement to each class member) if the total amount of money set aside to pay the claims was not set forth in the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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Attorney Fees in Federal Class Action Settlements, 2006 and 2007

A. Total Amount of Fees and Expenses

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

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

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

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

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

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

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

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

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

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

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

B. Method of Awarding Fees

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

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

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

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

C. Variation in Fees Awarded

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

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[67]Fed. R. Civ. P. 23(h).

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

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

[70]Id. at 31–32.

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

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

that use the percentage-of-the-settlement method usually rely on a multifactor test[73] and, like most multifactor tests, it can plausibly yield many results. It is true that in many of these cases, judges examine the fee percentages that other courts have awarded to guide their discretion.[74] In addition, the Ninth Circuit has adopted a presumption that 25 percent is the proper fee award percentage in class action cases.[75] Moreover, in securities cases, some courts presume that the proper fee award percentage is the one class counsel agreed to when it was hired by the large shareholder that is now usually selected as the lead plaintiff in such cases.[76] Nonetheless, presumptions, of course, can be overcome and, as one court has put it, "[t]here is no hard and fast rule mandating a certain percentage . . . which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case."[77] The court added: "[i]ndividualization in the exercise of a discretionary power [for fee awards] will alone retain equity as a living system and save it from sterility."[78] It is therefore not surprising that district courts awarded fees over a broad range when they used the percentage-of-the-settlement method. Figure 4 is a graph of the distribution of fee awards as a percentage of the settlement in the 444 cases where district courts used the percentage method with or without a lodestar cross-check and the fee percentages were ascertainable. These fee awards are exclusive of awards for expenses whenever the awards could be separated by examining either the district court's order or counsel's motion for fees and expenses (which was 96 percent of the time). The awards ranged from 3 percent of the settlement to 47 percent of the settlement. The average award was 25.4 percent and the median was 25 percent. Most fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent. The Eisenberg-Miller study through 2008 found a slightly lower mean (24 percent) but the same median (25 percent) among its federal court settlements.[79]

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

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

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

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

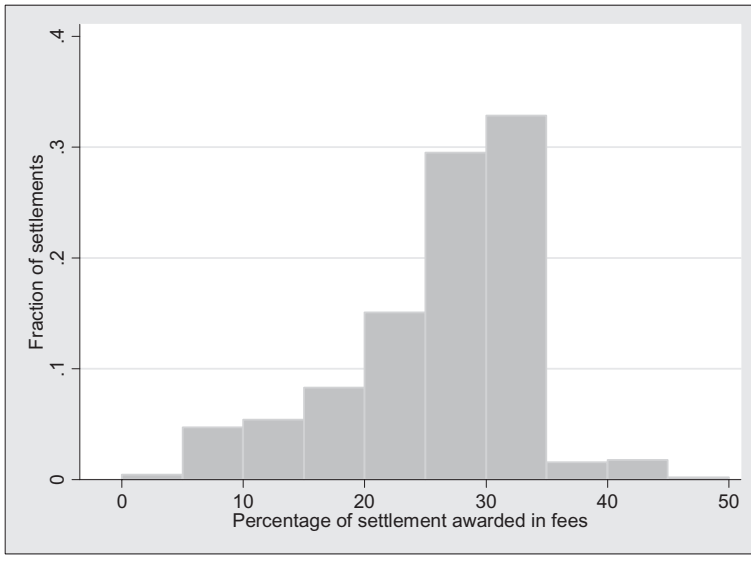
[76]See, e.g., In re Cendant Corp. Litig., 264 F.3d 201, 282 (3d Cir. 2001).

[77]*Camden I Condo. Ass'n*, 946 F.2d at 774.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

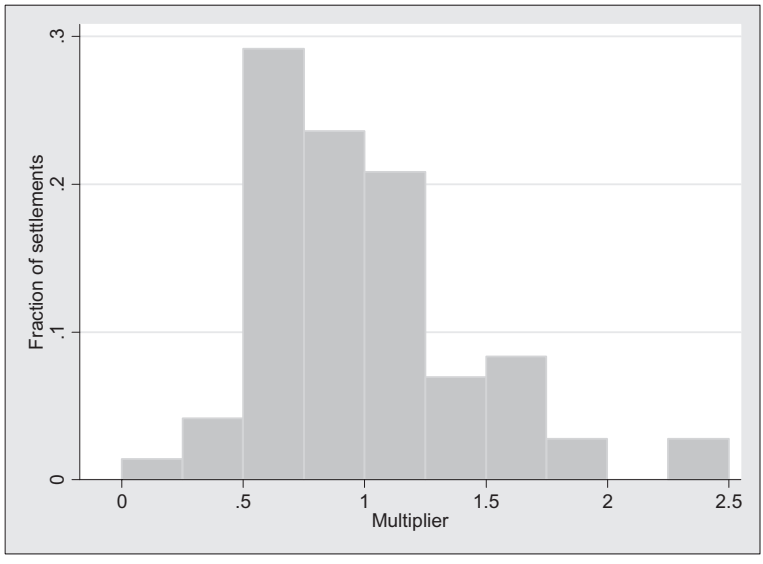
Sources: Westlaw, PACER, district court clerks' offices.

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

D. Factors Influencing Percentage Awards

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

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



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

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

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

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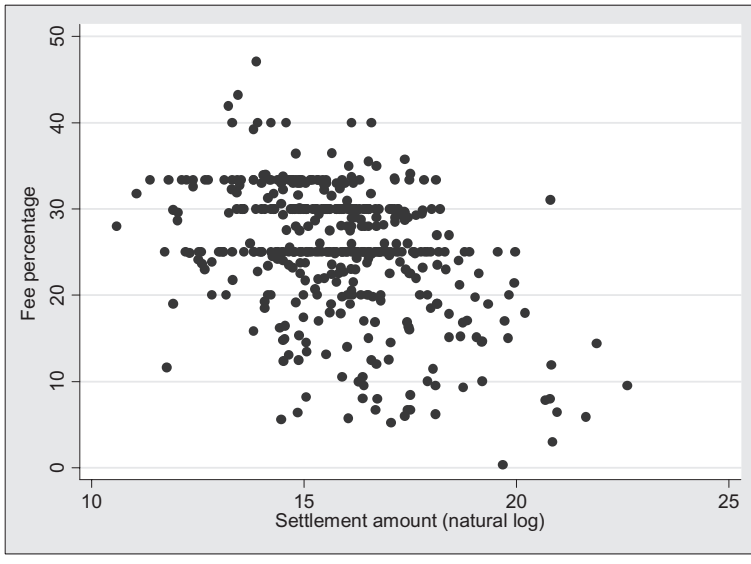
[82]See, e.g., Samuel Issacharoff, Regulating after the Fact, 56 DePaul L. Rev. 375, 377 (2007).

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[89]See Fitzpatrick, supra note 85, at 1640.

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

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

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

Table 12 *Continued*

	Regression Coefficients (and Robust t *Statistics)*				
Independent Variable	*1*	*2*	*3*	*4*	*5*
Commercial case		−0.028		−2.65	0.178
		(−0.01)		(−0.73)	(0.05)
Other case		−0.340		−3.73	−0.221
		(−0.17)		(−1.65)	(−0.11)
Constant	42.1	37.2	43.0	38.2	40.1
	(7.29)**	(6.08)**	(6.72)**	(4.14)**	(7.62)**
N	427	427	232	195	427
R^2	.20	.26	.37	.26	.26
Root MSE	6.59	6.50	5.63	7.24	6.48

NOTE: **significant at the 5 percent level; *significant at the 10 percent level. Standard errors in Column 1 were clustered by circuit. Indicator variables for race and gender were included in each regression but not reported.
SOURCES: Westlaw, PACER, district court clerks' offices, Federal Judicial Center.

thought that these kinds of questions are more often answered in published opinions.[91] Indeed, most of the studies finding an association between ideological beliefs and case outcomes were based on data sets that included only published opinions.[92] On the other hand, there is a small but growing number of studies that examine unpublished opinions as well, and some of these studies have shown that ideological effects persisted.[93] Nonetheless, in light of the discretion that judges exercise with respect to fee award decisions, it hard to characterize *any* decision in this area as "unambiguous." Thus, even when unpublished, I would have expected the fee award decisions to exhibit an association with ideological beliefs. Thus, I am more persuaded by the explanation suggesting that judges are more concerned with clearing their dockets or insulating their decisions from appeal in these cases than with furthering their ideological beliefs.

In all the regressions, the size of the settlement was strongly and inversely associated with fee percentages. Whether the case was certified as a settlement class was not associated

[91]See, e.g., Ahmed E. Taha, Data and Selection Bias: A Case Study, 75 UMKC L. Rev. 171, 179 (2006).

[92]Id. at 178–79.

[93]See, e.g., David S. Law, Strategic Judicial Lawmaking: Ideology, Publication, and Asylum Law in the Ninth Circuit, 73 U. Cin. L. Rev. 817, 843 (2005); Deborah Jones Merritt & James J. Brudney, Stalking Secret Law: What Predicts Publication in the United States Courts of Appeals, 54 Vand. L. Rev. 71, 109 (2001); Donald R. Songer, Criteria for Publication of Opinions in the U.S. Courts of Appeals: Formal Rules Versus Empirical Reality, 73 Judicature 307, 312 (1990). At the trial court level, however, the studies of civil cases have found no ideological effects. See Laura Beth Nielsen, Robert L. Nelson & Ryon Lancaster, Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post Civil Rights United States, 7 J. Empirical Legal Stud. 175, 192–93 (2010); Denise M. Keele et al., An Analysis of Ideological Effects in Published Versus Unpublished Judicial Opinions, 6 J. Empirical Legal Stud. 213, 230 (2009); Orley Ashenfelter, Theodore Eisenberg & Stewart J. Schwab, Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes, 24 J. Legal Stud. 257, 276–77 (1995). With respect to criminal cases, there is at least one study at the trial court level that has found ideological effects. See Schanzenbach & Tiller, supra note 81, at 734.

with fee percentages in any of the regressions. The age of the case at settlement was associated with fee percentages in the first two regressions, and when the settlement class variable was removed in regressions 3 and 4, the age variable became positively associated with fee percentages in nonsecurities cases but remained insignificant in securities cases. Professors Eisenberg and Miller likewise found that the age of the case at settlement was positively associated with fee percentages in their 1993–2002 data set,[94] and that settlement classes were not associated with fee percentages in their 2003–2008 data set.[95]

Although the structure of these regressions did not permit extensive comparisons of fee awards across different litigation subject areas, fee percentages appeared to vary somewhat depending on the type of case that settled. Securities cases were used as the baseline litigation subject area in the second and fifth regressions, permitting a comparison of fee awards in each nonsecurities area with the awards in securities cases. These regressions show that awards in a few areas, including labor/employment and antitrust, were more lucrative than those in securities cases. In the fourth regression, which included only nonsecurities cases, labor and employment cases were used as the baseline litigation subject area, permitting comparison between fee percentages in that area and the other nonsecurities areas. This regression shows that fee percentages in several areas, including consumer and employee benefits cases, were lower than the percentages in labor and employment cases.

In the fifth regression (Column 5 of Table 12), I attempted to discern whether the circuits identified in Section III as those with the most overrepresented (the First, Second, Seventh, and Ninth) and underrepresented (the Fifth and Eighth) class action dockets awarded attorney fees differently than the other circuits. That is, perhaps district court judges in the First, Second, Seventh, and Ninth Circuits award greater percentages of class action settlements as fees than do the other circuits, whereas district court judges in the Fifth and Eighth Circuits award smaller percentages. To test this hypothesis, in the fifth regression, I included indicator variables only for the six circuits with unusual dockets to measure their fee awards against the other six circuits combined. The regression showed statistically significant association with fee percentages for only two of the six unusual circuits: the Second and Ninth Circuits. In both cases, however, the direction of the association (i.e., the Second and Ninth Circuits awarded *smaller* fees than the baseline circuits) was opposite the hypothesized direction.[96]

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[94]See Eisenberg & Miller, supra note 15, at 61.

[95]See Eisenberg & Miller II, supra note 16, at 266.

[96]This relationship persisted when the regressions were rerun among the securities and nonsecurities cases separately. I do not report these results, but, even though the First, Second, and Ninth Circuits were oversubscribed with securities class action settlements and the Fifth, Sixth, and Eighth were undersubscribed, there was no association between fee percentages and any of these unusual circuits except, again, the inverse association with the Second and Ninth Circuits. In nonsecurities cases, even though the Seventh and Ninth Circuits were oversubscribed and the Fifth and the Eighth undersubscribed, there was no association between fee percentages and any of these unusual circuits except again for the inverse association with the Ninth Circuit.

The lack of the expected association with the unusual circuits might be explained by the fact that class action lawyers forum shop along dimensions other than their potential fee awards; they might, for example, put more emphasis on favorable class-certification law because there can be no fee award if the class is not certified. As noted above, it might also be the case that class action lawyers are unable to engage in forum shopping at all because defendants are able to transfer venue to the district in which they are headquartered or another district with a significant connection to the litigation.

It is unclear why the Second and Ninth Circuits were associated with lower fee awards despite their heavy class action dockets. Indeed, it should be noted that the Ninth Circuit was the baseline circuit in the second, third, and fourth regressions and, in all these regressions, district courts in the Ninth Circuit awarded smaller fees than courts in many of the other circuits. The lower fees in the Ninth Circuit may be attributable to the fact that it has adopted a presumption that the proper fee to be awarded in a class action settlement is 25 percent of the settlement.[97] This presumption may make it more difficult for district court judges to award larger fee percentages. The lower awards in the Second Circuit are more difficult to explain, but it should be noted that the difference between the Second Circuit and the baseline circuits went away when the fifth regression was rerun with only nonsecurities cases.[98] This suggests that the awards in the Second Circuit may be lower *only* in securities cases. In any event, it should be noted that the lower fee awards from the Second and Ninth Circuits contrast with the findings in the Eisenberg-Miller studies, which found no intercircuit differences in fee awards in common-fund cases in their data through 2008.[99]

V. Conclusion

This article has attempted to fill some of the gaps in our knowledge about class action litigation by reporting the results of an empirical study that attempted to collect all class action settlements approved by federal judges in 2006 and 2007. District court judges approved 688 class action settlements over this two-year period, involving more than $33 billion. Of this $33 billion, nearly $5 billion was awarded to class action lawyers, or about 15 percent of the total. District courts typically awarded fees using the highly discretionary percentage-of-the-settlement method, and fee awards varied over a wide range under this method, with a mean and median around 25 percent. Fee awards using this method were strongly and inversely associated with the size of the settlement. Fee percentages were positively associated with the age of the case at settlement. Fee percentages were not associated with whether the class action was certified as a settlement class or with the

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[97]See note 75 supra. It should be noted that none of the results from the previous regressions were affected when the Ninth Circuit settlements were excluded from the data.

[98]The Ninth Circuit's differences persisted.

[99]See Eisenberg & Miller II, supra note 16, at 260.

political affiliation of the judge who made the award. Finally, there appeared to be some variation in fee percentages depending on subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all of the other litigation areas, and district courts in the Ninth Circuit and in the Second Circuit (in securities cases) awarded lower fee percentages than district courts in several other circuits. The lower awards in the Ninth Circuit may be attributable to the fact that it is the only circuit that has adopted a presumptive fee percentage of 25 percent.

Exhibit 3

Documents reviewed:

- Plaintiff's Unopposed Motion & Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement & Preliminary Certification of Settlement Class, On Order Shortening Time (June 20, 2024)
- Declaration of Ritesh Patel in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Preliminary Certification of Settlement Class (June 20, 2024)
- Declaration of E. Michelle Drake in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Preliminary Certification of Settlement Class (June 20, 2024)
- Appendix to the Declaration of E. Michelle Drake in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Preliminary Certification of Settlement Class (June 20, 2024), including Exhibit 1, Settlement Agreement and Release ("Settlement Agreement")

EXHIBIT 2

DECL
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DISTRICT COURT
CLARK COUNTY, NEVADA

ANGEL LUIS RODRIGUEZ, JR., individually and as a representative of the class,

Plaintiff,

vs.

NATIONAL CREDIT CENTER, LLC.

Defendant.

Case No.: A-23-869000-B
Dept. No.: 16

DECLARATION OF E. MICHELLE DRAKE IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARD

I, E. Michelle Drake, declare as follows:

1. I am one of Class Counsel in this action.

2. The matters set forth herein are within my personal knowledge and if sworn as a witness I could competently testify regarding them.

3. I submit this Declaration in support of Plaintiff's Unopposed Motion for Attorneys' Fees, Costs, and Class Representative Service Award.

Class Counsel's Efforts in Litigation & Settlement

4. Beginning in October 2022, Class Counsel worked with Plaintiff to investigate potential claims against Defendant, and eventually drafted and filed the class action complaint.

5. Class Counsel prepared Plaintiff's initial disclosures, and analyzed Defendant's initial disclosures, as well.

6. During discovery in this matter, Plaintiff served multiple sets of written discovery, including requests for production, interrogatories, and a request for admission. After receiving Defendant's responses and supplemental responses, Class Counsel analyzed those responses, as well as Defendant's productions.

7. Defendant also propounded written discovery requests on Plaintiff, including 26 requests for production and 21 interrogatories. With his written responses, Plaintiff produced numerous documents, including sensitive financial documents and personal text messages.

8. Both Parties challenged each other's initial responses to written discovery requests, leading the Parties to engage in near-weekly meet-and-confers during the fall and early winter of 2023. Prior to reaching a settlement, the remaining disputes were known, and Plaintiff was preparing to move to compel on a number of issues, including on NCC's net worth and pre-tax profits.

9. NCC also provided multiple rounds of supplemental responses to both Plaintiff's requests for production and interrogatories, and produced additional documents.

10. Plaintiff retained an expert forensic and financial consultant to analyze financial-related productions from NCC. This analysis formed the basis for Class Counsel's strategy in settlement negotiations and the eventual resolution of this matter.

11. Plaintiff also negotiated the production of multiple iterations of complex data sets consisting of millions of data points on hundreds of thousands of consumers as well as the code behind Defendant's relevant algorithms. Plaintiff retained experts to assist with analyzing these materials, as well. One such expert, a Ph.D. computer scientist with specialized expertise in "entity resolution," reviewed and critiqued Defendant's source code and was prepared to offer his opinions at trial.

12. Plaintiff also took a Fed. R. Civ. P. 30(b)(6) deposition of NCC. At the time the settlement was reached, Plaintiff had also scheduled and begun preparing for several additional depositions of NCC current and former employees.

13. Plaintiff issued subpoenas to seven third parties, as well, including Parkway Ford and SNH Capital Partners (NCC's parent company). Class Counsel conducted resulting meet-and-confers on responses to those subpoenas, and analyzed the resulting productions.

14. The Parties began discussing possible classwide resolution of this matter in fall 2023. These discussions involved negotiating NCC's production of various materials, including individual-level data on potential class members, as well as information on NCC's finances. Plaintiff retained an expert to assist with analyzing this voluminous data.

15. On October 27, 2023, the Parties engaged in a full-day, remote mediation session with third-party neutral Rodney Max. Following this session, NCC produced more consumer data and other information for settlement purposes.

16. On December 11, 2023, the Parties engaged in a second full-day, remote mediation with Mr. Max. On January 12, 2024, the Parties engaged in a third full-day, in-person mediation with Mr. Max, at which the Parties reached a settlement in principle.

17. The Parties then continued arms-length negotiations to formalize the settlement terms, with Class Counsel ultimately preparing the first draft of the 34-page Settlement Agreement and all exhibits thereto.

18. Class Counsel also prepared the Notice Plan, which involved soliciting and vetting multiple proposals from settlement administrators, and working with Defendant to obtain class member data that would be necessary to administering the settlement of this matter.

19. On June 11, 2024, the Parties executed the Settlement Agreement. Class Counsel then drafted, filed, and argued the Motion for Preliminary Approval of the Settlement.

20. In drafting the Settlement Agreement and Exhibits, Class Counsel worked closely with the Administrator to ensure the Notice Plan will reach as many consumers as possible. I have substantial experience in working with notice administrators to formulate effective notice plans, including in the Big Three Public Records Litigation. *Clark v. Trans Union, LLC*, No. 3:15-cv-00391 (E.D. Va.); *Clark v. Experian Info. Sols., Inc.*, No. 3:16-cv-00032 (E.D. Va.); *Thomas v. Equifax Info. Services, LLC*, No. 3:18-cv-00684 (E.D. Va.). Class Counsel worked to ensure the Settlement provided for all Settlement Class Members who could be reached with Notice to automatically receive a cash payment.

21. Throughout the Notice Plan's implementation, Class Counsel have assisted class members who reached out with questions about the Settlement, and supervised the Settlement Administrator in its work.

22. In this action, Class Counsel have diligently investigated and litigated the claims at issue, including, among other things: researching and drafting the complaint; propounding and responding to multiple sets of written discovery; producing documents; conferring on multiple discovery disputes; reviewing Defendant's productions; negotiating and analyzing Defendant's data productions, including with expert assistance; taking a deposition of Defendant; navigating third-party discovery; and ultimately successfully negotiating classwide relief and working to draft the Settlement Agreement and notices, and the Motion for Preliminary Approval.

23. Before taking the case, Class Counsel negotiated a customary contingency fee agreement ("Retainer Agreement") with Plaintiff, which states, in relevant part:

> [Class Counsel] agree to seek a reasonable attorneys' fee which may be determined as a percentage (customarily one-third) of the value of all monetary and Non-Monetary Relief (as defined below) provided by the settlement or judgment. Alternatively, at their election, [Class Counsel] may seek a higher amount so long as the fee is reasonably based on the value and quality of the work performed, the results achieved, and applicable law…

> [Plaintiff] acknowledges and agrees that any settlement, award, or judgment may also include relief of a non-monetary nature that inures to [Plaintiff]'s and/or the applicable class's benefit, or otherwise accomplishes [Plaintiff]'s objectives, in whole or in part, in pursuing the Claim ("Non-Monetary Relief").

24. Class Counsel negotiated the above with the understanding that this would be an appropriate incentive for Counsel to take on the financial risks involved. Class Counsel also agreed to advance all costs. If Counsel did not successfully resolve this matter, they would have been paid nothing.

25. The Settlement Agreement and Plaintiff's Retainer Agreement both authorize Class Counsel to seek one-third of the monetary relief provided by the Settlement, as well as reimbursement of out-of-pocket costs. Class Counsel's intention to seek such here was included in the notices provided to the Class. No objections have been received to date.

26. To date, Berger Montague has expended 1,517.7 hours on the litigation and settlement of this matter. At Berger Montague's current and reasonable hourly rates, this results in $1,157,308.50 in lodestar. A summary table of timekeepers, their positions, and the number of hours each expended on this matter follows. Class Counsel can provide more details on the below, upon request from the Court.

Timekeeper	**Position**	**Hours Worked**
E. Michelle Drake	Executive Shareholder	243.3
John G. Albanese	Shareholder	142.5
Joseph Klein	Senior Counsel	42.8
Joseph Hashmall	Senior Counsel	11
Zachary M Vaughan	Senior Counsel	383.5
Kerri Petty	Senior Counsel	63
Sophia M. Rios	Associate	63
Ariana Kiener	Associate	452.5
Jean Hibray	Paralegal	113.9
Julie Gionnette	Legal Assistant	2.2
Total		1,517.7

27. Berger Montague's time records are maintained in accordance with industry standards to ensure reliability and transparency. The firm's formal policy requires all timekeepers—including attorneys and support staff—to keep records of time worked contemporaneously and to provide

sufficient detail to convey the nature and merit of the work performed. To ensure each time entry contains sufficient detail, the firm requires time entries to include both matter numbers (corresponding to the specific case) and task codes (corresponding to the type of work performed). Timekeepers are also required to provide narrative descriptions setting forth the case-specific tasks associated with each time entry. This manner of timekeeping, with contemporaneous records and detailed descriptions broken down by task, provides a level of accountability that courts nationwide routinely recommend when scrutinizing applications for attorneys' fees. *Deary v. City of Gloucester*, 9 F.3d. 191, 197-98 (1st Cir. 1993) ("In order to recover fees, attorneys must submit a full and precise accounting of their time, including specific information about number of hours, dates, and the nature of the work performed."); *Bode v. United States*, 919 F.2d 1044, 1047 (5th Cir. 1990) (collecting cases) ("[C]ourts customarily require the applicant to produce contemporaneous billing records or other sufficient documentation so that the district court can fulfill its duty to examine the application….").

28. To date, Berger Montague has incurred a total of $107,656.09 in costs. A summary table of the categories of costs follows. Class Counsel can provide more details on the below, upon request from the Court.

Category of Expense	Total
Expert Fees	$54,949.75
Mediation Fees	$35,951.32
Filing & Misc. Fees	$5,025.94
E-Discovery	$4,221.67
Transcripts	$2,510.00
Service Fees	$2,363.50
Travel	$2,167.38
Computer Research	$367.73
Meals	$72.80
Docusign	$24.80
Color Prints	$1.20
Total	$107,656.09

29. While the case had not yet reached expert discovery, Plaintiff had necessarily retained experts prior to settlement in order to fully analyze the productions from Defendant, to understand the scope of the case and the class here, and to negotiate the settlement from a fully informed position.

These experts included:

Craig Knoblock, Ph.D. Dr. Knoblock is a research professor of computer science at the University of Southern California. Dr. Knoblock possesses particular expertise in the area of "entity resolution," which is a term computer scientists use to describe the process of using computerized algorithms to determine whether two data points relate to the same real-world object. Dr. Knoblock was retained by Counsel to provide expertise regarding the way in which Defendant conducted its matching to the OFAC List.

Jonathan Jaffe. Mr. Jaffe is a technology consultant who specializes in filtering, joining, and summarizing government and corporate datasets that routinely contain hundreds of millions of records. He has served as both a consulting and testifying expert in numerous matters, including those alleging violations of the FCRA. Mr. Jaffe was retained by Counsel to provide expert analysis of the data produced by Defendant, and ultimately provided a declaration in support of Plaintiff's Motion for Preliminary Approval.

Stan V. Smith, Ph.D. Dr. Smith is President of Smith Economics Group, Ltd., and has more than 40 years of experience in the field of economics. As an economic expert and consultant for plaintiff and defense attorneys representing clients in federal and state courts nationwide, he and his staff economists provide analysis, testimony, and litigation support services in evaluating damages. Dr. Smith was retained by Counsel to assess the value of the injunctive relief provided under the Settlement, and ultimately provided a declaration in support of Plaintiff's Motion for Preliminary Approval.

Walter Bratic. Mr. Bratic is a Certified Public Accountant and Certified Fraud Examiner with more than 30 years of public accounting experience serving a broad spectrum of clients with litigation and valuations both domestically and internationally. He has testified in federal, district, bankruptcy, and state court, ICC, ITC and AAA proceedings, and has served as a court-appointed expert. Mr. Bratic was retained by Class Counsel in this matter to evaluate Defendant's financial position and financial relationships, which helped inform Counsel's strategy in settlement negotiations.

Named Plaintiff's Efforts on this Matter

30. Named Plaintiff Rodriguez has remained committed to class members' best interests throughout litigation and the settlement negotiation process. Since first identifying his potential claims against Defendant nearly two years ago, Plaintiff has assisted in the investigation of his claims, reviewed the complaint, remained abreast of developments in the case by regularly communicating with Class Counsel, responded to written discovery, and produced documents. Mr. Rodriguez remained involved in and abreast of settlement negotiations, and ultimately reviewed and approved the Settlement Agreement and attended the Preliminary Approval Hearing.

31. Without Plaintiff's initiative and commitment, class members likely would have received nothing for the conduct at issue in this case.

Counsel's Qualifications & Experience

32. I am an Executive Shareholder at Berger Montague PC. I have been practicing law since 2001 and am a graduate of Harvard College, Oxford University, and Harvard Law School. In 2016, I joined Berger Montague as a Shareholder, prior to that I was a partner at Nichols Kaster, PLLP, and ran that firm's consumer protection group.

33. Berger Montague specializes in class action litigation and is one of the preeminent class action law firms in the United States. The firm currently consists of over 90 attorneys who primarily represent plaintiffs in complex civil litigation, and class action litigation, in federal and state courts. Berger Montague has played lead roles in major class action cases for over 50 years, and has obtained settlement and recoveries totaling well over $30 billion for its clients and the classes they have represented.

34. I serve as co-chair of the firm's Consumer Protection & Mass Tort Department, and as chair of the Background Checks and Credit Reporting Department. My practice focuses on protecting consumers' rights when they are injured by improper credit reporting, and other illegal business practices. I currently serve as lead or co-lead counsel in dozens of class action consumer protection cases in federal and state courts across the country, including numerous cases brought pursuant to the Fair Credit Reporting Act ("FCRA"). Berger Montague's Background Checks and Credit Reporting

Department litigates on behalf of consumers nationwide to protect them against violations of their rights under the FCRA and other laws that govern credit reports and background checks. In particular, Berger Montague has developed an expertise in recent years representing consumers who have been inaccurately reported as matches to the OFAC List.

35. I serve on the Board of the Southern Center for Human Rights, the Board of Public Justice, am a member of the Partner's Council of the National Consumer Law Center, am a former Co-Chair of the Consumer Litigation Section for the Minnesota State Bar Association, and a former Board Member of the National Association of Consumer Advocates. I have previously served as a member of the Ethics Committee for the National Association of Consumer Advocates, and as Treasurer and At-Large Council Member for the Consumer Litigation Section of the Minnesota State Bar Association. I was also an appointee to the Federal Practice Committee in 2010 by the U.S. District Court for the District of Minnesota.

36. I was named to the LawDragon 500 Leading Plaintiff Financial Lawyers List for 2019, and a 2020 Elite Woman of the Plaintiffs Bar by the National Law Journal. I am consistently named to the annual lists of The Best Lawyers of America, Top 50 Women Minnesota Super Lawyers, and Super Lawyers. I have been quoted in the New York Times, and the National Law Journal, and have had prior cases named as "Lawsuits of the Year" by Minnesota Law & Politics.

37. I present frequently at national and local conferences on class actions, consumer protection, and Fair Credit Reporting Act-related topics, and I co-authored a book chapter on background checks and related issues, "Financial and Criminal Background Checks," Job Applicant Screening: A Practice Guide, Minnesota Continuing Legal Education Publication, May 2014, and the forthcoming 2d. ed. I was a contributing author to "Consumer Law," The Complete Lawyer's Quick Answer Book, Minnesota Continuing Legal Education Publication, 2d. ed., 2019, and "Chapter 1: Case and Claims Selection, Other First Considerations," Consumer Class Actions, National Consumer Law Center, 10th ed., 2019. My recent speaking engagements have included:

"National FCRA Landscape," National Association of Consumer Advocates Spring Training, May 2022.

"Sealing, Expungement and FCRA: Criminal Records Reporting in a New Era," Equal Justice Conference, May 2022.

"Evidentiary Challenges in Certifying Class Actions," Class Action Symposium, Consumer Rights Litigation Conference, National Consumer Law Center, December 2021.

"COVID and Post-COVID Issues in FCRA Litigation," National Association of Consumer Advocates Spring Training, Virtual, April 2021.

"Consumer Law: Overview of the Fair Credit Reporting Act," Minnesota Continuing Legal Education, Virtual, December 2020.

"The Role of the Lawyer in Class Actions," Panel Chair, Global Class Actions Symposium 2020, Virtual, November 2020.

"Hunting the Snark: Finding & Effectively Using Data to Certify Classes," Class Action Symposium, National Consumer Law Center Consumer Rights Litigation Conference, Virtual, November 2020.

"Specialty CRAs Part 1: Conviction Histories, Expungement, and FCRA: Keeping up with Developments in a Changing Legal Landscape," National Consumer Law Center Consumer Rights Litigation Conference, Virtual, November 2020.

"Conducting Financial & Criminal Background Checks – Applicant Rights and Employer Best Practices," Minnesota Continuing Legal Education, Minneapolis, MN, October 2020.

38. I litigate cases throughout the United States and have been admitted to, and am a member in good standing with, the following courts:

United States Supreme Court, 2017

State Bar of Georgia, 2001

Georgia Supreme Court, 2006

Minnesota Supreme Court, 2007

U.S. Court of Appeals for the Eighth Circuit, 2010

U.S. Court of Appeals for the First Circuit, 2011

U.S. Court of Appeals for the Seventh Circuit, 2014

U.S. Court of Appeals for the Ninth Circuit, 2015

U.S. Court of Appeals for the Tenth Circuit, 2018

U.S. Court of Appeals for the Third Circuit, 2019

U.S. District Court for the Northern District of Georgia, 2007

U.S. District Court for the District of Minnesota, 2007

U.S. District Court for the Eastern District of Wisconsin, 2011

U.S. District Court for the Western District of Texas, 2011

U.S. District Court for the Western District of Wisconsin, 2015

U.S. District Court for the Eastern District of Michigan, 2015

U.S. District Court for the Central District of Illinois, 2016

U.S. District Court for the Southern District of Texas, 2017

U.S. District Court for the Western District of New York, 2017

U.S. District Court for the Western District of Michigan, 2018

U.S. District Court for the Northern District of Illinois, 2020

39. I have served as lead, or co-lead, class counsel in numerous notable consumer protection matters, including, but not limited to, the following:

Fernandez v. CoreLogic Credco, LLC, No. 20-cv-1262 (S.D. Cal.) FCRA class action, alleging violations by consumer reporting agency related to reporting possible matches to the OFAC List, resulting in $58.5 million gross settlement, the second-largest class action FCRA settlement.[1]

In re GEICO Customer Data Breach Litig., No. 21-cv-2210 (E.D.N.Y.) Appointed as Interim Co-Lead Counsel on behalf of putative class in data disclosure action.

Gambles v. Sterling Infosystems, Inc., No. 15-cv-9746 (S.D.N.Y.) FCRA class action, alleging violations by consumer reporting agency, resulting in a gross settlement of $15 million.

In re: JUUL Labs, Inc. Mktg., Sales Practices, & Prod. Liab. Litig., No. 19-md-2913 (N.D. Cal.). Appointed to Plaintiffs' Steering Committee in multi-district litigation consolidated class action, regarding the marketing and sales practices of dangerous e-cigarettes to consumers.

In re: American Medical Collection Agency, Inc. Customer Data Security Breach Litig., No. 19-md-2904 (D.N.J.). Appointed to the Plaintiff's Quest Track Steering Committee in multi-district litigation consolidated class action, regarding the breach of consumers' medical

[1] This historical settlement was reached only after class certification was fully briefed, 23 depositions were completed, expert and rebuttal reports for 10 experts were exchanged, and significant motion practice was completed.

information.

In re: TransUnion Rental Screening Sols., Inc. FCRA Litig., No. 1:20-md-02933-JPB (N.D. Ga.). Appointed as Interim Lead Counsel for the classes in multi-district litigation consolidated class action, regarding violations of the Fair Credit Reporting Act.

Thomas v. Equifax Info. Services, LLC, No. 18-cv-684 (E.D. Va.). FCRA class action, alleging violations by credit bureau, providing nationwide resolution of class action claims asserted across multiple jurisdictions, including injunctive relief, and an uncapped mediation program for millions of consumers.

Clark v. Experian Info. Sols., Inc., No. 16-cv-32 (E.D. Va.). FCRA class action, alleging violations by credit bureau, providing a nationwide resolution of class action claims asserted by 32 plaintiffs in 16 jurisdictions, including injunctive relief and an uncapped mediation program, for millions of consumers.

Clark/Anderson v. Trans Union, LLC, No. 15-cv-391 & No. 16-cv-558 (E.D. Va.). FCRA consolidated class action, alleging violations by credit bureau, providing groundbreaking injunctive relief, and an opportunity to recover monetary relief, for millions of consumers.

Rilley v. MoneyMutual, LLC, No. 16-cv-4001 (D. Minn.). Court certified a litigation class of over 20,000 Minnesota consumers alleging that MoneyMutual violated Minnesota payday lending regulations, resulting in $2,000,000 settlement with notable injunctive relief.

Lee v. The Hertz Corp., No. CGC-15-547520 (Cal. Super. Ct., San Fran. Cnty.). FCRA class action, alleging violations by employer, resulting in $1.619 million settlement.

Rubio-Delgado v. Aerotek, Inc., No. 16-cv-1066 (S.D. Ohio). FCRA class action, alleging violations by employer, resulting in a $15 million settlement.

Knights v. Publix Super Markets, Inc., No. 14-cv-720 (M.D. Tenn.). FCRA class action, alleging violations by employer, resulting in a $6.75 million settlement.

Hillson v. Kelly Services, Inc., No. 15-cv-10803 (E.D. Mich.). FCRA class action, alleging violations by employer, resulting in a $6.749 million settlement.

Ernst v. DISH Network, LLC & Sterling Infosystems, Inc., No. 12-cv-8794 (S.D.N.Y.). FCRA class action, alleging violations by employer and consumer reporting agency, resulting in a $4.75 million settlement with consumer reporting agency, and a $1.75 million settlement with employer.

Howell v. Checkr, Inc., No. 17-cv-4305 (N.D. Cal.). FCRA class action, alleging violations by consumer reporting agency, resulting in a $4.46 million settlement.

Brown v. Delhaize America, LLC, No. 14-cv-195 (M.D.N.C.). FCRA class action, alleging violations by employer, resulting in $2.99 million settlement.

Nesbitt v. Postmates, Inc., No. CGC-15-547146 (Cal. Super. Ct., San Fran. Cnty.). FCRA class action, alleging violations by employer, resulting in a $2.5 million settlement.

Singleton v. Domino's Pizza, LLC, No. 11-cv-1823 (D. Md.). FCRA class action, alleging violations by employer, resulting in a $2.5 million settlement.

Heaton v. Social Finance, Inc., No. 14-cv-5191 (N.D. Cal.). FCRA class action, alleging violations by lender, resulting in a $2.5 million settlement.

Terrell v. Costco Wholesale Corp., No. 10-2-33915-9 (Wash. Super. Ct., King Cnty.). FCRA class action, alleging violations by employer, resulting in a $2.49 million settlement.

Halvorson v. TalentBin, Inc., No. 15-cv-5166 (N.D. Cal.). FCRA class action, alleging violations by online data aggregator, resulting in a $1.15 million settlement.

Legrand v. IntelliCorp Records, Inc., No. 15-cv-2091 (N.D. Ohio). FCRA class action, alleging violations by consumer reporting agency, resulting in a $1.1 million settlement.

In re Target Corp. Customer Data Security Breach Litig., MDL No. 14-2522 (D. Minn.). Data security breach class action, resulting in a $10 million settlement for consumers.

40. My litigation efforts and experience have received judicial acknowledgement and praise throughout the years of my practice. Examples of such recognition include:

From Judge Paul A. Engelmayer, United States District Court, Southern District of New York:

I know the diligence of counsel and dedication of counsel to the class…Thank you, Ms. Drake. As always I appreciate the—your extraordinary dedication to your – to the class and the very obvious backwards and forwards familiarity you have with the case and level of preparation and articulateness today. It's a pleasure always to have you before me…Class counsel [] generated this case on their own initiative and at their own risk. Counsel's enterprise and ingenuity merits significant compensation…Counsel here are justifiably proud of the important result that they achieved.

Sept. 22, 2020, Final Approval Hearing, *Gambles v. Sterling Info., Inc*., No. 15-cv-9746.

From Judge Harold E. Kahn, Dep't 302, Superior Court of Cal., San Fran. Cnty.:

You're very articulate on this issue. … Obviously, you're very thoughtful and you have given it a great deal of thought. … And I appreciate your ability to respond to my questions off the cuff. … It shows that you have given these issues a lot of thought ... I have to say that your thoughtfulness this morning has somewhat diminished my concerns [regarding high multiplier on attorney fees]… You're demonstrating credibility by a mile as you go….You are extraordinarily impressive. And I thank you for being here, and for your candid, noninvasive [sic] response to every question I have. I was extremely skeptical at the outset this morning. You have allayed all of my concerns and have persuaded me that this is an important issue, and

that you have done a great service to the class. And for that reason, I am going to approve your settlement in all respects… And I congratulate you on your excellent work.

Nov. 7, 2017, Final Approval Hearing, *Nesbitt v. Postmates, Inc.*, No. CGC-15-547146.

From Judge Laurie J. Michelson, United States District Court, E.D. Mich.:

Counsel's quality of work in this case was high. The Court has been impressed with counsel's in-court arguments. And counsel has provided the Court with quality briefing as well.

Aug. 11, 2017, Opinion & Order on Mtn. for Atty. Fees, and Mtn. for Final Approval, *Hillson v. Kelly Services, Inc.*, No. 15-cv-10803.

From Magistrate Judge Terence P. Kemp, United States District Court, S.D. Ohio:

The parties in this case are represented by counsel with substantial experience in class action litigation, and FCRA cases in particular. … Class Counsel are experienced and knowledgeable in FCRA litigation, are skilled, and are in good standing.

June 30, 2017, Report & Recomm'n. on Final Approval, *Rubio-Delgado v. Aerotek, Inc.*, No. 16-cv-1066.

From Judge Paul A. Magnuson, United States District Court, D. Minn.:

[T]he class representatives and their counsel more than adequately protected the class's interests. … [T]he comprehensive nature of the settlement in turn, reflects the adequacy, indeed the superiority, of the representation the class received from its named Plaintiffs and from class counsel.

May 17, 2017, Mem. & Order on Mtn. to Certify Class, *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 14-2522.

From Judge Paul A. Engelmayer, United States District Court, S.D.N.Y.:

The high quality of [plaintiffs' counsel]'s representation strongly supports approval of the requested fees. The Court has previously commended counsel for their excellent lawyering. …The point is worth reiterating here. [Plaintiffs' counsel] was energetic, effective, and creative throughout this long litigation. The Court found [Plaintiffs' counsel]'s briefs and arguments first-rate. And the documents and deposition transcripts which the Court reviewed in the course of resolving motions revealed the firm's far-sighted and strategic approach to discovery. … Further, unlike in many class actions, plaintiffs' counsel did not build their case by piggybacking on regulatory investigation or settlement. … The lawyers [] can genuinely claim to have been the authors of their clients' success.

Sept. 22, 2015, Final Approval Order, *Hart v. RCI Hospitality Holdings, Inc.*, No. 09-cv-3043.

From Magistrate Judge Laurel Beeler, United States District Court, N.D. Cal.:

Counsel have worked vigorously to identify and investigate the claims in this case, and, as this litigation has revealed, understand the applicable law and have represented their clients vigorously and effectively.

June 13, 2014, Order Granting Mtn. for Class Cert., *Ellsworth v. U.S. Bank, N.A.*, No. 12-cv-2506.

From Judge Richard H. Kyle, United States District Court, D. Minn.:

Well, I think you did a great job on this. I mean, I really do. … it seems to me you folks have gotten it done the right way.

Jan. 6, 2014, Prelim. Approval Hearing, *Bible v. General Revenue Corp.*, No. 12-cv-1236.

From Judge Deborah Chasanow, United States District Court, D. Md.:

[plaintiffs' counsel] are qualified, experienced, and competent, as evidenced by their background in litigating class-action cases involving FCRA violations. … As noted above, Plaintiffs' attorneys are experienced and skilled consumer class action litigators who achieved a favorable result for the Settlement Classes.

Oct. 2, 2013, Final Approval Order, *Singleton v. Domino's Pizza, LLC*, No. 11-cv1823.

From Judge Lorna G. Schofield, United States District Court, S.D.N.Y.:

[Plaintiffs' Counsel] has demonstrated it is able fairly and adequately to represent the interests of the putative class.

July 23, 2013, Order Appointing Interim Lead Counsel, *Ernst v. DISH Network, LLC*, No. 12-cv-8794.

From Judge Susan M. Robiner, Minnesota District Court, Henn. Cnty.:

Plaintiffs' counsel are adequate legal representatives for the class. They have done work identifying and investigating potential claims, have handled class actions in the past, know the applicable law, and have the resources necessary to represent the class. The class will be fairly and adequately represented.

Oct. 16, 2012, Order Granting Mtn. for Class Cert., *Spar v. Cedar Towing & Auction, Inc.*, No. 27-CV-411-24993.

41. Class Counsel on this matter additionally includes:

John G. Albanese. Mr. Albanese is a Shareholder with Berger Montague, in the firm's

Consumer Protection Department, with a concentration on Fair Credit Reporting Act class actions. Mr. Albanese is regularly invited to speak on consumer law and litigation issues, and frequently represents consumer advocacy groups as *amici curiae* at the appellate level. He has been named a Super Lawyers Rising Star since 2017, and by Best Lawyers as One to Watch, in 2021. He is a graduate of Columbia Law School, where he was a managing editor of the Columbia Law Review. Mr. Albanese clerked for Magistrate Judge Geraldine Brown in the Northern District of Illinois. He also has a B.A. from Georgetown University. He has served as class counsel in over 20 class actions.

Sophia M. Rios. Ms. Rios manages the Firm's San Diego office and practices in the Consumer Protection, and Antitrust practice groups. Ms. Rios advocates on behalf of a broad range of clients, including HIV Prevention patients, persons wrongly reported as possible terrorists and drug traffickers when applying for credit, persons who receive unwanted marketing text messages, and people who were overcharged on foreign transactions when using their Visa or Mastercard debit and credit cards. Ms. Rios is committed to furthering diversity and inclusion in law firms. She serves on the Firm's Diversity, Equity & Inclusion Task Force and has participated in the Leadership Council on Legal Diversity's Pathfinder Program. She was named by Best Lawyers as One to Watch in 2022 and 2023, and to San Diego's Top 40 Under 40 Business Professionals in 2020. She is a graduate of Stanford Law School, where she served as an extern Legal Adviser in the Office of Commissioner Julie Brill at the Federal Trade Commission in Washington, DC, co-founded the Stanford Critical Law Society, and was a Lead Article Editor for the Stanford Environmental Law Journal. Ms. Rios has a B.A. and a B.S. from UC Berkeley.

Ariana B. Kiener. Ms. Kiener is an Associate with the firm's Consumer Protection Department, working primarily on class actions, and with a focus on Fair Credit Reporting Act matters. Ms. Kiener is a graduate of Mitchell Hamline School of Law, finishing ranked first in her class.

While at law school, Ms. Kiener served with the Mitchell Hamline Employment Discrimination Mediation Representation Clinic as a Certified Student Attorney and Student Director. Prior to law school, Ms. Kiener worked in education, including as a Fulbright Scholar in Thailand, and as a communications director for an education advocacy non-profit. She has a B.A. from Carleton College.

Zachary M. Vaughan. Mr. Vaughan is a Senior Counsel at the Firm with the Consumer Protection Department, focused on class actions. Mr. Vaughan worked in this matter throughout the expert analysis process and assisted with complex data analysis for settlement purposes.

42. My firm engages in daily monitoring of all FCRA filings, and rigorously tracks FCRA class action settlements, including resolutions achieved by governmental entities. We have engaged in this monitoring for the past eight years of my tenure at Berger Montague. I also engaged in this practice at the law firm where I worked prior to joining Berger Montague. To my knowledge, this settlement is the fourth-largest recovery achieved in any FCRA case. The Settlement amount is also larger than any FCRA recovery achieved by the Federal Trade Commission or Consumer Financial Protection Bureau. (*See* https://www.ftc.gov/news-events/news/press-releases/2021/04/smart-home-monitoring-company-vivint-will-pay-20-million-settle-ftc-charges-it-misused-consumer (stating that $20 million deal to settle FTC allegations of FCRA violations was "the largest to date for an FTC FCRA case"); https://www.cnbc.com/2023/10/12/transunion-settles-with-ftc-cfpb-for-23-million-in-housing-case.html (announcing $23 million settlement between FTC, CFPB, and TransUnion and its subsidiary over alleged FCRA violations, violations which, notably, Class Counsel pursued in a separate action before the CFPB or FTC filed suit).

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

Executed on this 4th day of September, 2024 at Minneapolis, Minnesota.

/s/E. Michelle Drake
E. Michelle Drake

EXHIBIT 3

DECLARATION OF RICHARD K. HY, ESQ. TO PLAINTIFF'S MOTION & MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARD

I, Richard K. Hy, Esq., declare as follows:

1. I am admitted to practice law in the State of Nevada and am a partner at Eglet Adams Eglet Ham Henriod, co-counsel for the Plaintiff in this matter.

2. I make this declaration in support of the Plaintiff's Unopposed Motion for Attorneys' Fees, Costs, and a Class Representative Service Award. I submit this declaration based on my personal knowledge, and if called as a witness, I could and would competently testify to the facts stated herein.

3. Eglet Adams Eglet Ham Henriod is a leading Nevada law firm recognized for its advocacy for consumer rights and its consistent success in obtaining substantial trial verdicts.

4. The firm exclusively represents plaintiffs and specializes in complex civil litigation, people who have sustained catastrophic injuries, mass torts, and class action litigation in both federal and state courts. The firm is also dedicated to protecting consumers' rights, especially in cases involving false advertising, defective products, and other unfair trade practices.

5. Notably, the firm has secured more multi-million-dollar verdicts than any other law firm in Nevada, including the largest injury verdicts in the United States in 2010 and 2013. In 2011, we achieved the third-largest verdict in the United States in a case involving Nevadans harmed by negligent drug manufacturers: *Chanin et al. v. Teva Parenteral Medicines Inc. et al.*, Case No. A-10-571172 ($505,100,000 verdict); *Meyer v. Health Plan of Nevada Inc. et al.*, Case No. A-13-583799 and related cases ($524,000,000 verdict); and *Sacks et al. v. Sicor Inc. et al.*, Case No. A-10-572315 and related cases ($182,600,000 verdict). Currently, the firm represents the State of Nevada and twenty (20) other local governments in the opioids' litigation, securing over $1.1 billion in settlements, one of the highest per capita recovery amounts for any state.

6. The firm's attorneys have received numerous accolades for their dedication to justice. Robert Eglet, who leads the trial team, has served as lead trial counsel in over 125 civil jury trials, with 31 verdicts exceeding a million dollars. Robert Adams, who heads the mass torts division, was recognized by the National Association of Distinguished Counsel as one of the Nation's Top One Percent Trial Lawyers in 2015 and was named among the Top 100 Litigation Lawyers by the American Society of Legal Advocates in 2013 and 2015. I, Richard Hy, focus primarily on complex civil litigation, including mass torts and class actions. I received The National Trial Lawyers Top 40 Under 40 award in 2019 and the Top 100 Civil Plaintiff Lawyers award from 2019-2023. I was also selected as a Mountain States Rising Star by Super Lawyers from 2020-2023.

7. To date, Eglet Adams Eglet Ham Henriod has expended over 50 hours on this matter serving as Nevada counsel, resulting in a lodestar of approximately $35,000, and has incurred a total of $2,797.46 in costs. These costs include $2,617.90 in court filing fees, $147.56 in hearing transcript fees, and $32.00 in courier services.

8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 4th day of September, 2024.

By: */s/ Richard K. Hy*
RICHARD K. HY, ESQ.

EGLET ADAMS
EGLET HAM HENRIOD

EXHIBIT 4

DECL
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**admitted pro hac vice*

Attorneys for Plaintiff and the Class

DISTRICT COURT
CLARK COUNTY, NEVADA

ANGEL LUIS RODRIGUEZ, JR., individually and as a representative of the class,

Plaintiff,

vs.

NATIONAL CREDIT CENTER, LLC.

Defendant.

Case No.: A-23-869000-B
Dept. No.: 16

DECLARATION OF ANGEL LUIS RODRIGUEZ, JR.

I, Angel Luis Rodriguez, Jr., declare as follows:

1. I am the Named Plaintiff in the above-captioned matter against Defendant National Credit Center, LLC ("Defendant"). I am over 18 years of age and have personal knowledge of the facts described in this Declaration. If called as a witness, I could and would testify competently to these facts.

2. I first retained Class Counsel to represent me after I discovered that a company, at the time name unknown to me, but ultimately discovered to be Defendant, had inaccurately reported to my potential auto dealer and creditor that I was a match to an individual on the Office of Foreign Assets Control Specially Designated List ("OFAC List"), which interfered with my ability to purchase my dream car.

3. I then assisted Class Counsel in investigating potential claims against Defendant. In particular, I submitted a request to Defendant for all information in my file, submitted disputes of the inaccurate information that had been reported, and provided Class Counsel with my communications with my auto dealer and creditor during the application and purchasing process.

4. Through this investigation, Class Counsel and I determined that the inadequacies with Defendant's reporting practices appeared to be systemic and had likely impacted thousands of consumers.

5. I was determined to hold Defendant accountable for its practices, to secure compensation for other consumers who had been harmed by Defendant's conduct, and hopefully, to initiate systemic change so that what happened to me never happens to anyone else.

6. I agreed to serve as a Class Representative and to pursue my claims on a class basis. I knowingly and fully accepted the risks involved in this decision, and made a long-term commitment to actively participate in the case against Defendant, to put the interests of class members ahead of my own, and to take my duties as Class Representative seriously. I felt strongly about obtaining justice—including meaningful injunctive relief—for others who were impacted by Defendant's reporting practices. I have remained determined to see this case through to classwide resolution to secure compensation and injunctive relief for other aggrieved consumers.

7. During this litigation, I have spent significant time working with my attorneys, and carrying out my responsibilities as the sole Class Representative. In particular, I (1) first identified, and contacted Class Counsel about, my potential claims against Defendant; (2) assisted Class Counsel in the investigation of my claims; (3) reviewed and approved the complaint for filing; (4) responded to 47 written discovery requests; (5) had my personal cell phone imaged; (6) produced hundreds of pages of documents, including sensitive financial documents and personal text messages; (7) regularly conferred with Class Counsel; (8) made myself available to Class Counsel throughout settlement negotiations; (9) reviewed and approved the Settlement Agreement; and (10) attended the Preliminary Approval Hearing.

8. I was also ready and willing to testify at deposition and/or trial, had the case continued in litigation.

9. Not only have I spent significant time on this matter, and accepted intrusion into my personal affairs, but, as part of the Settlement, I have also agreed to give up much more than any other Settlement Class Members. That is, I have provided a general release of *all* claims against Defendant. The release to which I agreed is substantially broader than the release that Settlement Class Members have been asked to provide.

10. I understand that there are many risks and uncertainties involved in continuing to pursue this case. I have been advised of the terms of the Settlement and, in light of the risks and uncertainties in proceeding with this case—as well as the historic relief provided under the Settlement—I believe that the Settlement is fair, reasonable, and in the best interests of the Settlement Class.

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

Executed on this 3d day of Sept., 2024, at Lorain, Ohio.

DocuSigned by:
Angel Rodriguez
6B175C1F778B45D...

Angel Luis Rodriguez, Jr.

EXHIBIT 5

DISTRICT COURT
CLARK COUNTY, NEVADA

ANGEL LUIS RODRIGUEZ, JR., individually and as a representative of the class, Plaintiff, vs. NATIONAL CREDIT CENTER, LLC, Defendant.	CASE NO. A-23-869000-B **DECLARATION OF RITESH PATEL RE: SETTLEMENT ADMINISTRATION COSTS AND EXPENSES**

I, Ritesh Patel, hereby declare as follows:

1. My name is Ritesh Patel and I make this declaration in Montgomery County, Pennsylvania. The statements that follow are all made of my personal knowledge.

2. I am a Partner at Continental DataLogix LLC ("Continental"), a provider of class action settlement administration services with an office in Lansdale, Pennsylvania. Prior to my current position, I was a manager with RSM US LLP, a nationwide provider of audit, tax, and consulting services. Since 2004, I have been associated with the administration of a variety of class action settlements ranging from 50 class members to over 20 million class members.

3. My experience includes administering various types of class action settlements, including consumer products, fraud, employment law, product liability, antitrust, credit reporting, and financial and securities cases. A list of settlements that I have been involved with can be made available upon request.

4. Pursuant to Section 9 of the Order Granting Plaintiff's Unopposed Motion & Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement & Preliminary Certification of Settlement Class, on Order Shortening Time, Continental was appointed as the Settlement Administrator in this matter.

Administrative Costs and Fees

5. Prior to commencing the administration of the settlement, Continental estimated that the costs for administering the Settlement will be approximately $970,000.00. This estimate was based on certain specifications provided to Continental and related assumptions. Continental advised that actual costs may vary based on actual volumes and changes to required procedures.

6. As of September 3, 2024, the anticipated administrative costs and fees have increased due in large part to the costs associated with the increase in the number of class members as well as a larger projected check mailing. Continental currently estimates that the costs for administering the Settlement will be approximately $1,199,926.00 as shown below:

Process	**Initial Estimate**	**Current Estimate**
Initial Coordination	$29,250	$64,363
Skip-tracing and Translation	$36,500	$26,147
Notice Implementation	$143,468	$194,065
Website Development	$8,940	$18,540
Claims Processing	$12,125	$5,738
Telephone Support and Communications	$25,750	$25,750
Distribution Services	$197,390	$191,855
Tax Services	$3,700	$11,100
Postage	$513,069	$662,368
Total Estimate	**$970,192**	**$1,199,926**

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

Executed on this 3rd day of September 2024.

Ritesh Patel