EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE JUUL LABS, INC., MARKETING SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION

This Document Relates to:
All Class Actions

CASE NO. 19-md-02913-WHO

DECLARATION OF PROFESSOR ROBERT H. KLONOFF RELATING TO ATTORNEYS' FEES AND SERVICE AWARDS

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ROBERT H. KLONOFF, under penalty of perjury, declares as follows:

I. INTRODUCTION

1. I have been asked by class counsel to opine on their request for a 30 percent attorneys' fee award from a non-reversionary $255 million classwide settlement with JUUL Labs, Inc. ("JLI") relating to the manufacture, labeling, marketing, and sale of JUUL, an electronic nicotine delivery system. I have also been asked to opine on the reasonableness of class counsel's request for service awards for the 86 class representatives, ranging from $5,000 to $33,000 each.[1] I offer my opinions for the Court's consideration. I recognize that my role is limited and that this Court will exercise its own independent judgment in resolving these issues.

II. QUALIFICATIONS

2. I have served as an expert in numerous class action and other aggregate cases and have opined on attorneys' fees and service award issues in many of those cases. I am currently the Jordan D. Schnitzer Professor of Law at Lewis & Clark Law School and have held that position since June 1, 2014. This is an endowed, tenured position at the rank of full professor. From July 1, 2007, to May 31, 2014, I served as the Dean of Lewis & Clark Law School, and I was also a full professor at Lewis & Clark during that time. Immediately prior to assuming the deanship at Lewis & Clark, I served for four years as the Douglas Stripp/Missouri Professor of Law at the University of Missouri-Kansas City School of Law (UMKC). That appointment was an endowed, tenured position at the rank of full professor. Before joining the academy in a full-time capacity,

[1] Class counsel have not asked me to opine, at this time, on their request for "up to" $4.1 million in expenses. They have advised me that the actual amount they will seek will likely be lower, but they will not know that amount until after the due date of this Declaration.

I served for more than a dozen years as an attorney with the international law firm of Jones Day, working in the firm's Washington, D.C. office. I was an equity partner at the firm for most of that time. (I continued to work for Jones Day while I was employed at UMKC; my status with the firm during that period changed from partner to of counsel.) While working at Jones Day (before joining the UMKC faculty), I also served for many years as an adjunct professor of law at Georgetown University Law Center. Before joining Jones Day, I served as an Assistant United States Attorney and as an Assistant to the Solicitor General of the United States. Immediately after graduating from law school, I served as a law clerk for Chief Judge John R. Brown of the U.S. Court of Appeals for the Fifth Circuit. I received my law degree from Yale Law School.

3. In my various academic positions, I have taught (among other subjects) complex litigation, class actions, civil procedure, federal courts, and federal appellate procedure. With respect to my scholarship, I am a co-author of the Wright & Miller treatise, *Federal Practice and Procedure.* I have sole responsibility for the three volumes of the treatise focusing on class actions (including attorneys' fees in class actions). In addition, I co-authored the first casebook devoted specifically to class actions, and I am now the sole author of that book: *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 4th ed. 2017, with annual supplements). I am also the sole author of the Nutshell on class actions, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 6th ed. 2021), and the Nutshell on federal multidistrict litigation, *Federal Multidistrict Litigation in a Nutshell* (West 2020). These texts, which address attorneys' fees issues, are used at law schools throughout the United States and have been cited by many courts and commentators.[2] I have also authored or co-authored numerous scholarly articles on

[2] As just a small sample, *see, e.g.*, *Soileau v. Churchill Downs Louisiana Horseracing Co.,*

class actions and other topics.[3] In October 2014, I was elected to membership in the International Association of Procedural Law ("IAPL"), an organization of preeminent civil procedure scholars from around the world. I was selected in a competitive process to present a scholarly article on class actions at the May 2015 Congress of the IAPL, an event held once every four years.

4. In September 2011, Chief Justice John G. Roberts, Jr., appointed me to serve a three-year term as the academic voting member of the Judicial Conference Advisory Committee on Rules of Civil Procedure ("Advisory Committee"). The Advisory Committee considers and recommends amendments to the Federal Rules of Civil Procedure. Only one professor in the United States is selected by the Chief Justice to serve in that role during any three-year term. In May 2014, Chief Justice Roberts reappointed me to serve a second three-year term on the Advisory Committee. I completed that service in May 2017. (The maximum period of service on the

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L.L.C., 2021-0022 (La. App. 4th Cir. 12/22/21), 2021 La. App. LEXIS 2022, at *83 (citing casebook); *Kolbe v. BAC Home Loans Servicing, LP*, 738 F.3d 432, 468 (1st Cir. 2013) (citing *Class Action Nutshell*); *Culver v. City of Milwaukee*, 277 F.3d 908, 913 (7th Cir. 2002) (citing *Class Action Nutshell*); *LaRocque ex rel. Spang v. TRS Recovery Servs., Inc.*, 285 F.R.D. 139, 151 (D. Me. 2012) (citing *Class Action Nutshell)*; *Adams v. United Services Automobile Ass'n*, No. 2:14-CV-02013, 2016 WL 1465433, at *7 (W.D. Ark. Apr. 14, 2016) (citing *Class Action Nutshell*), *rev'd on other grounds*, 863 F.3d 1069 (8th Cir. 2017); Samir D. Parikh, *The New Mass Torts Bargain*, 91 FORDHAM L. REV. 447, 476 (2022) (citing *Federal Multidistrict Litigation Nutshell)*; Brian T. Fitzpatrick, *Many Minds, Many MDL Judges*, 84 LAW & CONTEMP. PROBS. 107, 108 (2021) (citing *Federal Multidistrict Litigation Nutshell)*; Judge Stephen R. Bough & Anne E. Case-Halferty, *A Judicial Perspective on Approaches to MDL Settlement*, 89 UMKC L. Rev. 971, 973–974 (2021) (citing *Federal Multidistrict Litigation Nutshell*).

[3] My articles have been frequently cited. For example, my 2013 article, *The Decline of Class Actions*, 90 WASH. U. L. REV. 729 (2013), has been cited well over 250 times by courts and commentators. As just a small sample, *see, e.g.*, *Mielo v. Steak 'n Shake Operations, Inc.*, 897 F.3d 467, 484 & n.18 (3d Cir. 2018); *In re National Football League Players' Concussion Injury Litig.*, 775 F.3d 570, 576 (3d Cir. 2014); *Eubank v. Pella Corp.*, 753 F.3d 718, 719 (7th Cir. 2014) (Posner, J.); *In re Johnson*, 760 F.3d 66, 75 (D.C. Cir. 2014); Christine P. Bartholomew, *Antitrust Class Actions in the Wake of Procedural Reform*, 97 Ind. L.J. 1315, 1317 (2022); J. Maria Glover, *Mass Arbitration*, 74 STAN. L. REV. 1283, 1291 (2022).

Advisory Committee is six years.) I also served on the Advisory Committee's Class Action Subcommittee, which took the lead for the full Advisory Committee on proposed amendments to the federal class action rule, Federal Rule of Civil Procedure 23. Those proposed amendments became effective on December 1, 2018.

5. I have been a member of the American Law Institute ("ALI") since 2003, and I serve on the ALI Council, the organization's governing body. I was an Associate Reporter for the ALI's class action (and other multi-party litigation) project, Principles of the Law of Aggregate Litigation. I was the principal author of Chapter 3, which addresses class action settlements and attorneys' fees. The ALI project was unanimously approved by the membership of the American Law Institute at its annual meeting in May 2009 and was published by the American Law Institute in May 2010. It has been frequently cited by courts and commentators.[4]

6. I have more than 40 years of experience as a practicing lawyer. I have had eight oral arguments before the U.S. Supreme Court, and numerous oral arguments in other federal and state appellate courts throughout the country, including oral arguments in eight federal circuits. As an attorney at Jones Day, I personally handled more than 100 class action cases, mostly (but not entirely) on the defense side. I have also served as co-counsel in numerous class actions post-Jones Day.

[4] As just a small sample, *see*, *e.g.*, *Smith v. Bayer Corp.*, 564 U.S. 299, 316 (2011) n.11 (2011); *In re Google Inc. St. View Elec. Commc'ns Litig.*, 21 F.4th 1102, 1122–23 (9th Cir. 2021) (Bade, J., concurring), *cert. denied*. 143 S. Ct. 107 (2022); In *re Google Inc. Cookie Placement Consumer Privacy Litig.*, 934 F.3d 316, 331 (3d Cir. 2019); *Keepseagle v. Perdue*, 856 F.3d 1039, 1069–70 (D.C. Cir. 2017) (Brown, J., dissenting); *In re Google Referrer Header Privacy Litig*., 869 F.3d 737, 744, 749 (9th Cir. 2017), *vacated*, 139 S. Ct. 1041 (2019); Abbe R. Gluck & Elizabeth Chamblee Burch, *MDL Revolution*, 96 N.Y.U. L. REV. 1, 30 (2021); Elizabeth Chamblee Burch & Margaret S. Williams, *Judicial Adjuncts in Multidistrict Litigation*, 120 COLUM. L. REV. 2129, 2121–22 (2020).

7. I have lectured and taught on class actions and other litigation topics throughout the United States and abroad, including presentations at law schools in Cambodia, Canada, China, Colombia, Croatia, Ecuador, Germany, India, Israel, Italy, Japan, the Philippines, Russia, South Korea, Taiwan, and Turkey. Over the years, I have frequently appeared as an invited speaker at class action symposia, conferences, and continuing legal education programs.[5]

8. I have testified as an expert in numerous class action cases and in other cases raising civil procedure issues, including cases in this District and in the Central District of California. Between 2011 and the present, I testified in the following cases:

- *Zakikhani v. Hyundai Motor Co.*, No. 8:20-cv-01584-SB-JDE (C.D. Ca.) (submitted expert declaration, dated 3/20/23, in support of class counsel's motion for attorneys' fees, costs, and service awards for class plaintiffs);
- *Rogowski v. State Farm Life Insurance Company*, No. 4:22-cv-00203-RK (W.D. Mo.) (submitted expert declaration, dated 2/13/23, in support of class counsel's motion for attorneys' fees, costs, and service awards for class plaintiffs);
- *In re Marjory Stoneman Douglas High School Shooting FTCA Litigation*, No. 01:18-62758-WPD (S.D. Fla.) (*Parkland*) (submitted expert declaration, dated 2/08/22, on a motion to terminate lead counsel; submitted supplemental expert declaration, dated 10/28/22, on attorneys' fees issues);
- *Githieya v. Global Tel Link Corp.*, No. 1:15-cv-00986-AT (N.D. Ga.) (submitted expert declaration, dated 4/01/22, on attorneys' fees issues;

[5] Examples of those courses and speaking engagements are contained in my attached curriculum vitae (Appendix A). As one recent example, I was the academic speaker at the 2022 Palm Beach, Florida, meeting for approximately 125 federal MDL judges.

submitted expert declaration, dated 7/22/22, on class certification and fairness issues in connection with a proposed class settlement);

- *Rosie D. v. Baker,* C.A. No. 01-30199-RGS (D. Mass.) (submitted expert declaration, dated 11/23/21, on attorneys' fees issues);

- *Bahn v. American Honda Motor Co.*, No. 2:19-cv-5984 RGK (C.D. Cal.) (submitted expert declaration, dated 11/22/21, on attorneys' fees issues);

- *In re Broiler Chicken Antitrust Litig.*, No. 1:16-CV-08637 (N.D. Ill.) (submitted expert declaration, dated 9/15/21, on attorneys' fees issues raised by the court);

- *Pinon v. Daimler AG.*, No. 1:18-cv-03984 (N.D. Ga.) (submitted expert declaration, dated 7/24/21, opining on the fairness of the settlement to members of the class under Fed. R. Civ. P. 23(e) and the adequacy of the class counsel and class representatives);

- *Rosas v. Sarbanand Farms, LLC.,* No. 2:18-CV-0112-JCC (W.D. Wa.) (submitted expert declaration, dated 4/19/20, opining that a final fairness hearing under Fed. R. Civ. P. 23(e) can be conducted telephonically);

- *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020) (submitted expert declaration on attorneys' fees on 10/29/19; submitted supplemental expert declaration on class settlement terms on 12/15/19), *aff'd in relevant part, In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247 (11th Cir. June 3, 2021);

- *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices &Products Liability Litigation*, No. 3:17-md-02777-EMC (N.D. Cal.) (submitted expert declaration on settlement fairness, dated 4/25/19);

- *The Doan v. State Farm General Insurance Co.*, No. 1-08-CV-129264 (Cal. Sup. Ct. Santa Clara Cnty.) (submitted expert declaration on

settlement fairness, attorneys' fees, expenses, and service awards, dated 1/16/19);

- *In re Syngenta AG MIR162 Corn Litigation*, No. 2:14-MD-02591-JWL-JPO (D. Kan.) (submitted expert declaration on attorneys' fees, expenses, and service awards, dated 7/10/18; submitted supplemental declaration on attorneys' fees, dated, 8/17/18);

- *In re Chinese-Manufactured Drywall Litigation*, MDL No. 2047 (E.D. La.) (submitted expert declarations on attorneys' fees issues, dated 5/4/17 and 8/1/18);

- *Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC (N.D. Cal.) (submitted expert declaration on class certification, settlement fairness, attorneys' fees, costs, and incentive payments in unauthorized accounts litigation, dated 1/19/18; submitted supplemental declaration on 5/21/18);

- *Lynch v. Lynch*, No. F.D. 14-6239-006 (Pa. Ct. Comm. Pl., Allegheny Cnty.) (submitted expert declaration on the nature of class action law practice in the context of a divorce proceeding involving a class action attorney) (dated 9/5/17);

- *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (submitted expert declaration addressing objections by class members to proposed 3.0-liter and Bosch settlements) (dated 4/28/17);

- *State of Louisiana & Vermilion Parish School Board v. Louisiana Land and Exploration Co., et al.,* No. 82162 (15th Judicial Court, Parish of Vermilion) (submitted expert declaration on attorneys' fees issues) (dated 3/9/17);

- *Thacker v. Farmers Insurance Exchange*, Case No. 2006CV342 (Dist. Ct. Boulder Cnty., Colo.) (submitted expert declaration on class certification issues) (dated 1/24/17);

- *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (submitted expert declaration addressing objections by class members to proposed 2.0-liter settlement) (dated 9/30/16);

- *In the Matter of Gosselin Group*, No. 15/3925/B (Antwerp Court of First Instance, Belgium) (submitted expert declaration discussing the role of U.S. federal appellate courts in the factfinding process) (dated 9/27/16);

- *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, Nos. 12-970, 15-4143, 15-4146, and 15-4645 (E.D. La.) (submitted expert declaration on class certification, settlement fairness, and attorneys' fees relating to proposed Halliburton/Transocean class settlement) (dated 8/5/16);

- *Ben-Hamo v. Facebook, Inc. and Facebook Ireland Limited*, No. 46065-09-14 (Central District Court, Israel) (submitted expert declaration on 9/3/15, on behalf of Facebook, Inc. and Facebook Ireland Limited addressing various issues of U.S. civil procedure and class action law);

- *Skold v. Intel Corp.*, Case No. 1-05-CV-039231 (Super. Ct. of Cal., Santa Clara Cnty.) (submitted expert declaration on class settlement approval, attorneys' fees, and incentive payments to class representatives) (dated 12/30/14);

- *In re National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323-AB (E.D. Pa.) (submitted expert declaration on class certification, class notice, and settlement fairness) (dated 11/12/14);

- *MBA Surety Agency, Inc. v. AT&T Mobility, LLC*, Case No. 1222-CC09746 (Mo. 22d Dist.) (submitted expert declaration on class certification and settlement fairness on 2/13/13; submitted a supplemental expert declaration on 2/19/13; and testified in court on 2/20/13);

- *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, No. 2:10-md-02179-CJB-SS (E.D. La.) ("Deepwater Horizon") (submitted expert declarations on class certification, fairness, and attorneys' fees for the economic and property damages settlement (Doc. No. 7104-3) and class certification, fairness, and attorneys' fees for the personal injuries settlement (Doc. No. 7111-4) (both dated 08/13/12), and submitted supplemental expert declarations for both class settlements (Doc. No. 7727-4) (economic), (Doc. No. 7728-2) (medical) (both dated 10/22/12));

- *Robichaux v. State of Louisiana, et. Al.* (No. 55,127) (18th Judicial Dist. Ct., Iberville Parish, La.) (submitted written report on attorneys' fees on February 20, 2012, gave deposition testimony on March 7, 2012, and testified in court on April 11, 2012); and

- *In re AT&T Mobility Wireless Data Services Sales Tax Litig.*, MDL No. 2147, Case No. 1:10-cv-02278 (N.D. Ill.) (submitted expert declarations on the fairness of a proposed class action settlement (Doc. No. 163-3) and on attorneys' fees and incentive payments (Doc. 164-1) (both dated 03/08/11), and testified in court on March 10, 2011).

9. Courts reviewing attorneys' fees issues and class settlements have relied extensively on my testimony. For example, In the *Syngenta MIR 162 Corn* MDL litigation, Judge John Lungstrum cited my two declarations on attorneys' fees issues numerous times in his two opinions.[6] Indeed, Judge Lungstrum credited my opinions on attorneys' fees over the contrary

[6] *See In re Syngenta AG MIR 162 Corn Litig.,* 357 F. Supp. 3d 1094, 1112 (D. Kan. 2018) (granting final approval of class settlement and awarding total attorneys' fees), *aff'd.*, *Kellogg v. Watts Guerra LLP*, 41 F.4th 1246, 1257 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 1022 (2023); *In re Syngenta AG MIR 162 Corn Litig*., No. 14-MD-2591-JWL, 2018 WL 6839380 (D. Kan. Dec. 31, 2018) (allocating attorneys' fees among common benefit counsel and individually retained private attorneys), *aff'd.*, *Kellogg v. Watts Guerra LLP*, 41 F.4th 1246, 1257 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 1022 (2023).

opinions of five law professor experts retained by various objectors.[7] In *In re Broiler Chicken Antitrust Litig.*, Judge Thomas Durkin cited and quoted my declaration numerous times in awarding attorneys' fees of more than $55 million; he specifically stated that he found my declaration (and one other) to be "very helpful[.]"[8] In *Zakikhani v. Hyundai Motor Co*., Judge Stanley Blumenfeld, Jr., cited my declaration in approving attorneys' fees to class counsel.[9] In *Githieya v. Global Tel Link Corp*., Judge Amy Totenberg cited and quoted my declaration several times in awarding attorneys' fees to class counsel.[10] In the *Deepwater Horizon* MDL litigation, Judge Carl Barbier cited and quoted my declarations (relating to a proposed settlement with British Petroleum) more than 60 times in his two opinions analyzing class certification and fairness.[11] In a later order in that MDL, Judge Barbier repeatedly cited another declaration of mine—which I filed in connection with a class settlement involving Transocean and Halliburton.[12] In the *Volkswagen Clean Diesel* MDL litigation, Judge Charles Breyer repeatedly cited and quoted my two declarations in his three opinions—relating to the 2.0-liter VW class settlement, the 3.0-liter VW class settlement, and the class settlement with VW's co-defendant, Bosch.[13] In the *AT&T*

[7] *In re Syngenta*, 2018 WL 6839380 at *4.

[8] 2021 U.S. Dist. LEXIS 228367, at *47 n.4, *49–50 & n.5 (N.D. Ill. Nov. 30, 2021).

[9] *Zakikhani v. Hyundai Motor Co.*, No. 8:20-cv-01584-SB-JDE, at *1 (C.D. Ca. May 5, 2023) (Doc. 160).

[10] *Githieya v. Global Tel Link Corp.*, No. 1:15-cv-00986-AT (N.D. Ga. Aug. 30, 2022) (Doc. 369).

[11] *See In re Deepwater Horizon*, 910 F. Supp. 2d 891, 903, 914–16, 918–21, 923–24, 926, 929–33, 938, 941, 947, 953, 955, 960, 962 (E.D. La. 2012) (approving economic and property damages settlement), *aff'd*, 739 F.3d 790 (5th Cir. 2014); *In re Deepwater Horizon*, 295 F.R.D. 112, 133–34, 136, 138–41, 144–45, 147 (E.D. La. 2013) (approving medical benefits settlement).

[12] *See* Order and Reasons, Case No. 2:10-md-02179-CJB-JCW (Doc. No. 22252) (E.D. La. 02/15/17), *available at* http://www.laed.uscourts.gov/sites/default/files/OilSpill/2152017OrderAndReasons%28HESI%26TOsettlement%29.pdf (last visited June 18, 2023).

[13] *See In re Volkswagen "Clean Diesel" Marketing, Sales Practices & Prod. Liab. Litig.*,

Mobility MDL litigation, then–District Judge Amy St. Eve (now a Judge on the Seventh Circuit) cited and quoted my declarations more than 20 times in approving a class settlement and awarding attorneys' fees.[14] In the *Equifax Data Breach* case, Judge Thomas Thrash considered various expert reports relating to a class settlement and proposed attorneys' fees; he noted that, although he exercised his own independent judgment, he found my declaration to be "particularly helpful."[15] In the *Wells Fargo Unauthorized Accounts* litigation, Judge Vince Chhabria cited my declaration in connection with the issue of whether objectors to a class settlement should be ordered to post an appeal bond.[16] In *Skold v. Intel Corp*., Judge Peter Kirwan cited my declaration in approving a class settlement and awarding attorneys' fees.[17]

10. In this case, I am being compensated at my standard hourly rate of $1,075.00. Payment for my services is not contingent on the outcome of class counsel's request for attorneys' fees and service awards. Nor is it contingent on my taking any particular position on class counsel's request for attorneys' fees and service awards.

No. 3:15-md-02672-CRB, 2016 WL 6248426, at *18, *19, *20 (N.D. Cal. Oct. 25, 2016), *appeal filed*, No. 16-17185 (9th Cir. Nov. 29, 2016); Order Granting Final Approval of the Consumer and Reseller Dealership 3.0-Liter Class Action Settlement, Case No. 3:15-md-02672-CRB (Doc. No. 3229) (filed 05/17/17), at 34, 35, 38; Order Granting Final Approval of the Bosch Class Action Settlement, Case No. 3:15-md-02672-CRB (Doc. No. 3230) (filed 05/17/17), at 18.

[14] *See In re AT&T Mobility Wireless Data Serv. Sales Tax Litig.*, 789 F. Supp. 2d 935, 956–59, 961, 963–65 (N.D. Ill. 2011) (approving class settlement); *In re AT&T Mobility Wireless Data Serv. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1032 n.3, 1034–35, 1037, 1040, 1042 (N.D. Ill. 2011) (awarding attorneys' fees).

[15] *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020), *aff'd in relevant part*, No. 20-10249, 2021 WL 2250845 (11th Cir. June 3, 2021).

[16] *See Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC, slip op. at 14 (N.D. Cal. June 14, 2018).

[17] *See Skold v. Intel Corp.*, No. 1-05-CV-039231 (Cal. Super. Ct. Santa Clara County) (Jan. 29, 2015), at 7, *available at* http://lawzilla.com/blog/janet-skold-et-al-vs-intel-corporation/.

11. Additional information regarding my qualifications and experience—including a list of my publications—can be found in my curriculum vitae (attached hereto as Appendix A).

III. MATERIALS RELIED UPON

12. In addition to reviewing numerous court filings in the present litigation, as well as cases and materials in other class action settlements, I reviewed and relied upon the following documents in the instant case:

(1) Early and near-final draft declarations of Dena Sharp in support of settlement approval and attorneys' fees;

(2) Lodestar information from class counsel;

(3) Staffing and billable hour information from class counsel regarding the JLI class action and related cases;

(4) Information from class counsel regarding auditing of time submissions;

(5) Information from class counsel regarding the calculation of service award requests, including the point system;

(6) Judge Andler's audit reports; and,

(7) Expert report of Dr. Hal Singer and related information from class counsel regarding possible recovery at trial.

IV. OVERVIEW

13. This Court is thoroughly familiar with the background of the JUUL-related litigation. Thus, I focus only on facts that are relevant to my opinions. However, because the

attorneys' fees issues turn on the results achieved, skill of class counsel, and risks imposed by the litigation, it is important to describe the legal and factual complexity of the litigation.

A. Genesis of Litigation

14. The crux of the litigation is that JLI fraudulently misrepresented the risks of JUUL products and targeted minors in selling the products, and that various other defendants engaged in a RICO conspiracy, with JLI as the enterprise and the individual defendants whose claims are released in the settlement as alleged co-conspirators. Plaintiffs brought class claims alleging violations of the California Unfair Competition Law and the California Consumer Legal Remedies Act, fraud, breach of implied warranty of merchantability, unjust enrichment, RICO, Magnuson-Moss Warranty Act, and various other claims under the laws of all 50 states and the District of Columbia. Altria and related parties were also named as defendants in the class action but are not part of the settlement at issue here. The settlement does cover, and provides releases for, certain individual founders and directors of JLI who had been named defendants in the litigation.

15. In addition to the consumer class action, there are separate personal injury lawsuits against JLI, Altria, and related defendants, as well as lawsuits brought by governmental entities against these various defendants. These related suits are not part of the settlement at issue here. On April 26, 2018, several firms that are now on the Plaintiffs' Steering Committee, on behalf of plaintiffs Bradley Colgate and Kaytlin McKnight, filed a 384-page complaint against JLI. *Colgate, et al. v. JUUL Labs, Inc., et al.*, No. 3:18-02499 (N.D. Cal.). The case, a putative consumer class action, was assigned to this Court, which denied JLI's motion to compel arbitration and various motions to dismiss. See Declaration of Dena Sharp in Support of Motions for Final Approval and for Attorneys' Fees, Expenses, and Service Awards ("Sharp Decl." or "Sharp Declaration") ¶ 10.

16. On July 29, 2019, JLI filed a motion for centralization under 28 U.S.C. § 1407, which the Judicial Panel on Multidistrict Litigation ("JPML") granted on October 2, 2019. The MDL includes the consumer putative class actions, the (8,500+) personal injury cases, and the claims by governmental entities (including states, counties, cities, school districts, and tribes). There are three primary sets of defendants in the class action: JLI, the Altria defendants, and certain current and former JLI founders and directors. Certain other retailer, distributor, and e-liquid defendants are named only in the personal injury cases. In December 2019, this Court appointed four attorneys from four law firms to serve as co-lead counsel. Doc. 341. I understand from class counsel that, from the very beginning, these attorneys recognized the significant overlap among the three categories of cases and worked collaboratively to avoid duplication and ensure efficiency. The attorneys' fees, expenses, and service awards requested by class counsel relate solely to the consumer class actions. Moreover, the settlement at issue involves only JLI (and certain additional released parties, including the individual defendants) but does not include the Altria defendants. It is my understanding that all of the JUUL and Altria suits—involving all three categories of cases—have now settled. That includes related cases that were pending in California state court Judicial Council Coordinated Proceedings.

17. Following centralization, plaintiffs filed a consolidated class action complaint on March 1, 2020, which they amended on April 6, 2020. The complaint contained both a nationwide class and a California subclass. It totaled 667 pages, plus hundreds of additional pages of class representative declarations and JUUL advertisements. Named were JLI, Altria (and related defendants), and various "founder" and "other director" JLI defendants. The current operative complaint is the second amended complaint (filed February 2, 2021). The other current operative

complaints are the amended personal injury master complaint (filed April 6, 2020) and the second amended government entity complaint (filed on February 2, 2021).

B. Motions to Dismiss

18. Defendants moved—on multiple grounds—to dismiss claims in the consumer, personal injury, and government entity cases. The Court ruled on the motions in two "waves."

19. **First Wave.** The first wave of motions addressed numerous complex legal issues and entailed massive briefing. The Court's October 23, 2020 ruling totaled 152 pages, reflecting the difficult and challenging issues raised.

20. First, the Court rejected JLI's argument that all MDL proceedings should be dismissed or stayed on primary jurisdiction grounds pending a ruling by the Food and Drug Administration ("FDA") on JLI's premarket tobacco application for its electronic delivery system. JLI argued that a stay or dismissal of the court cases would be the fairest and most efficient way to proceed, given that the FDA proceeding raises technical issues (also involved in the court cases) that are within the FDA's expertise. This Court disagreed. It found that the FDA's resolution would be forward-looking, whereas the court cases center on JLI's past conduct. Moreover, the FDA proceedings will not consider a host of consumer and personal injury issues raised in the court cases. The Court was also concerned that a stay or dismissal would result in a delay of at least a year.

21. Second, as it had in the pre-MDL *Colgate* suit, the Court rejected various defendants' arguments that plaintiffs' state law claims were expressly or impliedly preempted by the Family Smoking Prevention and Tobacco Control Act of 2009 (TCA), 21 U.S.C. § 387 et seq.

The only claims that the Court found to be preempted (as it had in *Colgate*) were those based on failure to disclose nicotine addictiveness on JLI's product labels.

22. Third, JLI, Altria, and various individual defendants moved to dismiss the RICO claims brought against them. The crux of the RICO claims is that those defendants formed an "association-in-fact enterprise—the Nicotine Market Expansion Enterprise," which allegedly was created to maintain and expand the number of nicotine-addicted e-cigarette users, particularly minors. These RICO issues were complex, necessitating 40 pages of analysis by this Court. In the end, the Court agreed with multiple arguments raised by the defendants and granted their motion to dismiss the RICO claims, but with leave to amend to cure various deficiencies identified by the Court.

23. Fourth, the Court denied defendants' motions to dismiss fraud, consumer protection, implied warranty, and unjust enrichment claims asserted on behalf of a subclass of California Consumers (with the exception of certain affirmative misrepresentation claims and certain UCL claims against individual defendants).[18]

24. To address the deficiencies identified by the Court in its October 23, 2020, Order, class plaintiffs filed a 729-page second amended consolidated class action complaint ("SAC") on November 12, 2020. During that same period, class counsel urged the Court to adopt an important clarification to protect members of the class: that members of the consumer class could separately pursue individual personal injury claims through the personal injury track. The Court agreed and made clear that class members could simultaneously pursue personal injury claims.

[18] The Court also granted in part and denied in part motions to dismiss the government entity complaints.

25. **Second Wave.** Defendants moved to dismiss the SAC on January 4, 2021. On April 13, 2021, the Court largely denied the motions to dismiss in a 30-page opinion. The Court found that the SAC sufficed to establish plausible RICO claims under plaintiffs' new theory. The Court also denied various individual defendants' motions to dismiss the public nuisance, New York General Business Law, and Florida Deceptive and Unfair Trade Practices Act claims. The Court dismissed without prejudice claims under the laws of Delaware, the District of Columbia, Idaho, and North Dakota.

26. Because the motions to dismiss raised overlapping issues in the three categories of cases, the co-leads and other attorneys in the various categories worked closely together. Much of the research, analysis, and drafting work was essential to all three categories, because defendants' motions themselves sought dismissal of claims in each of the categories.

C. Discovery

27. The discovery in this case (and in the related personal injury and government entity cases) has been extensive and wide-ranging. *See* Sharp Decl. ¶¶ 39–71. For example, plaintiffs' counsel reviewed more than 33 million pages of documents produced by JLI, took over 100 depositions of fact witnesses, took additional depositions of JLI's experts, and responded to discovery propounded by JLI and related parties. Plaintiffs' counsel also propounded multiple rounds of document requests, interrogatories, and requests for admission.

28. The parties faced numerous challenges in discovery, including defending class representative depositions, taking depositions of senior corporate officials, producing medical and educational records for bellwether class representatives, effectuating international service of subpoenas, securing JLI correspondence with the FDA, addressing various other privilege issues,

establishing deposition protocols, pursuing discovery relating to JUUL's Premarket Tobacco Product Applications, and conducting discovery of non-parties—just to name some of the challenges. Then–Magistrate (now District Judge) Corley resolved numerous discovery disputes.

D. Case Management

29. Class counsel insisted on an aggressive discovery and trial schedule, with discovery to be completed by September 2021, just 21 months after this Court appointed MDL leadership. Sharp Decl. ¶¶ 32–33. Various case management orders addressed, among other things, bellwether trials, plaintiff fact sheets, and common benefit timekeeping. *Id.* ¶¶ 26–30.

E. Class Certification and *Daubert* Issues

30. On April 28, 2021, plaintiffs moved for certification of four classes of purchasers of JUUL products. In support, plaintiffs utilized several experts. Dr. Hal Singer, an economist, performed modeling on damages suffered by the class, and arrived at figures that ranged from $643 million to $1.9 billion based on the data available to him at the time. Dr. John Chandler, a marketing professor, opined on JLI's marketing and consumer exposure to JLI's advertising. Dr. Sherry Emery, an expert on media marketing, reviewed JLI's marketing strategy and its focus on youth. Dr. Anthony Pratkanis, a social psychologist, also analyzed JLI's marketing. Dr. Alan Shihadeh, an engineer who specialized in tobacco products, opined on issues related to the propensity for JUUL products to lead to addiction. Defendants moved to strike all five of those experts under *Daubert*, and they argued that the proposed classes should not be certified. In a comprehensive opinion totaling 94 pages, entered on June 28, 2022, the Court ultimately rejected defendants' *Daubert* challenges and certified the classes proposed by class counsel.[19]

[19] The Court also denied plaintiffs' motion to exclude one of defendants' experts.

31. As reflected in this Court's Order, defendants raised complicated and substantial class certification issues. They argued that each proposed class member was exposed to different advertisements at different times; reacted differently to the alleged misrepresentations or omissions; suffered differing levels of economic injury; and had different experiences involving their use of JUUL products. With respect to the Rule 23(a) requirements, defendants did not dispute numerosity and commonality, but they vigorously disputed adequacy and typicality under Rule 23(a)(3) and (a)(4), as well as the predominance and superiority requirements of Rule 23(b)(3).

32. On the question of typicality, the Court reviewed the factual circumstances of representatives Colgate, Krauel, C.D., L.B., and Greg—all representatives for nationwide classes. The Court found that differences among the class representatives—such as when the plaintiffs learned about nicotine in JUUL, why they used the product, and whether they are addicted—were not material to the claims and legal theories at issue in the four classes. Nor were there any "unique defenses" applicable to the representatives that rendered them atypical. The Court also rejected arguments that the representatives were inadequate because of concerns about their honesty and credibility.

33. Most of the Court's focus was on defendants' predominance arguments. Initially, the Court distinguished a host of prior cases relied upon by defendants involving tobacco and other addictive products in which class certification was denied because of individualized issues. The Court found that defendants' reliance on other tobacco products cases "ignor[ed] the specific facts and legal theories here that distinguish the cases [defendants] rely on and the expert support

provided by plaintiffs that was missing in those cases."[20] Next, the Court rejected defendants' argument that plaintiffs could not offer a classwide damages model (and had to prove individualized damages), pointing to plaintiffs' expert, Dr. Hal Singer, and rejecting defendants' *Daubert* attacks on Singer. The Court reasoned that Dr. Singer's model was consistent with plaintiffs' liability theories and that the various attacks on Dr. Singer's conjoint analyses were meritless. Next, the Court rejected defendants' predominance arguments relating to the RICO classes. With respect to reliance, the Court found, as it had in earlier orders in the case, that the cases cited by defendants had been undermined by the Supreme Court's decision in *Bridges v. Phoenix Bond & Indem. Co.,*[21] which made clear that under RICO a person can be injured by reason of a pattern of mail fraud even in the absence of first-party reliance on misrepresentations. Similarly meritless in the Court's view was defendants' attempt to reargue reliance under the guise of proximate cause. Plaintiffs showed through their experts that JLI used a consistent message in its marketing, and the fact that some portion of the class may not have seen or recalled specific advertisements they saw was not fatal.

34. The Court also rejected arguments by Altria that proof of damage to business or property required individualized determinations. It further found, contrary to defendants' contention, that plaintiffs were entitled to a presumption of reliance under California law, and that plaintiffs showed actual reliance and materiality of omitted information for claims under California's Unfair Competition Law, Consumer Legal Remedies Act, and False Advertising Law.

[20] *In re JUUL Labs, Inc. Mkt'g, Sales Pracs., and Prods. Liab. Litig.*, 609 F. Supp. 3d 942, 969 (N.D. Cal. 2022).

[21] 553 U.S. 639 (2008).

And it found that the claims under unjust enrichment and implied warranty theories did not raise individualized issues that would preclude certification.

35. In addition to contesting predominance, JLI raised several other arguments that purportedly defeated class certification, including the contention that class members who claimed they were addicted lacked Article III standing, given that they received just what they expected and thus were not injured. The Court rejected those arguments.

36. Finally, the Court rejected defendants' superiority requirement under Rule 23(b)(3), disagreeing with defendants' contention that plaintiffs had not provided a plan for trying the claims on a classwide basis.

37. On July 12, 2022, defendants filed three petitions under Rule 23(f) seeking interlocutory review of this Court's class certification order. On October 24, 2022, the Ninth Circuit consolidated the three petitions and granted interlocutory review. Because the various cases settled, the Ninth Circuit never addressed the propriety of class certification.

38. From the standpoint of risks posed by the litigation, the Ninth Circuit's decision to grant review under Rule 23(f) is significant. A decision overturning class certification would have meant the end of the consumer litigation. Based on the Ninth Circuit's prior track record in 23(f), class counsel had reason for concern. The most recent Rule 23(f) studies I could locate (covering the period 2018–2021) reveal that the Ninth Circuit granted only 13 percent of Rule 23(f) petitions filed by defendants.[22] Moreover, in cases in which Rule 23(f) review was granted, the chances of

[22] *How do Rule 23(f) petitions fare in the Ninth Circuit?*, J.D. SUPRA (June 28, 2022), https://www.jdsupra.com/legalnews/how-do-rule-23-f-petitions-fare-in-the-4676814/#:~:text=In%20the%20Ninth%20Circuit%2C%20Rule,if%20the%20first%20two%20disagree) (last visited June 18, 2023).

reversal were much higher than in the usual appeal. By way of comparison, for the 12-month period ending September 30, 2022, the Ninth Circuit's overall reversal rate in all appeals terminated during that period was only 8.7 percent.[23] By contrast, in the Rule 23(f) context, during the 2018–2021 period covered by the aforementioned study, the Ninth Circuit reversed in 44 percent of the Rule 23(f) appeals.[24] Thus, just looking at raw data, class counsel faced a significant chance that this Court's class certification ruling would be reversed.

F. Merits Experts

39. In addition to the class action experts, plaintiffs in the three categories of cases designated 23 merits experts. *See* Sharp Decl. ¶¶ 94–95. Defendants in turn designated 20 merit experts. *Id* ¶ 97. JLI sought to strike in whole or part 22 of plaintiffs' experts; Altria sought to strike eight of the experts; and "other director" defendants sought to strike three experts. Together, defendants' motions spanned hundreds of pages. While deferring ruling on a small number of experts, the Court denied defendants' motion to exclude virtually all of the experts in a 69-page order.

G. Summary Judgment

40. The Court addressed motions for summary judgment against the San Francisco Unified School District ("SFUSD"), the bellwether plaintiff in the government entity litigation. The Court denied summary judgment but described Altria's public nuisance arguments in

[23] *See* G. Castanias & R. Klonoff, FEDERAL APPELLATE PRACTICE AND PROCEDURE IN A NUTSHELL 35 (3d ed. 2023).

[24] *How do Rule 23(f) petitions fare in the Ninth Circuit?*, J.D. SUPRA (June 28, 2022), https://www.jdsupra.com/legalnews/how-do-rule-23-f-petitions-fare-in-the-4676814/#:~:text=In%20the%20Ninth%20Circuit%2C%20Rule,if%20the%20first%20two%20disagree) (last visited June 18, 2023).

particular as "weighty" ones that "could dramatically impact the scope of damages or nature of abatement to which SFUSD might be entitled if the jury finds Altria liable for nuisance." Doc. 3911. The Court also denied summary judgment in the personal injury litigation, rejecting myriad arguments advanced by JLI and by Altria (apart from dismissing claims abandoned by JLI during the briefing).

41. Numerous issues raised in the SFUSD and personal injury bellwether summary judgment proceedings applied to the class case, such as the viability of plaintiffs' RICO claims. Thus, while not directly related to the class complaint, these summary judgment proceedings, and plaintiffs' success in defending against them, were important to the class.

H. Settlement Agreement

42. On May 4, 2020, this Court issued a notice that it intended to appoint Thomas J. Perrelli as Settlement Master. With no opposition, that appointment was finalized on May 18, 2020. I have been advised by class counsel that the mediation process was hard-fought and lasted for years, ultimately resulting in the JLI class settlement at issue.

43. The settlement encompasses all individuals in the United States (with certain exclusions, including, *e.g.*, employees of defendants) who purchased a JUUL product from a brick-and-mortar or online retailer before December 7, 2022. The settlement creates a $255 million non-reversionary fund that, after payment of attorneys' fees, expenses, and service awards, as approved by the Court, will be used to compensate class members who do not opt out of the settlement and submit timely claims. The Plan of Allocation ensures that, after fees, expenses, and service awards, all of the remaining funds will go to eligible class members who submitted timely claim forms. Class members can make a claim via a special website, by replying through an email link, by

returning a postcard, or following instructions for submitting a paper claim. The exact recoveries will depend on how much each claimant spent on JUUL products compared to other class members who submit claims. Although it is possible to posit theoretical maximum recoveries under best case scenarios, the reality is that defendants had many arguments for substantially reducing the damages awarded, even if a jury found for plaintiffs on liability. I would also note that it is premature to discuss specifics prior to July 14, 2023, when the parties will have detailed information on the claims rates and amounts claimed by eligible class members. Nonetheless, recognizing all of these caveats, and assuming as a rough estimate 9 million class members (estimates of the class size have varied between 6.5 millon and 11 million individuals), class counsel advise that in the best-case scenario, recovery at trial would be between $510 and $550—based on overcharges of roughly $4.6–$5 billion. Further assuming 1.5 million valid claims are made, the average recovery per claimant would be $111 (assuming a $166.6 million net settlement fund divided by 1.5 million claims). Even if the actual numbers deviate from the rough estimates offered to me by class counsel, it is clear that class members will receive cash payments representing a substantial percentage of the theoretical damages they could have received at trial. It is, of course, unreasonable to believe that defendants—possessing so many strong arguments regarding the merits, scope of damages, and class certification—would agree to a settlement anywhere close to the theoretical maximum that class members could have received at trial.

44. Class members have the option of opting out of the settlement, and those who do not opt out can lodge objections.

I. Lodestar Information

45. I am advised by class counsel that the total lodestar for the three categories of cases in both this MDL and in related California coordinated proceedings is $199,336,544.05, including time through December 6, 2022 (the date of the settlement), representing a total of 363,344.1 hours by the collection of timekeepers. That lodestar does not include an additional estimated 500 hours to finalize and implement the settlement. See ¶ 48. I am advised by class counsel that, under this Court's case management order number 5, Doc. 352, counsel submitting time were subject to rigorous time and expense reporting guidelines. Attorneys and staff at Lieff Cabraser (liaison counsel) audited the submissions on a regular basis and returned those that were deemed deficient for correction or elaboration. Then, after Lieff Cabraser's review, the records were submitted to Retired Judge Gail Andler, who was appointed by this Court as Common Benefit Special Master on June 16, 2020. Judge Andler's underlying objective was to "facilitate the submission of appropriate requests for fees and expenses from [the Common Benefit Fee and Expense Fund] on an ongoing basis." *Id.* Among her other responsibilities, she was to determine "whether certain tasks, categories of costs, or level of fee requests are properly sought." *Id.* I understand that she focused, *inter alia*, on whether an excessive number of timekeepers attended a hearing, and whether timekeepers billed more than eight hours in a single time entry or billed more than twelve hours in a single day.

46. I am advised by class counsel that the average billing rate for each category of timekeeper is as follows: $314 for paralegals/staff; $382 for staff attorneys; $373 for contract attorneys; $505 for associates; $767 for of counsel; and $805 for partners.

47. I am also advised by class counsel that the highest billing rates for the five highest billing timekeepers at each of the co-lead law firms are as follows:

Lieff Cabraser:		
Sarah London	Partner	$740
Reilly Stoler	Partner	$615
Robert Fernez	Contract Attorney	$475
Alex Larrabee	Staff Attorney	$475
Peter Roos	Staff Attorney	$475

Keller Rohrback:		
Dean Kawamoto	Partner	$1,010
Garrett Heilman	Associate	$650
Felicia Craick	Associate	$625
Brenna Willott	Staff Attorney	$475
Gayle Perez	Staff Attorney	$475

Weitz & Luxenberg		
Ellen Relkin	Partner	$975
Teresa Curtin	Associate	$750
Mark Weitz	Of Counsel	$750
Stuart Friedman	Of Counsel	$750
Danielle Gold	Associate	$595

Girard Sharp		
Dena Sharp	Partner	$1,100
Scott Grzenczyk	Partner	$925
Nina Gliozzo	Associate	$625
Kyle Quackenbush	Associate	$650
Kai Lucid	Associate	$425

J. Additional Hours Contemplated

48. As noted, class counsel advise me that they estimate having spent approximately 300 hours working on settlement finalization and administration issues (at a blended rate of $800), and that they will likely spend another 200 hours in administering the settlement. Such additional work will focus on providing high-level input concerning determinations that need to be made as part of the claims administration process and preparing submissions to the Court. Class counsel believe that a blended rate of approximately $750 will take into account the various levels of timekeepers who will assist in post-settlement work.

K. Proposed Service Award Information

49. There are a total of 86 class representatives. Class counsel seek service awards from the common fund of between $5,000 and $33,000 per class representative, depending on the precise work performed by each representative. The total amount sought for service awards is $774,600. To determine the amount requested for each class representative, class counsel utilized a point system, which considered, *inter alia*, the length of time the class representative has been in the case; whether the class representative is still in the case; completed plaintiff fact sheets; produced documents (specifically including medical records); responded to written discovery; and sat for deposition.

V. SUMMARY OF OPINIONS

50. **Reasonableness of Fees.** In my opinion, the attorneys' fee percentage sought (30 percent) is reasonable, despite the mega-fund nature of this case. The non-reversionary settlement is a superb outcome; the case posed major risks (*i.e.*, the viability of the claims, the difficulty of securing and maintaining class certification, substantial trial risks, and the possibility of JLI

declaring bankruptcy); and class counsel's work was outstanding. Class counsel took a huge risk (by working on a contingent-fee basis). Moreover, I do not believe that a 30 percent award would result in a windfall to counsel. Using very conservative assumptions to derive the lodestar, I calculate the multiplier to be a very modest 1.36.

51. **Service Awards.** In my opinion, service awards of between $5,000 and $33,000 are reasonable. Class counsel determined the award for each class representative based on a point system, which assessed each class representative's contributions and efforts.

VI. DETAILED DISCUSSION OF OPINIONS: OVERVIEW

52. In the remaining sections of this Declaration, I explain in detail my opinions on the reasonableness of the proposed attorneys' fees and the proposed service awards to the class representatives.

VII. ATTORNEYS' FEES

53. Class counsel are seeking, as attorneys' fees, 30 percent of the $255 million non-reversionary settlement fund, *i.e.,* $76,500,000, plus a proportionate share of any accrued interest. In this section of the Declaration, I offer my opinions on the reasonableness of that request. First, I address the percentage-of-the-fund method. In doing so, I opine that the Court should use the percentage-of-the-fund method as the primary method to assess reasonableness. I also discuss the relevance of the fact that this is a so-called mega-fund settlement, *i.e.,* one with a settlement fund of more than $100 million.[25] I then assess reasonableness based on the results achieved, the risks

[25] *Reyes v. Experian Info. Sols.*, No. 20-55909, at *4 (9th Cir. Apr. 8, 2021) ("[M]egafund cases are usually those with settlements exceeding $100 million.").

posed by the litigation, the skill required of class counsel, the contingent nature of the representation, and awards in similar cases (including consumer cases and mega-fund cases generally). Second, I conduct a lodestar cross-check based on the information given to me by class counsel. In doing so, I explain how, in my view, a lodestar cross-check should be conducted based on the complicated fact that the total lodestar hours represent work done on behalf of all three categories of cases, not just the class action. Applying that approach, I estimate the lodestar and the resulting multiplier.

A. The Attorneys' Fees Requested by Class Counsel Are Reasonable Under the Percentage Method

1. This Court Should Use the Percentage-of-the-Fund Method

54. As an initial matter, this Court must decide whether to use the percentage-of-the-fund method (the "percentage method") or the lodestar method. In assessing the reasonableness of the attorneys' fees sought, courts have discretion in common fund cases to choose between these two methods.[26] Nonetheless, many courts have expressed a preference for the percentage method.[27] This preference—which I support—stems primarily from the fact that the percentage method "aligns the interests of counsel and the class by allowing class counsel to directly benefit

[26] *See, e.g.*, *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022) ("District courts have discretion to employ either the lodestar method or the percentage-of-recovery method." (cleaned up)); *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010) (same); *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1047 (9th Cir. 2002) (same).

[27] *See, e.g.*, *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (noting that the "use of the percentage method in common fund cases appears to be dominant"); *Willcox v. Lloyds TSB Bank, PLC*, Civ. No. 13-00508 ACK-RLP, at *36–37 (D. Haw. Dec. 14, 2016) (noting that the percentage method is "favored in common-fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure" (cleaned up)).

from increasing the size of the class fund."[28] By contrast, the lodestar method "give[s] lawyers incentives to run up hours unnecessarily, which can lead to overcompensation or to later litigation over fee padding."[29] Moreover, the lodestar method has been heavily criticized as a burdensome and time-consuming endeavor that lacks objectivity.[30]

55. The percentage method is especially suitable here because, as I explain in ¶¶ 78–79, a full-blown lodestar analysis would be extremely burdensome and time-consuming for the Court to perform and would be highly subjective. As explained in ¶ 81, myriad tasks performed in this case benefited all three categories of litigation (class action, personal injury cases, and government entity cases). A strict lodestar approach would require the Court to go through close to 370,000 hours of time records in an attempt to determine, for each billable task, how to allocate time between the three categories of cases. The process would entail considerable guesswork. By contrast, as I discuss in ¶ 78, because a lodestar cross-check need not be as meticulous, the Court can make rough estimates in allocating time among the three categories without reviewing the mass of time records.

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[28] *Craft v. Cnty. of San Bernardino*, 624 F. Supp. 2d 1113, 1123 (C.D. Cal. 2008)).

[29] *Vogel v. Harbor Plaza Ctr., LLC*, 893 F.3d 1152, 1164 (9th Cir. 2018) (citation omitted); *accord, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 n.5 (9th Cir. 2002) (noting that "the lodestar method creates incentives for counsel to expend more hours than may be necessary"); *In re Netflix Privacy Litig*., No. 5:11-CV-00379 EJD, slip op. at 18 (N.D. Cal. Mar. 18, 2013) (same).

[30] *See, e.g., In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 571 (9th Cir. 2019) (en banc) (noting that the lodestar method can be a "time-consuming task"); *Sec. & Exch. Comm'n v. S.F. Reg'l Ctr.*, No. 17-cv-00223-RS, at *4 (N.D. Cal. Oct. 17, 2022) (same); *Vogel v. Harbor Plaza Ctr., LLC*, 893 F.3d 1152, 1164 (9th Cir. 2018) (noting that the lodestar method "may unduly burden judges" (cleaned up)); *Lopez v. Youngblood,* No. CV-F-07-0474 DLB, at *7 (E.D. Cal. Sep. 1, 2011) (noting that the lodestar method "lacks objectivity").

56. In applying the percentage method, a court "must consider the actual or realistically anticipated benefit to the class—not the maximum or hypothetical amount—in assessing the value of a class action settlement."[31] Concerns arise when a class settlement involves a reversionary fund (where all unclaimed funds revert to the defendant), and the claims process is a complicated one (thus deterring class members from filing claims to obtain any cash recovery).[32] Under such circumstances, the purported fund is not the true benefit to the class. Here, however, that concern does not arise. The proposed settlement creates a non-reversionary cash fund. *See* ¶ 43. After payment of fees, expenses, and service awards approved by the Court, the entire balance of the fund goes to the class. Not a penny reverts to JLI. And here, the proposed settlement does not create a complicated claims process that would discourage class members from submitting claims. Claims can be submitted online or by postcard. Moreover, the claimant's attestation is sufficient without proof of purchase unless the retail value of the claimed expenditures exceeds $300. And even if the $300+ proof of purchase applies, it can be satisfied not only by receipts but by "other documentation demonstrating such purchases." Doc. 3724-3 (Plan of Allocation).

57. In sum, this case is well suited for application of the percentage method.

2. This Court Should Consider the Mega-Fund Nature of This Settlement as One Factor in Assessing the Proposed Percentage

[31] *Lowery v. Rhapsody Int'l*, __F.4th __, __ (9th Cir. June 7, 2023).

[32] *See, e.g., In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 949 (9th Cir. 2011) ("[A]rrangement[s] reverting unpaid attorneys' fees to the defendant rather than to the class amplifies the danger of collusion."); *Cottle v. Plaid Inc.*, 20-cv-03056-DMR, at *12 (N.D. Cal. July 20, 2022) (courts "should be alert to whether the claims process is unduly demanding"); *Newell v. Ensign United States Drilling (Cal.) Inc.*, 1:19-cv-01314-JLT-BAK, at *13 (E.D. Cal. July 12, 2022) ("[N]on-reversionary provisions help negate concerns of collusion because the benefits renown to the class members rather than the defendant.").

58. In the Ninth Circuit, the traditional benchmark fee award is 25 percent of the common fund.[33] This case, however, is a mega-fund case, *i.e.*, involving a settlement of more than $100 million. In the mega-fund context, the Ninth Circuit has indicated that the 25 percent benchmark "is of little assistance[.]"[34] In particular, when awarding "25% of a 'megafund' would yield windfall profits for class counsel in light of the hours spent on the case, courts should adjust the benchmark percentage or employ the lodestar method instead."[35] This does not mean, however, that fees in a mega-fund case can never equal or exceed 25 percent; indeed, courts in this District have awarded fees of more than 25 percent in mega-fund cases based on the results obtained and the risks incurred.[36]

3. A 30 Percent Fee Award is Reasonable

59. In this section, I conclude that a 30 percent award is reasonable. (Subsequently, I conclude that a 30 percent award would not result in a windfall. *See* ¶¶ 81–87.) The factors pertinent in reviewing the reasonableness of a proposed fee percentage include: "(1) the results

[33] *See*, *e.g.*, *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (cleaned up) ("[C]ourts typically calculate 25% of the fund as the benchmark for a reasonable fee award, providing adequate explanation in the record of any special circumstances justifying a departure." (cleaned up)); *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1047 (9th Cir. 2002) (25 percent benchmark is "a starting point for analysis"); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420 YGR (DMR), at *34 (N.D. Cal. Dec. 10, 2020) ("courts in the Ninth Circuit typically employ the percentage of the common fund method and a benchmark rate of 25%"), *aff'd,* No. 19-16803 (9th Cir. Apr. 23, 2021).

[34] *In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 931 (9th Cir 2020) (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002)).

[35] *In re Bluetooth Headset Prods. Liab. Litig.,* 654 F.3d 935, 942 (9th Cir. 2011).

[36] *See, e.g., In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420 YGR (DMR) (N.D. Cal. Dec. 10, 2020) (approving fee request of "just under 30 percent" in a mega-fund case where results were excellent, risk was substantial, and multiplier was approximately 0.82), *aff'd,* No. 19-16803 (9th Cir. Apr. 23, 2021); *In re Lidoderm Antitrust Litig.,* 2008 WL 4620695 (N.D. Cal. Sept. 20, 2018) (awarding 33 1/3 percent of a $104.75 million fund given the results obtained and risk involved, where multiplier was 1.37).

achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases."[37] And in a mega-fund case, the court must also ensure that the percentage would not result in a windfall to class counsel. Consistent with this approach, I first address the pertinent factors in assessing a percentage fee request. Based on that assessment, I conclude that a 30 percent award is reasonable. I then conduct a lodestar cross-check to determine whether a 30 percent award would result in a windfall for class counsel. I conclude that a 30 percent award would not result in a windfall because the multiplier, based on extremely conservative assumptions, is a modest 1.36.[38]

a. The Results Achieved are Excellent

60. This is a massive $255 million non-reversionary settlement. It provides genuine and tangible financial compensation to every eligible class member who submits a claim. Assuming, as class counsel predict, that at least 1.2 million eligible class members file timely claims, the average amount per class member would be approximately $111. Of course, the amount recovered by individual class members will be higher if the claims rate turns out to be lower. Class members who have personal injury claims do not forfeit those claims by participating in the consumer settlement. And the ability to participate (up to the $300 level) without having to

[37] *Cottle v. Plaid Inc.,* 20-cv-03056-DMR, at *15 (N.D. Cal. July 20, 2022) (citing *Perkins v. Linkedin Corp.*, No. 13-CV-04303-LHK, 2016 WL 613255, at *14 (N.D. Cal. Feb. 16, 2016)).

[38] The actual number is 1.356, which I have rounded up to 1.36. I use this number throughout the Declaration. Taking into consideration the future hours discussed in ¶ 48, the multiplier is reduced to 1.347, which would be 1.35 when rounded up. In my opinion, the difference between 1.35 and 1.36 is not material.

locate a receipt or other proof of purchase greatly simplifies the process and thus ensures substantial participation by class members who can attest to having made eligible purchases. The relief under the settlement consists of meaningful cash payments directly to class members. *See* ¶ 43.

61. In addition, the reality is that individual class members would never pursue these claims outside the context of a class action.[39] And the terms of the settlement are especially impressive given all of the risks that class counsel faced in this litigation (*see* ¶¶ 62–67).

b. This Litigation Imposed Serious Risks

62. The degree of risk imposed is an important factor in assessing the reasonableness of a fee request.[40] In my opinion, this litigation was fraught with serious risks. A number of the claims were potentially vulnerable. For instance, the lawsuit relied heavily on a novel, cutting-edge approach to RICO. Indeed, the Court initially dismissed the RICO claims, forcing plaintiffs to replead. Defendants raised other substantial legal challenges. For instance, defendants argued for dismissal or a stay under the doctrine of primary jurisdiction based on the regulatory authority of the FDA over e-cigarettes. Defendants also argued lack of Article III standing, an issue made more difficult for plaintiffs after the Supreme Court's decision in *TransUnion LLC v. Ramirez*.[41]

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[39] *See Carnegie v. Household Int'l*, 376 F.3d 656, 661 (7th Cir. 2004) ("[O]nly a lunatic or a fanatic sues for $30.") (Posner, J.).

[40] *See, e.g.*, *In re Washington Public Power Supply Sys. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) ("It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases."); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, at *17 (N.D. Cal. July 21, 2020) (noting that courts may consider "the risks, expense, complexity, and likely duration of further litigation").

[41] 141 S. Ct. 2190 (2021) (reversing data breach class action trial verdict in part because of lack of injury to major portion of the class).

Indeed, this discussion only skims the surface. The myriad legal challenges raised by defendants in *Colgate* and in the two waves of motions to dismiss were numerous and complex, necessitating hundreds of pages of briefing and lengthy orders by this Court (*see* ¶¶ 15, 18–26).

63. These legal difficulties did not end when the Court largely denied the motions to dismiss and later denied summary judgment in the three categories of cases. Had the class action gone to trial, and had plaintiffs won (which was itself uncertain), JLI almost certainly would have raised many of the same legal challenges on appeal, including RICO and primary jurisdiction.

64. To support their claims and justify class certification, plaintiffs relied heavily on expert testimony, and defendants mounted significant attacks on plaintiffs' experts. Defendants were aggressive on the expert witness front, mounting a *Daubert* challenge to virtually every expert proffered by plaintiffs, both at class certification and on the merits.

65. An especially challenging aspect of this litigation was class certification. In a small-claims consumer case of this kind, plaintiffs and class action attorneys lack sufficient financial incentive to pursue the claims individually. As a practical matter, therefore, the success of the litigation depended on plaintiffs obtaining class certification and then successfully defending class certification on appeal. Here, this Court addressed a host of challenges raised by defendants. In my opinion, several of those challenges were substantial, particularly those based on a lack of predominance. Moreover, even though plaintiffs successfully obtained class certification in this Court, there was a serious cloud over the Court's ruling because the Ninth Circuit granted Rule 23(f) review, and that appeals process was moving forward at the time of settlement. As discussed above (¶ 38), convincing the Ninth Circuit to grant review under Rule 23(f) is exceedingly difficult, and such efforts fail in the vast majority of cases. Thus, the very fact that defendants' three Rule

23(f) petitions were granted and consolidated was an ominous development for class counsel. Moreover, unlike most appeals to the federal appellate courts—where reversal is highly unlikely—there is a substantial risk of reversal when the Ninth Circuit grants Rule 23(f) review. Specifically, based just on statistics for 2018–2021, there was close to a 50 percent chance of reversal by the Ninth Circuit, compared to less than a 10 percent chance of reversal overall in the Ninth Circuit. *See* ¶ 38. Indeed, class counsel's concerns were not just abstract or based on raw statistics. Just a few months ago, in a Rule 23(f) appeal, the Ninth Circuit vacated a class certification ruling on both Article III and Rule 23(b)(3) predominance grounds,[42] two of the grounds that defendants here raised.

66. My own review of the Rule 23(f) petitions confirms that defendants raised serious issues for the Ninth Circuit. For instance, JLI's petition asserted that its "advertising varied substantially over time and was nonexistent for large portions of the class period," and that the notion that different advertisements conveyed the same basic message was flawed because it "would guarantee certification in any false-advertising case."[43] Similarly, Altria's petition argued that this Court "adopt[ed] . . . novel RICO causation and injury theories never before applied by [the Ninth Circuit]."[44] And the petition by three non-management directors of JLI argued that this Court failed to "conduct a rigorous analysis to determine whether a proposed damages model matches the plaintiff's theory of liability."[45] By no means am I suggesting that reversal was

[42] *Van v. LLR, Inc.* 61 F.4th 1053 (9th Cir. 2023).

[43] JLI Petition for Rule 23(f) Review in No. 22-80063, *In re: JUUL Labs, Inc. Marketing, Sales Practices & Products Liability Litigation* 2 (filed July 12, 2022).

[44] Altria Petition for Rule 23(f) Review in No. 22-80063, *In re: JUUL Labs, Inc. Marketing, Sales Practices & Products Liability Litigation* 3 (filed July 11, 2022).

[45] Hoyuoung Huh, Nicholas Pritzker, and Riaz Valani's Petition for Rule 23(f) Review in

inevitable. This Court wrote a thorough and extremely well-reasoned opinion supporting class certification and the admissibility of plaintiffs' experts. Thus, class counsel had strong arguments for defending this Court's ruling on appeal. My point is simply that defendants had substantial arguments as well, and the fact that they secured interlocutory review under Rule 23(f) shows that the Ninth Circuit took the defendants' arguments seriously.

67. As a separate matter, there was a substantial concern that JLI would file for Chapter 11 bankruptcy, *see* Sharp Decl. ¶ 87, which would have made it very difficult for class members to have recovered anything comparable to what they sought in court and what they will end up with under this settlement.

c. A Great Deal of Skill was Required to Produce High Quality Work

68. In my opinion, this litigation required the highest level of skill for class counsel to succeed. As noted above, the legal, factual, and expert challenges were enormous, and the case raised difficult issues of first impression, particularly under RICO. Moreover, defendants were represented by some of the leading law firms and lawyers in the country, and those lawyers made clear that they would leave no stone unturned in trying to win. The array of skills required of plaintiffs' counsel was far greater than in most lawsuits, even compared with many other MDLs and class actions. Class counsel had to become experts on a host of federal and state statutory and common law theories, and they had to pursue claims (such as RICO) in which there was little direct precedent for the precise circumstances here. Class counsel were required to develop expertise on a host of topics covered by the wide array of class certification and merits experts.

No. 22-80063, *In re: JUUL Labs, Inc. Marketing, Sales Practices & Products Liability Litigation* 2 (filed July 15, 2022).

They needed to review millions of documents, take more than 100 depositions, and integrate all of this discovery into persuasive and legally supportable claims. They needed to master virtually every element of the class action rule, Rule 23, as well as standing under Article III, and (but for the settlement) they would have been required to defend class certification on appeal. As noted above, defendants argued that class certification is almost universally denied in cases involving tobacco products, and class counsel needed to craft a litigation and certification strategy to directly address that precedent. Class counsel's excellent performance is confirmed by the fact that they were up against exceptionally talented opposing counsel.[46] There was also the practical issue of how to coordinate among lead counsel in three different categories of cases to secure the best result in a collaborative and efficient manner. And, of course, great skill was needed to negotiate and reach a robust settlement in this complex class action.[47]

d. The Contingent Nature of the Attorneys' Fees and Class Counsel's Financial Burden

69. Class counsel undertook this case on a contingent-fee basis, with no assurance that they would recover their expenses, let alone compensation for the thousands of hours they devoted to the case. As noted, class counsel faced numerous potentially fatal risks: dismissal on the merits

[46] *See, e.g., In re MacBook Keyboard Litig.*, 5:18-cv-02813-EJD, at *24 (N.D. Cal. May 25, 2023) ("The quality of opposing counsel . . . further speaks to Class Counsel's skill and diligent prosecution of this action" (citing *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 449 (C.D. Cal. 2013)).

[47] This Court recognized, on multiple occasions, the outstanding performance of the attorneys for both sides. *See, e.g.,* ECF 3772 at 40 ("I continue to be impressed with the way that . . . you are working together to push these cases into a place where they can be resolved."); ECF 2767 at 10 ("I have been super impressed in this case how hard the parties have worked and how much you have accomplished."); ECF 3430 at 10 ("There's so much work going on and I appreciate the manner and professionalism in which you're carrying it out.").

based on a host of legal arguments; loss at trial; reversal of class certification by the Ninth Circuit, which as a practical matter would have ended the litigation; and the risk of insolvency by JLI. Had any of these scenarios come to fruition, class counsel would have recovered nothing for their efforts on behalf of the class—well over $60 million of attorney time and millions of dollars in out-of-pocket expenses. Nor could class counsel choose to just walk away to avoid racking up more hours and expenses. In addition to the fiduciary duty they undertook as class counsel, the leadership attorneys received coveted appointments from this Court as part of the MDL process. Leadership appointments are made based on the reliability of counsel to invest the time and resources necessary for the litigation. Simply put, the leadership law firms were bound to the case for its duration.

e. The Thirty Percent Award Sought is Supported by Awards in Consumer Cases and in a Variety of Mega–Fund Cases

70. Numerous courts within the Ninth Circuit and elsewhere have approved percentages of 30 percent or more in consumer cases.[48] Moreover, the fact that this is a mega-fund case does not mean that the Court is subject to an arbitrary ceiling in setting a fee percentage. The Ninth Circuit has "declined to adopt a bright-line rule requiring the use of sliding-scale fee

[48] *See, e.g., In re MacBook Keyboard Litig.*, 5:18-cv-02813-EJD, at *25 (N.D. Cal. May 25, 2023) (awarding 30 percent in fees from a $50 million settlement); *In re Lenovo Adware Litig.*, No. 15-MD-02624-HSG, 2019 WL 1791420, at *9 (N.D. Cal. Apr. 24, 2019) (awarding 30 percent in fees in consumer privacy settlement); *Zakskorn v. Am. Honda Motor Co.*, No. 2:11-cv-02610-KJM-KJN, at *24 (E.D. Cal. June 8, 2015) (applying percentage method as a cross-check and noting "factors justifying departure from [the 25 percent] benchmark, as high as 33 percent"); *Objector v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (affirming attorneys' fee award representing one-third of the settlement fund); *Nieberding v. Barrette Outdoor Living, Inc.*, 129 F. Supp. 3d 1236, 1249, 1252 (D. Kan. 2015) (awarding attorneys' fees equal to approximately 33.8 percent of settlement fund).

awards for class counsel in megafund cases[.]"[49] In addition, numerous scholars argue that fee percentages should not necessarily be lower in mega-fund cases.[50] They argue that such a bright-line rule could result in undesirable incentives on the part of plaintiffs' counsel.

71. A simple hypothetical illustrates the concern about arbitrary caps on fee percentages in mega-fund cases. Assume that class counsel are offered a $99 million class settlement (just below the mega-fund amount). And assume that class counsel believe they could recover benchmark attorneys' fees of 25 percent. Assume further that counsel believe that, with little effort, they could convince the defendant to increase the settlement fund to $110 million, particularly with the input of the mediator who has facilitated the negotiations. And assume that for mega-fund cases, a rigid maximum fee exists under the case law—not to exceed 20 percent—whereas the benchmark in non-mega-fund cases is 25 percent. In the non-mega-fund scenario ($99 million settlement), class counsel could recover $24.75 million in fees. In the mega-fund scenario ($110 million settlement), however, even if counsel obtained the maximum 20 percent

[49] *In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 933 (9th Cir. 2020) (citing *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1047 (9th Cir. 2002)); *accord, e.g., In re Lidoderm Antitrust Litig.*, No. 14-md-02521-WHO, 2018 WL 4620695, at *4 (N.D. Cal. Sept. 20, 2018) (noting that "[t]here is no rule in the Ninth Circuit that requires a court to decrease the percentage of the fee award as the size of the settlement increases" (citing *In re Toyota Motor Corp. Unintended Marketing, Sales Pracs. and Prods. Liability Litig.*, No. 8:10ML 02151 JVS (FMOx), 2013 WL 12327929 , at *34 (C.D. Cal. July 24, 2013))).

[50] *See, e.g.*, John C. Coffee, Jr., *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 COLUM. L. REV. 669, 697 (1986); Declaration of Professor Geoffrey P. Miller at 11, *In re Takata Airbag Prods. Liab. Litig.*, No. 1:15-md-02599-FAM (S.D. Fla.) (Dkt. No. 2318-3) (filed Jan. 24, 2018), *available at* https://www.autoairbagsettlement.com/Content/Documents/Exhibit%20C%20to%20Response%20to%20Objections%20HN.pdf; Declaration of Brian T. Fitzpatrick on the Reasonableness of Class Counsel's Requested Award of Attorneys' Fees at 7, *In re Urethane Antitrust Litig.*, No. 2:04-md-01616-JWL (D. Kan.) (Dkt. No. 3269-1) (filed July 15, 2016).

allowed for mega-fund settlements, their fee would be only $22 million. Thus, by maximizing recovery for the class, counsel would recover $2.75 million less in fees. It takes little imagination to assume that at least some attorneys, faced with such a reduced percentage situation, would be tempted to accept the $99 million settlement proposal without pressing for more money for the class. Ensuring robust, non-declining fees provides a powerful incentive for class counsel to recover every last dollar for the class.

72. To be sure, empirical studies reflect that average and median fee awards in mega-fund cases are typically below 20 percent. For instance, an empirical study conducted in 2010 by Professor Brian Fitzpatrick of Vanderbilt University School of Law showed an inverse relationship between fee percentages and the amounts of settlements.[51] Of the mega-fund settlements surveyed by Professor Fitzpatrick where the fund was between $250 million and $500 million—like the one here—the average and median fee awards were 17.8 percent and 19.5 percent, respectively.[52] Similar findings were made by Professors Eisenberg, Miller, and Germano after analyzing data through 2013.[53] These studies are certainly important in any consideration of a fee request in a mega-fund case.

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[51] Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811, 845 (2010).

[52] *Id.* at 839 tbl.11. *See also Ark. Teacher Ret. Sys. v. State St. Corp.*, 25 F.4th 55, 65–66 (1st Cir. 2022) (discussing Professor Fitzpatrick's findings).

[53] Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009–2013*, 92 N.Y.U. L. REV. 937, 947–48 (2017) (describing "scaling effect" where, "as [the] recovery amount increases, the ratio of the size of the attorneys' fee relative to the size of the recovery (*i.e.*, the fee percentage) tends to decrease" and finding that average and median fees for settlements greater than $100 million varied from "a low of 16.6% in 2009 to a high of 25.5% in 2011").

73. In my opinion, however, such empirical studies should not be dispositive. By definition, the median value is the value in the middle of a data set (with half above and half below the middle). Likewise, an average is the sum of all values divided by the number of values. Clearly, neither a median nor a mean is a cap or a maximum.

74. It should not be surprising, therefore, that there are numerous mega-fund cases with fee awards of 30 percent or greater—both within the Ninth Circuit and elsewhere throughout the country. As would be expected, those awards are based on a careful analysis of the specific facts and challenges of a given case. The table below lists 51 mega-fund cases that involved fee awards of 30 percent or greater.[54] Twenty-seven of the cases post-date the 2010 data of Professor Fitzpatrick's 2010 study, and 21 post-date the 2013 data used by of Professors Eisenberg, Miller, and Germano.

TABLE 1: Fee Awards of 30 Percent or More in Mega-Fund Class Actions[55]

Case	Recovery	Fee Award	Trial?
In re Capacitors, 3:14-cv-03264-JD, (N.D. Cal. Mar. 6, 2023)	$165 million	40 percent	No[56]

[54] *See In re Syngenta AG MIR162 Corn Litigation*, No. 2:14-MD-02591-JWL-JPO (D. Kan.) (relying on Professor Klonoff's compilation).

[55] Many additional cases can be found in this District in the 25–29 percent range. *See, e.g.*, *In re Apple Device Performance Litig.*, 5:18-md-02827-EJD, at *35 (N.D. Cal. Feb. 17, 2023) (decision on remand awarding 26 percent in attorneys' fees from a $310 settlement fund); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02420 YGR (DMR) (N.D. Cal. Dec. 10, 2020) (awarding 29.8 percent in attorneys' fees from a $113.45 million common fund), *aff'd,* No. 19-16803 (9th Cir. Apr. 23, 2021); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, at *11–12 (N.D. Cal. Apr. 1, 2013) (awarding 28.5 percent in attorneys' fees from a $1.08 billion common fund settlement).

[56] This settlement was one of several throughout the many stages of this litigation. Trial commenced on two occasions but was never completed. Class counsel recovered in total $604,550,000 and was awarded a total of $187,490,000 in attorneys' fees.

Case	Recovery	Fee Award	Trial?
Cook v. Rockwell Int'l Corp., 2017 WL 5076498 (D. Colo. Apr. 28, 2017)	$375 million	40 percent	Yes
Lobo Exploration Co. v. BP Am. Prod., No. CJ-1997-72 (Oka. Dist. Ct., Beaver Cnty. Dec. 8, 2005)	$150 million	40 percent	No
Simmons v. Anadarko Petroleum Corp., No. CJ-2004-57 (Okla. Dist. Ct., Caddo Cnty., Dec. 23, 2008)	$155 million	40 percent	No
Lauriello v. Caremark RX LLC, No. 01-cv-2003-006630.00 (Ala. Cir. Ct., Jefferson Cnty. Aug. 15, 2016)	$310 million	40 percent	No
In re Merry-Go-Round Enterprises, Inc., 244 B.R. 327 (Bankr. D. Md. 2000)	$185 million	40 percent	No
In re Combustion, Inc., 968 F. Supp. 1116 (W.D. La. 1997)	$127 million	36 percent	No[57]
In re Managed Care Litig. v. Aetna, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003)	$100 million	35.5 percent	No
Haddock v. Nationwide Life Ins. Co., No. 3:01-cv-01552-SRU (D. Conn. Apr. 9, 2015) (Dkt. No. 601)	$140 million	35 percent	No
In re Vitamins Antitrust Litig., No. 99-197, 2001 WL 34312839 (D.D.C. July 16, 2001)	$365 million	34.06 percent	No
In re Lidoderm Antitrust Litig., 2018 WL 4620695 (N.D. Cal. Sept. 20, 2018)	$104.75 million	33.33 percent	No
In re Syngenta AG MIR 162 Corn Litig., 357 F.Supp.3d 1094 (D. Kan. 2018)	$1.5 billion	33.33 percent	Yes

[57] A Missouri class trial was conducted in the parallel government enforcement action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et seq.*, but the private class action based on plaintiffs' tort claims was settled prior to trial.

Case	Recovery	Fee Award	Trial?
Rogowski v. State Farm Life Insurance Company, No. 4:22-cv-00203-RK (W.D. Mo., Apr. 18, 2023)	$325 million	33.33	No[58]
Hale v. State Farm Mut. Auto Ins. Co., 2018 WL 6606079 (S.D. Ill. Dec. 16, 2018)	$250 million	33.33 percent	Yes
In re Loestrin 24 Fe Antitrust Litig., MDL No. 2472 (D.R.I. July 17, 2020)	$120 million	33.33 percent	No
DeLoach v. Phillip Morris Co., No. 1:00-cv-01235, 2003 WL 25683496 (M.D.N.C. Dec. 19, 2003)	$212 million	33.33 percent	No
In re Tricor Direct Purchaser Antitrust Litig., 1:05-cv-00340-SLR (D. Del. Apr. 23, 2009) (Dkt. No. 543)	$250 million	33.33 percent	No
In re Neurontin Antitrust Litig., No. 2:02-cv-01830 (D.N.J. July 6, 2014) (Dkt. No. 114)	$190 million	33.33 percent	No
In re Titanium Dioxide Antitrust Litig., No. 1:10-cv-00318 (D. Md. Dec. 13, 2013) (Dkt. No. 555)	$163.5 million	33.33 percent	No
In re U.S. Foodservice, Inc. Pricing Litig., No. 3:07-md-01894 (AWT) (D. Conn. Dec. 9, 2014) (Dkt. No. 521)	$297 million	33.33 percent	No
In re Urethane Antitrust Litig., No. 2:04-md-01616-JWL (D. Kan. July 29, 2016) (Dkt. No. 3276)	$835 million	33.33 percent	Yes
In re Relafen Antitrust Litig., No. 01-cv-12239-WGY (D. Mass. Apr. 9, 2004) (Dkt. No. 297) (direct purchaser litigation)	$175 million	33.33 percent	No
In re Flonase Antitrust Litig., 951 F. Supp. 2d 739 (E.D. Pa. 2013)	$150 million	33.33 percent	No

[58] A trial was conducted in related litigation, but that case was not part of the settlement.

Case	Recovery	Fee Award	Trial?
City of Greenville v. Syngenta Crop Prot., No. 3:10-cv-00188 (S.D. Ill. Oct. 23, 2012)	$105 million	33.33 percent	No
In re OSB Antitrust Litig., No. 06-cv-00826 (D. Pa. Dec. 9, 2008) (Dkt. No. 947)	$120.7 million	33.33 percent	No
In re Apollo Grp. Inc. Sec. Litig., No. 04-cv-02147-PHX-JAT, 2012 WL 1378677 (D. Ariz. Apr. 20, 2012)	$145 million	33.33 percent	Yes
Cabot East Broward 2 LLC v. Cabot, 2018 WL 5905415 (S.D. Fla. Nov. 9, 2018)	$100 million	33.33 percent	No
In re Buspirone Antitrust Litig., No. 1:01-md-01413-JGK (S.D.N.Y. Apr. Nov. 18, 2003) (Dkt. No. 171)	$220 million	33.30 percent	No
In re Initial Pub. Offering Sec. Litig., 671 F. Supp. 2d 467 (S.D.N.Y. 2009)	$510 million	33.30 percent	No
In re Broiler Chicken Antitrust Litig., 16 C 8637 (N.D. Ill. Oct. 7, 2022)	$181 million	33 percent	No
Standard Iron Works v. ArcelorMittal, No. 08-cv-05214, 2014 WL 7781572 (N.D. Ill. Oct. 22, 2014)	$164 million	33 percent	No
Dahl v. Bain Capital Partners, LLC, No. 1:07-cv-12388 (D. Mass. Feb. 2, 2015) (Dkt. No. 1095)	$590.5 million	33 percent	No
San Allen, Inc. v. Buehrer, No. CV-07-644950 (C.P., Cuyahoga Cnty., Ohio Nov. 25, 2014)	$420 million	32.7 percent	Yes
In re Auto. Refinishing Paint Antitrust Litig., No. MDL-1426, 2008 WL 63269 (E.D. Pa. Jan. 3, 2008)	$105.7 million	32.7 percent	No
Allapattah Services, Inc. v. Exxon Corp., 454 F. Supp. 2d 1185 (S.D. Fla. 2006)	$1.06 billion	31.33 percent	Yes

Case	Recovery	Fee Award	Trial?
In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig., 56 F.3d 295 (1st Cir. 1995)	$220 million	30.9 percent	Yes
In re Domestic Drywall Antitrust Litig., MDL No. 2437 (E.D. Pa. July 17, 2018)	$190 million	30 percent	Yes
Peace Officers' Annuity & Benefit Fund v. DaVita Inc., Civil Action No. 17-cv-0304-WJM-NRN (D. Colo. July 15, 2021)	$135 million	30 percent	No
In re Dole Food Co., Inc. Stockholder Litig., 2016 WL 541917 (Del. Ch. Feb. 10, 2016)	$113 million	30 percent	Yes
Weatherford Roofing Co. v. Employers Nat'l Ins. Co., No. 91-05637 (116th Tex. Dist. Ct., Dallas Cnty. Dec. 1, 1995)	$140 million	30 percent	Yes
In re (Bank of America) Checking Account Overdraft Litig., 830 F. Supp. 2d 1330 (S.D. Fla. 2011)	$410 million	30 percent	No
Tennille v. Western Union Co., No. 09-cv-00938-JLK-KMT, 2014 WL 5394624 (D. Colo. Oct. 15, 2014)	$180 million	30 percent	No
In re Linerboard Antitrust Litig., No. 98-cv-05055, 2004 WL 1221350 (E.D. Pa. June 2, 2004)	$202.5 million	30 percent	No
In re Home-Stake Prod. Co. Sec. Litig., MDL No. 153 (N.D. Okla. Jan. 2, 1990)	$185 million	30 percent	Yes
In re (Chase Bank) Checking Account Overdraft Litig., No. 1:09-md-02036 (S.D. Fla. Dec. 19, 2012) (Dkt. No. 3134)	$162 million	30 percent	No
In re (Citizens Bank) Checking Account Overdraft Litig., No. 1:09-md-02036 (S.D. Fla. Mar. 12, 2013) (Dkt. No. 3331)	$137.5 million	30 percent	No

Case	Recovery	Fee Award	Trial?
In re Informix Corp. Sec. Litig., No. 97-cv-01289-CRB (N.D. Cal. Nov. 23, 1999) (Dkt. No. 471)	$132.2 million	30 percent	No
Kurzweil v. Philip Morris Co., Inc., Nos. 94-civ-2373 (MBM), 94-civ-2546 (BMB), 1999 WL 1076105 (S.D.N.Y. Nov. 30, 1999)	$123 million	30 percent	No
In re Ikon Office Solutions, Inc. Sec. Litig., 194 F.R.D. 166 (E.D. Pa. 2000)	$111 million	30 percent	No
Klein v. O'Neal, Inc., 705 F. Supp. 2d 632 (N.D. Tex. Apr. 9, 2010), *as modified* (June 14, 2010)	$110 million	30 percent	No
In re Prison Realty Sec. Litig., No. 3:99-cv-00458 (M.D. Tenn. Feb. 9, 2001) (Dkt. No. 108)	$104 million	30 percent	No

75. These cases show that, even in mega-fund cases, there is nothing unprecedented about awards of 30 percent or more. In short, while the empirical data calls for caution, it does not call for a bright line rule requiring artificial caps on fee percentages in mega-fund settlements.

76. This case involves extraordinary work by class counsel, a substantial non-reversionary settlement, extremely difficult substantive and class certification challenges, and vigorous opposition by top-flight defense counsel. I believe that an award of 30 percent is reasonable (and, as discussed in ¶¶ 81–87, does not result in a windfall to class counsel).

77. Finally, although I believe that a 30 percent award is reasonable, the Court may wish to take an even more conservative approach to the fee percentage, given that (1) a 30 percent award exceeds the benchmark even for non-mega-fund cases, and (2) empirical studies reflect mean and average percentages of below 20 percent in mega-fund cases. Because I believe that a

30 percent award is reasonable, it follows *a fortiori* that a 25 percent award would not be unreasonably high. However, I would urge the Court not to set a percentage below 25 percent because, in my opinion, such an award would not adequately compensate counsel for the extraordinary results and high degree of risk undertaken.

B. Lodestar Cross-Check

1. A Full-Blown Lodestar Review is Unnecessary

78. The lodestar method involves "multiplying the number of hours reasonably expended by a reasonable hourly rate."[59] A full-blown lodestar analysis can be very labor-intensive and time consuming. By contrast, a lodestar cross-check need not be as rigorous as the full lodestar approach. Were the rule otherwise, all of the advantages of the percentage method over the lodestar would be lost. Thus, a lodestar cross-check "need entail neither mathematical precision nor bean-counting [and] district courts may rely on summaries submitted by the attorneys and need not review actual billing records."[60]

79. Consistent with the above, in my view, only a lodestar cross-check should be done. A full-blown lodestar analysis should not be the primary method used to evaluate the fee request. A full lodestar review—entailing detailed examination of thousands of individual time records—would be a massive undertaking. Moreover, such a review would not eliminate the arbitrary nature of trying to determine what proportion of a particular time entry should be attributed to the class action settlement, the personal injury cases, and/or the government entity cases (see ¶¶ 55, 81). In

[59] *In re Animation Workers Antitrust Litig.*, Master No. 14-CV-4062-LHK, at *6 (N.D. Cal. Nov. 11, 2016) (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944 (9th Cir. 2011)).

[60] *Gould v. Stone*, Case No: C 11-01283 SBA, at *9–10 (N.D. Cal. Sep. 26, 2013) (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306–307 (3rd Cir. 2005) (footnote omitted)).

awarding attorneys' fees, the overarching goal "is to do rough justice, not to achieve auditing perfection."[61] Reviewing 363,344.10 hours of billing records—*i.e.*, more than 185,000 lines of billing records—would be enormously time-consuming and burdensome for the Court. And, as discussed, it would not be obvious for many time entries whether the work benefited more than one category of cases. In the end, such an effort would still entail a significant amount of guesswork.[62] In my opinion, a lodestar cross-check is sufficient to determine whether the fees requested by class counsel would result in a windfall.

80. I have frequently taken the position that when the percentage method is used, a lodestar cross-check is unnecessary.[63] Indeed, the Ninth Circuit (and courts within the Ninth Circuit) have also made clear that a lodestar cross-check is normally not required.[64] Nonetheless, as explained above (¶ 58), the Ninth Circuit has also made clear that, in mega-fund cases, a lodestar

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[61] *Fox. v. Vice*, 563 U.S. 826, 838 (2011) (fee award arising under 42 U.S.C. § 1988).

[62] *Cf. In re Motor Fuel Temperature Sales Practices Litig.,* MDL No. 1840, at *26–27 (D. Kan. Aug. 24, 2016) (in case involving multiple defendants and a fee dispute with one of them (Costco), plaintiffs claimed that they spent 2,200+ hours on Costco issues, 18,000 hours on issues relating to other defendants, and 65,000 hours applicable to all defendants; court did a lodestar cross-check, but not a full-blown lodestar analysis, finding that doing so would entail massive review of time records and thus "would require huge and burdensome satellite litigation").

[63] *See, e.g., Githieya v. Global Tel Link Corporation,* No. 1:15-cv-00986-AT (N.D. Ga. Aug. 30, 2022) ("The Court finds that a lodestar cross-check is not necessary here for the reasons set forth in the declaration of Professor Robert Klonoff.").

[64] *See, e.g., In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 929–30 (9th Cir. 2020) ("encourag[ing]" courts to use the lodestar cross-check); *In re Google Referrer Header Privacy Litig*., 869 F.3d 737, 748 (9th Cir. 2017). (district courts are not required to do a lodestar cross-check), *vacated on other grounds*, *Frank v. Gaos*, 139 S.Ct. 1041 (2019); *Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1050 (9th Cir. 2002) (noting that a lodestar cross-check "may provide useful perspective on the reasonableness of a given percentage award"); *Perez v. Rash Curtis & Assocs.*, No. 4:16-cv-03396-YGR, at *30 (N.D. Cal. Apr. 17, 2020) ("Generally, a district court is 'not required' to conduct a lodestar cross-check to assess the reasonableness of a fee award." (quoting *In re Google Referrer Header Privacy Litig*., 869 F.3d at 748)).

cross-check may be appropriate to ensure that class counsel are not receiving a windfall based on the percentage of the fund that is sought. As a result, it is my opinion that a lodestar cross-check is appropriate here to verify that the 30 percent award sought would not result in a windfall for class counsel.

2. Estimating the Lodestar Given the Multi-Faceted Nature of the Lawsuits

81. This is an unusual and challenging context to apply a lodestar cross-check. The class settlement here involves the resolution of class claims against JLI and certain released parties. It does not involve the consumer class claims against the Altria defendants, nor does the class settlement resolve the claims brought by the government entity cases or the personal injury plaintiffs. Yet, much of the work by plaintiffs' counsel over the past several years was relevant not only to the consumer claims against JLI and the released parties but also to the class claims against the Altria defendants and the claims in the other two categories of cases. For example, the first and second wave motions to dismiss addressed legal issues in all three categories. Many of the experts designated by both sides opined on issues relevant to all of the cases. Similarly, many documents produced by defendants and reviewed by plaintiffs' counsel, and many depositions taken, were relevant to all three categories of cases. There is, accordingly, no simple method for determining the lodestar cross-check approach applicable to this settlement. Unlike the situation where a settlement resolves all claims against all defendants, there is no obvious method of isolating the time entries (or portions thereof) that should count towards the lodestar for this settlement with JLI. To complicate matters further, I am not aware of a case in which a court has grappled with a similar factual context.

82. Despite the complications noted above, I offer what I believe is a reasonable way of estimating a lodestar amount and resulting multiplier for this settlement. I then assess the resulting lodestar multiplier of 1.36, recognizing that after the Court determines the lodestar, it can "increas[e] or decreas[e] the lodestar figure based on a variety of factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented."[65]

83. I am advised that, as of the date of this Declaration, Judge Andler had audited all of the hours used to calculate the $199 million lodestar to ensure the time was expended for the common benefit. The difficult question, however, is: How much of the total lodestar should be allocated to this settlement? As I discuss below, using the total lodestar would vastly inflate the hours that should be attributed to this case. Instead, I propose that one-third of the total lodestar should be allocated to this case. I then explain that this one-third should be further reduced because the fees sought here are only for the settlement with JLI, even though Altria is also part of the class action. After undertaking this very conservative approach, I conclude that the multiplier is, at most, 1.36.

84. **Whether to Use the Entire Lodestar.** One approach would be to treat the entire $199 million as the lodestar applicable to the present class settlement with JLI on the theory that it is not possible to disaggregate the work done in the class action against JLI from the other work done by plaintiffs' counsel. As analogous authority for such an approach, it is often appropriate, in a case involving a settlement with only one of multiple defendants, to award time spent in

[65] *Van Lith v. iHeartMedia + Entm't, Inc.*, No. 1:16-cv-00066-SKO, at *25 (E.D. Cal. Sep. 29, 2017) (cleaned up).

litigating against all defendants.[66] Similarly, when plaintiff counsel is successful on some claims but not on others, "where the successful and unsuccessful claims are 'inextricably intertwined and involve a common core of facts or are based on related legal theories,' a court can award the entire fee."[67] Taking into consideration the full $199 million lodestar, the multiplier would be a negative one, only 0.384 based on a 30 percent award of attorneys' fees.

85. In my view, the above approach does not reflect the work the lawyers did in just this case. The theory of courts awarding fees based on hours attributable to all defendants is based on joint and several liability concepts.[68] While that approach perhaps makes sense in some instances when the defendants are all part of a single case, I am less comfortable with it when the hours at issue are attributable, as here, to three different sets of cases. In my opinion, the Court should take a more conservative approach to determine how much of the $199 million lodestar can be fairly attributed to the class action.

86. **A Better Approach: Use One-Third of the Total Lodestar.** As noted throughout this Declaration, there are three main categories of cases: the class action, the personal injury cases, and the government entity cases (cases on behalf of Native American Tribes joined later). All three categories are substantial. As a result, I would urge the Court to divide the $199 million lodestar figure by three—a third allocated to the consumer class actions, a third allocated to the personal

[66] *Z.F. v. Ripon Unified Sch. Dist.*, No. 2:10-cv-00523-TLN-CKD, at *8 (E.D. Cal. Mar. 20, 2017) (noting that it may be "proper for a court to award attorneys' fees against one defendant for time spent litigating against another" (citing authorities)).

[67] *U.S. & N.Y. ex rel. Nichols v. Comput. Scis. Corp.,* 499 F.Supp. 3d 32, 44 (S.D.N.Y. 2020) (quoting *Quaratino v. Tiffany & Co.,* 166 F.3d 422, 425 (2d Cir. 1999)).

[68] *See, e.g., Z.F. v. Ripon Unified Sch. Dist.*, No. 2:10-cv-00523-TLN-CKD, at *8 (E.D. Cal. Mar. 20, 2017) (discussing application of joint and several fee liability).

injury cases, and a third allocated to the governmental entity cases. Under this approach, a third of the total lodestar would be about $66.33 million.

87. **Adjusting the One-Third to Exclude Altria.** One additional adjustment is necessary to the $66.33 million lodestar attributable to the class action. The class action involves the Altria defendants as well as the JLI defendants. The Altria defendants have since settled the class case for $45.5 million, but that settlement is not at issue in the current attorneys' fees request. As one last calculation to ensure the most conservative approach, the lodestar figure should be reduced to reflect that the Altria defendants are not part of this settlement. The total settlement ($255 million here and $45.5 million for Altria) is just over $300 million. Put in percentage terms, 15 percent of the total consists of the Altria settlement and 85 percent consist of the JLI settlement. Reducing the $66.33 million figure by 15 percent would yield a JLI-specific consumer class lodestar of approximately $56.38 million. This works out to a multiplier of 1.36. A 1.36 multiplier is very modest—given the facts of this case—and does not in any way suggest a windfall.

3. Scrutiny of the Lodestar

88. Before the Court can use the total lodestar hours, it must determine that (1) the hours are not excessive, and (2) the billing rates assigned to the timekeepers are reasonable. I address those issues in this section.

a. The Hours Spent by Class Counsel

89. My calculation of the 1.36 multiplier assumes that the lodestar figure ($199 million) represents legitimate time and that the work was performed efficiently and without unnecessary staffing. I have not reviewed the time records in this case, but all of the lodestar hours were audited by Judge Andler (and prior to that, by Lieff Cabraser). To the extent that the Court has concerns

about the $199 million figure, despite the auditing by Judge Andler and Lieff Cabraser, that would impact the lodestar and thus, in turn, the multiplier. But the auditing process appears to have been a rigourous one.

90. I have not seen any red flags suggesting excessive hours were billed. The audit process helped to ensure that there were no unnecessary inefficiencies (*see* ¶ 45). Indeed, I understand from class counsel that some hours were not even included in the hours submitted for auditing because of counsel's determination that the hours would not satisfy the strict audit criteria. Moreover, reviewing the tasks performed by the co-lead firms, it appears that each firm was careful to assign appropriate level timekeepers to the various tasks. Partners worked on higher-level tasks, such as conducting oral arguments, working on major briefs, working with experts, taking depositions, conducting settlement negotiations, and performing trial roles (in the bellwether entity trial by San Francisco Unified School District). Associates also worked on discovery, depositions, expert preparation, and trial preparation. Document review was largely done by associates, contract attorneys, and staff attorneys. Paralegals assisted with the review of documents, prepared documents and other materials for depositions and expert reports, assisted with the preparation of filings, and performed other administrative tasks that were necessary to the litigation.

91. For purposes of a lodestar cross-check, this Court can rely on its own observations of counsel and also on the careful auditing process that the Court implemented.

b. The Billing Rates Proposed by Class Counsel are Reasonable

92. Before using the $199 million figure (or the figure including future hours), the Court must determine that the billing rates used for timekeepers are reasonable. Given the many timekeepers involved here, I have not reviewed the hourly rate designated by each one. Nor do I

think that such an intensive review of so many timekeepers is required for a lodestar cross-check. Rather, I have looked at the average hourly rates for various categories of timekeepers, which are $324 for paralegals/staff; $351 for staff attorneys; $371 for contract attorneys; $501 for associates; $775 for of counsel; and $819 for partners. I have also looked at the billing rates for the five timekeepers at each of the co-lead firms who billed the most hours. Those rates, at their highest, are $1,100 for a partner, $750 for an of counsel, $750 for an associate, and $475 for a staff attorney.

93. Generally, a reasonable hourly rate is determined by looking at attorney and staff rates in "the relevant community," *i.e.*, the "forum in which the district court sits."[69] In my opinion, the rates are reasonable based on billing rates previously approved for lawyers involved here and other lawyers who specialize in complex class actions.

94. Focusing on the co-lead law firms in the MDL, the Northern District of California has approved Girard Sharp's attorneys' fees at the following rates: $875–$1,195 per hour for partners; $385–$850 per hour for associates; and $200–$250 per hour for legal assistants.[70] Lieff Cabraser Heimann & Bernstein partners have been approved at rates ranging between $610–$1,025 per hour, associates at $465 per hour, summer law clerks at $370 per hour, and paralegals at $395 per hour.[71] Keller Rohrback timekeepers have been approved at rates ranging between

[69] *In re Bluetooth Headset Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (focusing on the "reasonable hourly rate for the region and for the experience of the lawyer"); *accord, e.g., Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-07098-AB (SHx), at *10–11 (C.D. Cal. Mar. 24, 2015) (noting that "courts determine the reasonableness of a rate based upon the rates prevailing in that district for similar services by lawyers of reasonably comparable skill, experience and reputation" (cleaned up)).

[70] *In re MacBook Keyboard Litig*., No. 5:18-cv-02813-EJD, 2023 BL 179706 (N.D. Cal. May 25, 2023).

[71] *Cottle v. Plaid Inc.*, 20-cv-03056-DMR, at *18 (N.D. Cal. July 20, 2022).

$485–$1,325 for partners, $350–$690 for associates, and $220–$485 for support staff.[72] And Weitz and Luxenberg has had fees approved with billing rates for partners ranging from about $400—$970, non-partner attorney rates (including senior attorneys, of counsel, and associates) ranging from $185—$850, and support staff rates as high as $440.[73] In my opinion, based on these prior approved rates, and my knowledge of rates generally in this District for complex litigation, the rates proposed here are reasonable.

95. The rates proposed here are also reasonable when compared to those awarded to other prominent plaintiff firms in other complicated nationwide MDL litigation in this District. For example, in *Volkswagen Clean Diesel*, Judge Breyer approved class counsel's hourly fees at rates as high as $1,600 for partners and $790 for associates.[74] In *Nitsch v. DreamWorks Animation SKG, Inc.*, Judge Koh approved billing rates for partners as high as $1,200 per hour.[75] In *Carlotti v. ASUS Computers International*, Judge Ryu approved class counsel's rates at $950 to $1,025 per hour for partners, $450 to $900 per hour for other attorneys, and $225 to $275 per hour for legal assistants.[76] In *In re Lenovo Adware Litig.*, Judge Gilliam found attorney rates ranging from $365 to $950 per hour to be reasonable.[77] And in *In re Lidoderm Antitrust Litig.*, this Court approved

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[72] *In re Volkswagen "Clean Diesel" Mktg. Sales Practices, & Prods. Liab. Litig.*, 15-md-02672-CRB, at *20-21 (N.D. Cal. Nov. 9, 2022).

[73] *In re Anthem, Inc. Data Breach Litigation*, No. 15-MD-02617-LHK, at *30 (N.D. Cal. Aug. 17, 2018).

[74] *In re Volkswagen "Clean Diesel" Marketing, Sales Practices & Prods Liab. Litig.*, No. 3:15-md-02672-CRB, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017).

[75] No. 14-CV-04062-LHK, 2017 WL 2423161, at *9 (N.D. Cal. June 5, 2017).

[76] *Carlotti v. ASUS Comput. Int'l*, No. 18-cv-03369-DMR, at *8 (N.D. Cal. June 22, 2020).

[77] No. 15-md-02624-HSG, at *14–15 (N.D. Cal. Apr. 24, 2019). *See also*, *e.g., Dickey v. Advanced Micro Devices* No. 15-cv-04922-HSG, at *13 (N.D. Cal. Feb. 21, 2020) (approving attorney rates as high as $1,000); *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST (N.D. Cal. Dec. 17, 2018) (finding rates from $400 to $650 for associates, and rates ranging from $650 to

rates of $350–$1,050 for partners and senior counsel, $300–$675 for associates, and $100–$400 for paralegals and other litigation staff.[78] The rates proposed here are in line with those in these other cases.

96. It is also instructive, in gauging billing rates for class counsel, to look at the standard rates of the defense law firms who litigated against the plaintiffs here.[79] As one court noted, "hourly rates or total fees charged by defense counsel are relevant to the question of what is a reasonable hourly rate or total fee for a prevailing plaintiff's counsel."[80] At Kirkland & Ellis, top-billing partners charge $1,845 per hour, and associates charge as much as $1,165 per hour.[81] Class counsel's rates are well below these Kirkland rates.

c. The Blended Rates are Reasonable and, In Any Event, are Not Especially Probative

97. The number of hours that make up the approximately $199 million lodestar is approximately 363,344.1. That works out to an overall blended rate of about $548. That blended rate is consistent with or below blended rates in various other major multi-state class actions. For example, in *NFL Concussion*, the court approved a blended rate or average for all timekeepers of $861.28 per hour for Seeger Weiss specifically, and a blended rate of $623.05 per hour for all

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$1,250 for partners or senior counsel were reasonable).

[78] *In re Lidoderm Antitrust Litig.*, 2018 WL 4620695 , at *2 (N.D. Cal. Sept. 20, 2018).

[79] *See, e.g.*, *Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760, 768 n.18 (7th Cir. 1982) ("The rates charged by the defendant's attorneys provide a useful guide to rates customarily charged in this type of case." (citation omitted)).

[80] *McClain v. Lufkin Indus. Inc.*, 649 F.3d 374, 388 (5th Cir. 2011).

[81] Samantha Stokes, *Will Billing Rates for Elite Firms Rise More in 2020?*, THE AMERICAN LAWYER (July 30, 2020), https://www.law.com/americanlawyer/2020/07/30/will-billing-rates-for-elite-firms-rise-more-in-2020/ (last visited June 20, 2023).

common benefit counsel.[82] In *Hayes v. Magnachip Semiconductor Corp.*, the court approved a blended rate of $600 per hour.[83] In *Coleman v. Newsom*, the court approved a blended rate of $775 per hour.[84]

98. In any event, in my opinion, it is not particularly useful to compare the blended rate here with blended rates in other cases, especially those in which the tasks performed were very different. Much of the work here was, by its very nature, high-level work and thus not suitable for a paralegal or low-level attorney.[85] It should not be surprising, therefore, that a number of the timekeepers with the highest billable hours are partners. *See* ¶ 47. The law firms could not assign paralegals or recent law school graduates to brief and argue class certification motions, conduct high-level settlement negotiations, interview and work with experts, or brief and argue complicated substantive issues. Given the nature of the tasks that make up many of the hours spent by class counsel, the blended rate here is very reasonable. Simply comparing the blended rates here to those in other cases—in which the mix of tasks performed may have been very different—is not a very probative exercise.

d. Additional Expected Hours are Properly Included in the Multiplier

[82] *See In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, slip op. at 20-21 (E.D. Pa. May 24, 2018) (Dkt. No. No. 10019) (approving lodestar for Seeger Weiss); *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1635648, at *9 (E.D. Pa. Apr. 5, 2018) (approving blended rate of $623.05 per hour for all common benefit counsel).

[83] Case No.14-cv-01160-JST, at *13 (N.D. Cal. Nov. 21, 2016).

[84] No. 2:90-cv-0520 KJM DB P, at *6 (E.D. Cal. Feb. 11, 2019).

[85] *See, e.g.*, *Young v. Polo Retail, LLC*, No. 02-cv-4546-VRW, 2007 WL 951821, at *7 (N.D. Cal. Mar. 28, 2007) ("[T]he central role of settlement negotiations in this litigation—and the central role of senior attorneys in those negotiations—suggest that typical blended hourly rates . . . are inappropriate here."); *In re HPL Tech., Inc. Sec. Litig.*, 366 F. Supp. 2d 912, 921 (N.D. Cal. 2005) (to the same effect).

99. When calculating the lodestar, courts routinely take into account hours that class counsel reasonably anticipate spending on the matter after finalization of the settlement (*e.g.*, hours to be spent on claims administration issues).[86] Here, as noted, class counsel have devoted an additional 300 hours to this settlement at an average hourly rate of $800, and expect to spend another 200 hours at a blended rate of $750 to administer the settlement. These additional hours, if added in full to the lodestar, would reduce the multiplier slightly from the 1.36 to 1.35.

4. A Multiplier of 1.36 Is Justified Based on the Facts

100. In determining whether a multiplier of above or below 1.0 is appropriate, courts consider "the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment."[87]

101. As discussed below, a 1.36 multiplier is fully justified based on the specific circumstances here. Indeed, the Ninth Circuit has approved multipliers as high as 3.65,[88] and has noted that even a multiplier of 6.85 was "well within the range of multipliers that courts have allowed."[89] A district court in this Circuit has cited a multiplier as high as 5.2 as within "the range

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[86] *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), slip op at 8 (N.D. Cal. Mar. 17, 2017) (granting fee request reserving "an additional 21,000 hours" for post-settlement work); *Reyes v. Bakery & Confectionery Union*, 281 F. Supp. 3d 833, 853, 856–57 (N.D. Cal. 2017) (including estimated hours for "future work" related to, *inter alia*, "managing class members' claims").

[87] *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (cleaned up).

[88] *Vizcaino v. Microsoft Corp.,* 290 F.3d 1043, 1051–52 (approving multiplier of 3.65 and including an appendix citing multipliers as high as multipliers as high as 19.6); *In re Hyundai & Kia Fuel Economy Litig.,* 926 F.3d 539, 572 (9th Cir. 2019) (en banc) (citing with approval *Vizcaino*'s endorsement of a 3.65 multiplier).

[89] *Steiner v. Am. Broad. Co.*, 248 F. App'x 780, 783 (9th Cir. 2007). *See also In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Antitrust Litig.*, 768 F. App'x 651, 653 (9th Cir. 2019) (approving multiplier of 3.66).

of acceptable lodestar multipliers."[90] Taking into consideration the results obtained here, the quality of representation, and the risk undertaken, it is my opinion a multiplier of 1.36 is reasonable.

i. Results Obtained

102. As explained in ¶¶ 60–61, this settlement represents an excellent result for the class. Every eligible class member who files a claim will recover a cash payment. Depending on the claims rate, the payments may amount to a significant portion of what class members could have recovered at trial. *See* ¶ 60.[91]

ii. Quality of Representation

103. As discussed in ¶ 68, the quality of representation in this case has been superb. Class counsel won critical battles on dispositive motion and on class certification. This outstanding work is underscored by the substantial non-reversionary settlement achieved for the class.[92] Class counsel bring vast complex litigation experience to the table. Indeed, the multiplier

[90] *Noll v. eBay, Inc.,* 309 F.R.D. 593, 610 (N.D. Cal. 2015) (citing *Craft v. Cnty. of San Bernardino,* 624 F. Supp.2d 1113, 1125 (C.D. Cal. 2008) (lodestar cross-check multiplier of 5.2)). *See also Gutierrez v. Wells Fargo Bank, N.A.,* No. C 07-05923 WHA, 2015 WL 2438274, at *7 (N.D. Cal. 2015) (5.5 multiplier applied to lead counsel's lodestar).

[91] *See generally In re MacBook Keyboard Litig.*, 5:18-cv-02813-EJD, at *15 (N.D. Cal. May 25, 2023) (noting that the $50 million settlement fund represented "approximately 9% to 28% of the total estimated damages at trial"); *Uschold v. NSMG Shared Servs., LLC*, 333 F.R.D. 157, 171 (N.D. Cal. 2019) ("It is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial." (cleaned up)); *DeStefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, at *19 (N.D. Cal. Feb. 11, 2016) (settlement resulting in "approximately 9.5 percent" of "likely recoverable damages" after deducting fees and costs, was "well within the range of percentages approved in [similar cases]"); *In re Toys "R" US-Delaware, Inc.*, 295 F.R.D. 438, 454 (C.D. Cal. 2014) (noting favorably in awarding attorneys' fees that the settlement represented between 5% and 30% of the recovery that might have been obtained had the case proceeded to trial).

[92] *See, e.g.*, *Wing v. Asarco Incorporated*, 114 F.3d 986, 989 (9th Cir. 1997) (the district

in all likelihood would have been much lower had less experienced counsel handled the case, because those attorneys would have had to spend significantly more time to perform the same tasks. As Judge Chen observed, "[c]lass counsel should not be 'punished' for efficiently litigating this action, or for otherwise providing class members with the benefits of their experience gained litigating similar class cases. Class members are well-served when they are represented by competent and experienced counsel."[93] In my opinion, it is fair and proper to recognize class counsel's extensive experience and expertise in evaluating the 1.36 multiplier.

iii. Risk

104. In percentage cases using a lodestar cross-check, it is appropriate to consider risk when evaluating a multiplier.[94] As discussed in ¶¶ 62–67, class counsel took an enormous risk that they would recover nothing for the years of time spent on this case and the enormous out-of-pocket expenses they incurred.

5. The Multiplier Is Justified in Comparison with Other Mega-Fund Cases

court "stress[ed] the first-rate job the lawyers did . . . and the exceptional results obtained, which the court viewed as especially remarkable in light of the quality of opposition counsel"); *Trosper v. Stryker Corp.*, No. 13-CV-00607-LHK, 2015 WL 5915360, at *1 (N.D. Cal. Oct. 9, 2015) ("Class Counsel's efforts in investigating this case, in engaging in successful motions practice, and in working with various experts were essential in effectuating a substantial settlement for the class.").

[93] *Bayat v. Bank of the West*, No. C-13-2376 EMC, 2015 WL 1744342, at *9 (N.D. Cal. Apr. 15, 2015).

[94] *See, e.g., In re Bluetooth Headset Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (noting that risk of nonpayment is among the factors courts consider when evaluating if a multiplier is appropriate).

105. Multipliers exceeding the 1.36 multiplier here have been approved in numerous mega-fund cases. Indeed, based on exceptional results and risks incurred, multipliers of over 5.0 have been approved, as illustrated by the following table:

TABLE 2: Examples of Multipliers Over 5.0 in Mega-Fund Class Actions

Case	Recovery	Multiplier	Trial?
Stop & Shop Supermarket Co. v. Smith-Kline Beecham Corp., No. 03-cv-04578, 2005 WL 1213926 (E.D. Pa. May 19, 2005)	$100 million	15.6	No
Lobo Exploration Co. v. BP Am. Prod., No. CJ-1997-72 (Oka. Dist. Ct., Beaver Cnty. Dec. 8, 2005)	$150 million	8.7	No
In re Buspirone Antitrust Litig., No. 1:01-md-01413-JGK (S.D.N.Y. Apr. 18, 2003) (Dkt. No. 171)	$220 million	8.46	No
New England Carpenters Health Benefits Fund v. First Databank, Inc., No. CIV.A. 05-11148PBS, 2009 WL 2408560 (D. Mass. Aug. 3, 2009)	$350 million	8.3	No
In re Rite Aid Corp. Sec. Litig., 362 F. Supp. 2d 587 (E.D. Pa. 2005)	$126.6 million	6.96	No
In re Cendant Corp. Litig., 243 F. Supp. 2d 166 (D.N.J. 2003), *aff'd*, 404 F.3d 173 (3d Cir. 2005)	$3.18 billion	6.87	No
In re 3COM Corp. Sec. Litig., No. C-97-21083 (N.D. Cal. Mar. 9, 2001)	$259 million	6.67	No
In re Credit Default Swaps Antitrust Litig., No. 1:13-md-02476, 2016 WL 2731524 (S.D.N.Y. Apr. 26, 2016)	$1.86 billion	6.2	No
In re Cardinal Health Inc. Sec. Litig., 528 F. Supp. 2d 752 (S.D. Ohio 2007)	$600 million	6	No

Case	Recovery	Multiplier	Trial?
In re Charter Commc'ns, Inc. Sec. Litig., No. 4:02-cv-01186-CAS, 2005 WL 4045741 (E.D. Mo. June 30, 2005)	$146.2 million	5.6	No
Roberts v. Texaco, 979 F. Supp. 185 (S.D.N.Y. 1997)	$115 million	5.5	No
Gutierrez v. Wells Fargo Bank, N.A., No. C 07-05923 WHA (N.D. Cal. May 21, 2015)	$203 million	5.5	Yes
In re Enron Corp. Sec., Derivative & ERISA Litig., 586 F. Supp. 2d 732 (S.D. Tex. 2008)	$7.22 billion	5.21	No

106. In sum, the modest 1.36 multiplier demonstrates that a 30 percent award would not result in a windfall to class counsel.

VIII. THE PROPOSED SERVICE AWARDS ARE REASONABLE

107. Class counsel seek service awards for the 86 class representative plaintiffs ranging from $5,000 to $33,000. In my view, these proposed service awards are reasonable.

108. In the Northern District of California, the presumptive service award is $5,000.[95] However, "a higher award may be appropriate where class representatives expend significant time and effort on the litigation and face the risk of retaliation or other personal risks; where the class overall has greatly benefitted from the class representatives' efforts; and where the incentive awards represent an insignificant percentage of the overall recovery."[96] Courts often look to "the

[95] *Cottle v. Plaid Inc.*, 20-cv-03056-DMR, at *33 (N.D. Cal. Nov. 19, 2021) ("The request of $5,000 is reasonable as that amount is the presumptive incentive award in the Northern District of California." (cleaned up)).

[96] *In re Wells Fargo & Co.*, 445 F. Supp. 3d 508, 534 (N.D. Cal. 2020).

extent of the plaintiff's personal involvement in the lawsuit in terms of discovery responsibilities and/or testimony at depositions or trial."[97] Moreover, courts frequently evaluate service awards "in comparison to the total recovery on behalf of the class."[98]

109. In this case, class counsel analyzed the contribution of each class representative through a point system to ensure that each would receive a service award that corresponds with the representative's particular contributions. *See* ¶ 49. The proposed awards range from $5,000 to $33,000 depending on, for example, whether the representative is still in the case, completed fact sheets, produced documents, responded to written discovery and sat for deposition. The total amount sought for service awards is $774,600.00, representing only 0.304 percent of the $255 million settlement. This low percentage is well within the norm.[99] Without the class representatives, the class action could not have gone forward. Awards well above those sought here are not unprecedented in this District and elsewhere when justified by the particular contributions of the representatives.[100] I see no red flags here.

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[97] *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 257 (E.D. Pa. 2011).

[98] *Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd.*, 565 F. Supp. 2d 49, 57 (D.D.C. 2008).

[99] *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving service award comprising 0.56% of the settlement fund); *In re MacBook Keyboard Litig.*, 5:18-cv-02813-EJD, at *28 (N.D. Cal. May 25, 2023) (approving service awards representing 0.12% of the settlement fund).

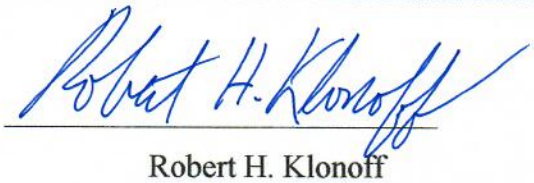
[100] *See, e.g., In re High-Tech Employee Antitrust Litig.*, No. 11-cv-02509-LHK, 2015 WL 5158730, at *17–18 (N.D. Cal. Sept. 2, 2015) (approving $80,000–$140,000 service awards); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (approving $50,000 service award)**;** *Guilbaud v. Sprint Nextel Corp.,* No. 3:13-CV-04357-VC, 2016 WL 7826649 at *4 (N.D. Cal. April 15, 2016) (approving $10,000 service awards); *Harrison v. Bank of Am. Corp.*, 19-cv-00316-LB, at *11 (N.D. Cal. Nov. 24, 2021) (approving $7,500 service awards); *Nelson v. Avon Prod., Inc.,* No. 13-CV-02276-BLF, 2017 WL 733145, at *7 (N.D. Cal. Feb. 24, 2017) (approving $10,000 service award); *Dyer v. Wells Fargo Bank*, N.A., 303 F.R.D. 326, 335 (N.D. Cal. 2014) (approving $10,000 service award); *In re Titanium Dioxide Antitrust Litig.,* No. 10-cv-

IX. CONCLUSION

110. In my opinion, the attorneys' fees and service awards sought by class counsel are reasonable and should be approved.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on information known to me.



Robert H. Klonoff

June 23, 2023

00318(RDB), 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (approving $125,000 service award); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-cv-03066-JEC, 2008 WL 11319972, at *3 (N.D. Ga. Mar. 4, 2008) (approving $100,000 service awards); *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1635648, at *10–11 (E.D. Pa. Apr. 5, 2018) (approving $100,000 service awards); *Velez v. Novartis Pharmaceutical Corp.*, No. 04-cv-09194-CM, 2010 WL 4877852, at *4, *8, *28 (S.D.N.Y. Nov. 30, 2010) (approving $125,000 service awards).

APPENDIX A

CURRICULUM VITAE

ROBERT H. KLONOFF
Lewis & Clark Law School
10101 S. Terwilliger Blvd.
Portland, Oregon 97219
Tel: 503-768-6935 (Office)
E-Mail: klonoff@lclark.edu

Date of Birth: March 15, 1955
Place of Birth: Portland, Oregon

EDUCATION:

J.D., Yale University, 1979

A.B., University of California, Berkeley, 1976, Majored in Political Science/Economics (Highest Honors)

WORK EXPERIENCE:

Current Positions:

Jordan D. Schnitzer Professor of Law, Lewis & Clark Law School (since 2014)

Panelist, FedArb (alternative dispute resolution)

Prior Positions:

Dean of the Law School, Lewis & Clark Law School (2007-2014)

Douglas Stripp/Missouri Endowed Professor of Law, University of Missouri-Kansas City School of Law (2003-2007)

Jones Day, Washington, D.C. (Partner, 1991-July 2003; Of Counsel, 1989-1991, 2003- 2007)

Adjunct Professor of Law, Georgetown University Law Center (class action law and practice) (1999-2003)

Visiting Professor of Law, University of San Diego School of Law (1988-1989)

Assistant to the Solicitor General of the United States (1986-1988)

Assistant United States Attorney (Criminal Division, District of Columbia) (1983-1986)

Associate, Arnold & Porter, Washington, D.C. (1980-1983)

Law Clerk to the Honorable John R. Brown, Chief Judge, United States Court of Appeals for the Fifth Circuit (1979-1980)

Summer Associate, Baker & Botts, Houston, and Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C. (1978)

Summer Associate, Sidley & Austin, Washington, D.C. (1977)

SPECIAL HONORS AND ACHIEVEMENTS:

Member, Council of the American Law Institute

Recipient, Lewis & Clark Law School's 2020 Leo Levenson Award for Excellence in Teaching (the law school's most prestigious award)

Recipient, 2018 Albert Nelson Marquis Lifetime Achievement Award in the field of law from *Who's Who in America*

Member, 2011-2017, United States Judicial Conference Advisory Committee on Civil Rules (appointed by Chief Justice John G. Roberts, Jr., in 2011 as the sole voting member from the law school academy; reappointed May 2014 for a second three-year term)

Elected Member, International Association of Procedural Law

Fulbright Specialist Scholar at the University of Hong Kong Faculty of Law (2016)

Recipient, Oregon Consular Corps Award for Individual Achievement in International Outreach, Portland, Oregon (May 2013)

Associate Reporter, American Law Institute's *Principles of the Law of Aggregate Litigation* (class action project; drafts presented at several annual meetings; final version approved by full ALI in May 2009 annual meeting and published in May 2010)

Fellow, American Academy of Appellate Lawyers

Sustaining Life Fellow, American Bar Foundation

Academic Fellow, Pound Institute

Recipient, 2007 Award for Outstanding UMKC Law Professor (based on vote of 3d year class)

2007 UMKC Law School Commencement Speaker (based on vote of 3d year class)

Recipient, 2006 UMKC Law School Elmer Pierson Teaching Award for Most Outstanding Teacher in the Law School (selected by the Dean)

Recipient, 2005 President's Award for Outstanding Service from the UMKC Law School Foundation

Reporter, 2005 National Conference on Appellate Justice (co-sponsored by the Federal Judicial Center, National Center for State Courts, and other organizations)

Co-Recipient, District of Columbia Bar's Frederick B. Abramson Award for Superior Service to the Community (June 1998)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant to the Solicitor General of the United States (1986, 1987)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant United States Attorney (1984, 1985)

The Benjamin N. Cardozo Prize for Best Moot Court Brief for Academic Year 1978-1979, Yale Law School

Semi-Finalist, Moot Court Oral Argument, Yale Law School (Fall, 1978)

Phi Beta Kappa

U.C. Berkeley's Most Outstanding Political Science Student (1976)

The Edward Kraft Award for Outstanding Work as a Freshman Student, U.C. Berkeley (1974)

MEMBERSHIPS:

U.S. Supreme Court Bar

Various Federal Circuit and District Courts

District of Columbia Bar

Missouri State Bar

Oregon State Bar

Multnomah County Bar

American Law Institute

American Bar Association

American Bar Association Committee on Class Actions & Derivative Suits (Section of Litigation)

PUBLICATIONS:

Books:

Wright & Miller, *Federal Practice and Procedure* (co-author with sole responsibility for the three volumes devoted to class actions)

Castanias & Klonoff, *Federal Appellate Practice in a Nutshell* (West 3d ed. 2023)

Klonoff, *Introduction to the Study of U.S. Law: Cases and Materials* (West 2d ed. 2021) (with teacher's manual)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 6th ed. 2021)

Klonoff, *Federal Multidistrict Litigation in a Nutshell* (West 2020)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 5th ed. 2017)

Castanias & Klonoff, *Federal Appellate Practice in a Nutshell* (West 2d ed. 2017)

Klonoff, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 4th ed. 2017) (with teacher's manual)

Klonoff, *Introduction to the Study of U.S. Law: Cases and Materials* (West 2016) (with teacher's manual)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 4th ed.) (2012)

Klonoff, Bilich & Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 3d ed.) (2012) (with teacher's manual)

Klonoff (associate reporter), *Principles of the Law of Aggregate Litigation*, American Law Institute Publications (2010) (along with Samuel Issacharoff, reporter, and associate reporters Richard Nagareda and Charles Silver)

Castanias & Klonoff, *Federal Appellate Practice and Procedure in a Nutshell* (Thomson West) (2008)

Klonoff & Colby, *Winning Jury Trials: Trial Tactics and Sponsorship Strategies* (NITA 3d ed.) (2007)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 3d ed.) (2007)

Klonoff, Bilich & Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (Thomson West 2d ed.) (2006) (with teacher's manual)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 2d ed.) (2004)

Klonoff & Colby, *Winning Jury Trials: Trial Tactics and Sponsorship Strategies* (Lexis Nexis 2d ed.) (2002)

Klonoff & Bilich, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West Group 2000)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West Group 1999)

Klonoff & Colby, *Sponsorship Strategy: Evidentiary Tactics for Winning Jury Trials* (Michie Co. 1990)

Articles and Book Chapters:

Klonoff, *COVID-19 Aggregate Litigation: The Search for the Upstream Wrongdoer*, 91 Fordham L. Rev. 385 (2022)

Klonoff, *3M's Bankruptcy Maneuver Raises Issues for Justice System* (Law 360, Aug. 11, 2022)

Francis McGovern: The Consummate Facilitator, Teacher, and Scholar, 84 Law & Contemporary Problems 1 (2021) (co-author)

Klonoff, *International Handbook on Class Actions*, chapter on the Future of U.S. Aggregate Litigation, Cambridge University Press (2021)

Klonoff, *The Judicial Panel on Multidistrict Litigation: The Virtues of Unfettered Discretion*, 89 UMKC L. Rev. 1003 (2021)

Klonoff, *Class Action Objectors: The Good, the Bad, and the Ugly*, 89 Fordham L. Rev. 475 (2020)

Klonoff, *Foreword—Class Actions, Mass Torts, and MDLs:The Next 50 Years*, 24 Lewis & Clark Law Review 359 (2020)

Application of the New Discovery Rules in Class Actions: Much Ado About Nothing, 71 Vanderbilt L. Rev. 1949 (2018)

Class Actions in the U.S. and Israel: A Comparative Approach, 19 Theoretical Inquiries in the Law 151 (2018) (co-author)

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The Remedy For Election Fraud Is A New Election, Law 360 (July 20, 2017) (www.law360.com/whitecollar/articles/946569/the-remedy-for-election-fraud-is-a-new-election)

Class Actions in the Year 2025: A Prognosis, 65 Emory L.J. 1569 (2016)

Why Most Nations Do Not Have U.S.-Style Class Actions, 16 BNA Class Action Litigation Report, Vol. 16, No. 10, at 586 (May 22, 2015) (selected for presentation at the May 2015 World Congress of the International Association of Procedural Law, Istanbul, Turkey)

Federal Rules Symposium: A Tribute to Judge Mark R. Kravitz -- Introduction to the Symposium, 18 Lewis & Clark L. Rev. 583 (2014) (co-author)

Class Actions for Monetary Relief Under Rule 23(b)(1)(A) and (b)(1)(B): Does Due Process Require Notice and Opt-Out Rights?, 82 Geo. Wash. L. Rev. 798 (2014)

The Decline of Class Actions, 90 Wash. U. (St. Louis) L. Rev. 729 (2013)

Reflections on the Future of Class Actions, 44 Loy. U. Chi. L.J. 533 (2013)

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Introduction and Memories of a Law Clerk, 47 Houston L. Rev. 529, 573 (2010)

ALI's Aggregate Litigation Project Has Global Impact, 33 ALI Reporter 7 (Fall 2010)

Book Review, *In the Public Interest,* 39 Env. Law 1225 (2009)

The Public Value of Settlement, 78 Fordham L. Rev. 1177 (2009)(co-author)

Making Class Actions Work: The Untapped Potential of the Internet, 69 U. Pitt. L. Rev. 727 (co-author)(2008), adapted and published in 13 J. Internet Law 1 (2009)

The Class Action Fairness Act: An Ill-Conceived Approach to Class Settlements, 80 Tul. L. Rev. 1695 (co-author) (2006)

The Twentieth Anniversary of Phillips Petroleum v. Shutts, *Introduction to the Symposium*, 74 UMKC L. Rev. 433 (2006)

The Adoption of a Class Action Rule: Some Issues for Mississippi to Consider, 24 Miss. C. L. Rev. 261 (2005)

Antitrust Class Actions: Chaos in the Courts, 11 Stan. J. L. Bus. & Fin. 1 (2005), reprinted in Litigation Conspiracy: An Analysis of Competition Class Actions

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The Judiciary's Flawed Application of Rule 23's "Adequacy of Representation" Requirement, 2004 Mich. St. L. Rev. 671 (2004)

Class Action Rules — Are They Driven by Substance?, 1 Class Action Litigation Report 504 (Nov. 10, 2000) (co-author)

Response to May 2000 Article on Sponsorship Strategy, 63 Tex. B.J. 754 (Sept. 2000) (co-author)

A Look at Interlocutory Appeals of Class Certification Decisions Under Rule 23(f), 1 Class Action Litigation Report 69 (May 12, 2000) (co-author)

The Mass Tort Class Action Gamble, 7 Metro. Corp. Counsel 1, 8 (Aug. 8, 1999) (co-author)

"Legal Approaches to Sex Discrimination" (co-author), in H. Landrine & E. Klonoff, *Discrimination Against Women: Prevalence, Consequences, Remedies* (Sage Pub. 1997)

Sponsorship Strategy: A Reply to Floyd Abrams and Professor Saks, 52 Md. L. Rev. 458 (1993) (co-author)

A Trial Lawyer's Roadmap for Handling Bad Facts: The Role of Credibility, 16 Trial Diplomacy Journal 139 (July/Aug. 1993) (co-author)

Opening Statement, 17 Litigation 1 (ABA Spring 1991) (co-author)

Contributing Editor, *Criminal Practice Institute Trial Manual*, Young Lawyers Section, Bar Ass'n of D.C. (1986)

The Congressman as Mediator Between Citizens and Government Agencies: Problems and Prospects, 15 Harv. J. Legis. 701 (1979)

A Dialogue on the Unauthorized Practice of Law, 25 Villanova L. Rev. 6 (1979) (co-author)

The Problems of Nursing Homes: Connecticut's Non Response, 31 Admin. L. Rev. 1 (1979)

SIGNIFICANT LEGAL EXPERIENCE:

Argued eight cases before the U.S. Supreme Court

Authored dozens of U.S. Supreme Court filings (certiorari petitions, certiorari oppositions, merits briefs, reply briefs)

Briefed and argued numerous cases before various U.S. circuit and district courts and state trial and appellate courts

Tried dozens of cases (primarily jury trials)

Handled more than 100 class action cases as co-counsel, including *TransUnion v. Ramirez* (U.S. Supreme Court) and *In re National Prescription Opiate Litigation* (Sixth Circuit)

Served as an expert witness in numerous high profile class action and other aggregate cases, including the *British Petroleum Deepwater Horizon Oil Spill* litigation, the *National Football League Concussion* litigation, the *Volkswagen Clean Diesel* litigation, the *Wells Fargo Unauthorized Accounts* litigation, the *Equifax Data Breach* litigation, the *Syngenta Genetically Modified Corn* litigation, the *Broiler Chicken Antitrust* litigation, and the *Parkland Shooting* civil litigation.

Worked extensively with testifying and consulting experts on class action issues, including economists, securities experts, medical and scientific experts, and leading academics

Presented more than 100 cases to the grand jury while serving as an Assistant U.S. Attorney

Handled hundreds of sentencing hearings, preliminary hearings, and probation revocation hearings

SIGNIFICANT TEACHING AND SPEAKING ENGAGEMENTS

Invited Speaker, Baylor MDL Judicial Summit, Aspen, Colorado (June 19, 2023)

Invited Speaker, Navy JAG Corps Training on Litigation Strategy, Coronado, CA (May. 27, 2023)

Moderator, Panel on Federal Multidistrict Litigation, Duke University School of Law, Durham, North Carolina (May 25, 2023)

Speaker on Henrietta Lacks Case for Symposium, Southern University, Baton Rouge, LA (March 14, 2023)

Speaker on Multidistrict Litigation and Moderator on Case Management Breakout Session, Mass Tort MDL Certificate Program, Bolch Judicial Institute, Duke University School of Law (Nov. 7, 2022) (held remotely)

Speaker on Class Actions and Moderator of Class Actions Breakout Session, 2022 Transferee Judges' Conference (approximately 125 federal judges), the Breakers, Palm Beach, Fla. (Nov. 1, 2022)

Speaker, Class and Aggregate Litigation in Europe and North America, New York University School of Law's Campus in Florence, Italy (July 8, 2022)

Speaker and Co-Organizer, McGovern Symposium on Civil Litigation, Duke University School of Law, Durham, North Carolina (May 27, 2022)

Moderator of Panel, Advanced MDL Certificate Program, Duke University School of Law, Durham, North Carolina (May 26, 2022)

Speaker, The Jewish Influences, Life & Legacy of Justice Ruth Bader Ginsburg, Cardozo Society of Washington State and Philadelphia Brandeis Society (April 5, 2022) (held remotely)

Panelist, Mass Torts/Bankruptcy Conference, Fordham University School of Law, New York, New York (Feb. 25, 2022)

Speaker on the Legacy of Justice Ruth Bader Ginsburg (held remotely), Temple Beth Sholom Synagogue, Salem Oregon (June 27, 2021)

Panel Moderator, Mass-Tort MDL Bench-Bar Conference (held remotely), George Washington University Law School, Washington, D.C. (June 10, 2021)

Speaker on Class Actions (held remotely), Oregon Association of Defense Counsel, Portland Oregon (May 20, 2021)

Speaker on Class Actions and Multidistrict Litigation (held remotely), South Ural State University Institute of Law, Chelyabinsk, Russia (April 8, 2021)

Speaker on Class Actions and Multidistrict Litigation (held remotely), Northwestern Pritzker School of Law, Complex Litigation Seminar, Chicago, Illinois (March 31, 2021, and again on March 30, 2022)

Speaker on Multidistrict Litigation, Class Actions, and the *Volkswagen Clean Diesel* Case (held remotely), Bahcesehir University, Istanbul, Turkey (July 15, 2020)

Speaker, Multidistrict Litigation Conference (held remotely), Emory University School of Law, Atlanta, Georgia (June 19, 2020)

Speaker, Class Action Conference, Fordham Law Review and the Institute for Law & Economic Policy, New York, New York (Feb. 27-28, 2020)

Keynote Speaker, Harold Schnitzer Spirit of Unity Peace Leadership Award Ceremony, Salem, Oregon (Nov. 20, 2019).

Conference Chair and Participant, 2019 Symposium on Class Actions and Aggregate Litigation, Pound Civil Justice Institute and Lewis & Clark Law School, Portland, Oregon (Nov. 1-2, 2019).

Speaker, International Class Actions Conference, Vanderbilt Law School, Nashville, Tennessee (Aug. 23, 2019)

Keynote Speaker, Pound Civil Justice Institute, Aggregate Litigation in State Court: Conference of State Court Appellate Judges, San Diego, California (July 27, 2019)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July, 2019) (faculty member for summer program on Transnational Torts)

Visiting Professor of Law, University of Trento School of Jurisprudence, Trento, Italy (May, 2019) (taught Introduction to U.S. Law)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (April 2019)

Speaker, Impact Fund Class Action Conference, San Francisco, California (Feb. 22, 2019)

Speaker on Class Actions, 17th Annual Impact Fund Class Action Conference, San Francisco, California (Feb. 23, 2019)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (December 2018) (taught course on U.S. Class Actions)

Speaker on the National Football League Concussion case, National Taiwan University, Taipei, Taiwan (December 20, 2018)

Speaker on Class Actions, Live Webinar Broadcast, Rule 23 Will Be Amended in Four Days: Are You Ready, American Bar Association (Nov. 27, 2018)

Speaker, American Bar Association's 22d Annual Institute on Class Actions, Chicago, Illinois (Oct. 18, 2018)

Speaker, MDL at 50 –The 50th Anniversary of Multidistrict Litigation, New York University School of Law, New York, New York (Oct. 12, 2018)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July 2018) (faculty member for environmental law program; lectured on environmental class actions)

Speaker on Class Actions, Freie University Faculty of Law, Berlin, Germany (June 26, 2018)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (April 2018) (taught course on Introduction to United States Law)

Co-Chair, Moderator, and Panelist, Posner on Class Actions, Columbia Law School, New York, New York (March 2, 2018)

Panelist on Civil Discovery, Vanderbilt University School of Law, Nashville, Tennessee (October 13, 2017)

Panelist on the Civil Rules Committee Process, University of Arizona College of Law, Tucson, Arizona (October 7, 2017)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July 2017) (faculty member for environmental law program; lectured on environmental class actions)

Visiting Professor of Law, University of Trento School of Jurisprudence, Trento, Italy (May 2017) (taught course on Introduction to U.S. Law)

Panelist on Class Actions, Beard Group, Class Action Money and Ethics Conference, New York, New York (May 1, 2017)

Visiting Professor of Law, Tel Aviv University, Tel Aviv, Israel (January 2017) (taught course on class actions)

Panelist on Class Actions, Tel Aviv University, Fifty Years of Class Actions – A Global Perspective (January 4, 2017)

Panelist on Class Actions, New York University Law School Conference on Rule 23@50, New York, New York (December 2, 2016)

Panelist on Class Actions, Appellate Judges Education Institute, Philadelphia, Pennsylvania (November 11, 2016)

Speaker on Class Actions, National Legal Aid Defender Association National Farmworker Conference, Indianapolis, Indiana (November 10, 2016)

Panelist on Class Actions, American Bar Association Class Action Institute, Las Vegas, Nevada (October 20, 2016)

Panelist, Duke University Law School Conference on Class Action Settlements, San Diego, California (October 6, 2016)

Fulbright Scholar, Hong Kong University School of Law (August- September 2016) (taught course on class actions and delivered campus-wide lecture on criminal procedure)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (June 2016) (taught course on Introduction to United States Law)

Speaker on Class Actions, University of Zagreb Law School, Zagreb, Croatia (May 11, 2016)

Panelist on Civil Litigation, Association of American Law Schools Annual Meeting, New York, New York (January 8, 2016)

Visiting Professor of Law, Bahçeşehir University School of Law, Istanbul, Turkey (December 2015) (taught Introduction to United States Law)

Participant, Conference on Civil Justice (Pound Institute) Emory University Law School, Atlanta, Georgia (October 15, 2015)

Participant, Conference on Class Actions, Duke Law School, Arlington, Virginia (July 23-24, 2015)

Participant, Conference on Class Actions, Defense Research Institute, Washington, D.C. (July 23-24, 2015)

Participant, Civil Procedure Workshop, Seattle University Law School, Seattle, Washington (July 17, 2015)

Panelist on Class Actions, Annual Meeting, American Association for Justice, Montreal, Canada (July 12, 2015)

Speaker on Class Actions, International Association of Procedural Law, Istanbul, Turkey (May 28, 2015)

Panelist, Subcommittee on Class Actions of U.S. Judicial Conference Advisory Committee on Civil Rules, American Law Institute Annual Meeting, Washington, D.C. (May 17, 2015)

Moderator, Ethical Issues in Class Actions and Non-Class Aggregate Litigation, American Law Institute Annual Meeting, Washington, D.C., (May 17, 2015)

Visiting Professor of Law, University of Trento School of Jurisprudence, Trento, Italy (March 2015) (taught U.S. Class Actions)

Speaker on Class Actions, European University Institute, Fiesole, Italy (February 23, 2015)

Visiting Professor of Law, University of Notre Dame, Fremantle Australia (January 2015) (taught course on U.S. Civil Rights and Civil Liberties)

Visiting Professor of Law, Universidad Sergio Arboleda, Bogota and Santa Marta, Colombia (December 2014) (taught course on Introduction to United States Law)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (November 2014) (taught course on Introduction to United States Law)

Panelist, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 23, 2014)

Visiting Professor of Law, East China University of Political Science and Law, Shanghai, China (October 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Herzen State Pedagogical University of Russia, St. Petersburg, Russia (September 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (July 2014) (taught Introduction to United States Law)

Speaker on U.S. Legal Education, Universidad Sergio Arboleda School of Law, Bogota, Colombia (June 3 and 5, 2014)

Speaker on Class Actions, Superintendencia de Industria y Comercio, Bogota, Colombia (June 3, 2014)

Speaker on Class Actions and the Fukushima Nuclear Accident, Waseda University School of Law, Tokyo, Japan (January 24, 2014)

Speaker on Class Actions, Osaka Bar Association, Osaka, Japan (January 23, 2014)

Speaker on Class Actions, East China University of Political Science and Law, Shanghai, China (January 15, 2014)

Speaker on Class Actions, AmCham Shanghai, Shanghai, China (January 14, 2014)

Speaker on Development of Animal Law in the Legal Academy, 2013 Animal Law Conference, Stanford Law School, Palo Alto, California (November 25, 2013)

Speaker on U.S. Law and Legal Education, Royal University of Law and Economics, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Law and Legal Education, Paññāsāstra University of Cambodia, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Legal Education, International Association of Law Schools International Deans' Forum, National University of Singapore Law School, Singapore (September 26, 2013)

Speaker on Class Actions, Japan Federation of Bar Associations, Tokyo, Japan (September 19, 2013)

Speaker on Class Actions, Waseda University School of Law, Tokyo, Japan (September 19, 2013)

Speaker on Ethics of Aggregate Settlements, American Association for Justice Annual Meeting, San Francisco, California (July 22, 2013)

Speaker on the British Petroleum Class Action Settlement, International Water Law Conference, National Law University of Delhi, Delhi, India (May 31, 2013)

Speaker on U.S. Supreme Court Confirmation Process, Jewish Federation of Greater Portland's Food for Thought Festival, Portland, Oregon (April 21, 2013)

Speaker on Class Actions, Class Action Symposium, George Washington University Law School, Washington, D.C. (March 8, 2013)

Speaker on Class Actions, Impact Fund Class Action Conference, Oakland, California (March 1, 2013)

Speaker on Class Actions, Hong Kong University Department of Law (November 15, 2012)

Speaker on Class Actions, Fudan University Law School (Shanghai, China) (November 13, 2012)

Keynote Speaker, National Consumer Law Center Symposium, Seattle, Washington (October 28, 2012)

Speaker, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 25, 2012)

Speaker, Conference on Class Actions, Washington University St. Louis School of Law and the Institute for Law and Economic Policy (April 27, 2012)

Speaker, Conference on Class Actions, Loyola Chicago School of Law (April 13, 2012)

Panelist on leadership and world peace with Former South African President F.W. De Klerk, University of Portland (February 29, 2012)

Panelist on class actions before the Standing Committee on Rules of Practice and Procedure, Phoenix, Arizona (January 5, 2012)

Speaker on Class Actions Lawsuits in the U.S., University of the Philippines, College of Law, Quezon City, Philippines (August 2011)

Speaker on Environmental Class Actions, Kangwon University Law School, Chuncheon, South Korea (August 2011)

Speaker on Class Actions, Federal Judicial Center Conference on Class Actions, Duke University School of Law (May 20, 2011)

Speaker, Conference on Aggregate Litigation, University of Cincinnati College of Law (April 1, 2011)

Speaker on Class Actions, Seoul National University School of Law (May 18, 2010)

Keynote Speaker (addressing US Supreme Court confirmation process), Alaska Bar Annual Meeting (April 28, 2010)

Speaker, Conference on the Future of Animal Law, Harvard Law School (April 11, 2010)

Speaker, Conference on Aggregate Litigation: Critical Perspectives, George Washington University Law School (Mar. 12, 2010)

Speaker, U.S. Supreme Court Confirmation Process, Multnomah County Bar Association and City Club of Portland, (Sept. 30, 2009)

Speaker on Class Actions, American Legal Institutions, and American Legal Education at National Law Schools of India in Bangalore, Hyderabad, Calcutta, Jodhpur, and Delhi (August 2009)

Speaker, China/U.S. Conference on Tort and Class Action Law, Renmin University of China School of Law, Beijing, China (July 11-12, 2009)

Speaker on Class Actions, Southeastern Association of Law Schools annual meeting, Palm Beach, Florida (August 1, 2008)

Speaker on Class Actions, National Foundation for Judicial Excellence (meeting of 150 state appellate court judges), Chicago, Illinois (July 12, 2008)

Speaker on Class Actions, Practising Law Institute, New York, NY (July 10, 2008)

Speaker at Conference on Class Actions in Europe and North America, sponsored by New York University School of Law, the American Law Institute, and the European University Institute, Florence, Italy (June 13, 2008)

Speaker on Class Actions at the American Bar Association Tort and Insurance Section Meeting, Washington, D.C. (Oct. 26, 2007)

Speaker on Antitrust Class Actions at the American Bar Association's Annual Antitrust Meeting, Washington D.C. (April 18, 2007)

Chair, Organizer, and Moderator of Class Action Symposium at UMKC School of Law (April 7, 2006) (other speakers (26 in all) included, *e.g.*, Professors Arthur Miller, Edward Cooper, Sam Issacharoff, Geoffrey Miller, and Linda Mullenix, as well as several prominent federal judges and practicing lawyers)

Speaker on Class Actions, Missouri CLE (Nov. 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 29, 2005)

Speaker on Class Actions, Kansas CLE (June 23, 2005)

Speaker on Class Actions at Bureau of National Affairs Seminar on the Class Action Fairness Act of 2005 (June 17, 2005)

Visiting Lecturer on Class Actions, Peking University (May 30-June 3, 2005)

Speaker on Oral Argument, American Bar Association 2005 Section of Litigation Annual Conference (April 22, 2005) (part of panel including Second Circuit Chief Judge Walker and several others)

Speaker on Class Actions, Federal Trade Commission/Organization for Economic Co-operation and Development, Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace (April 19, 2005)

Speaker at Antitrust Class Action Symposium, University of Western Ontario College of Law (April 1, 2005)

Speaker at Class Action Symposium, Mississippi College of Law (February 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 30, 2004)

Visiting Lecturer on Class Actions, Peking University (June 2004)

Visiting Lecturer on Class Actions, Tsinghua University (June 2004)

Speaker at Class Action Symposium, Michigan State University (April 16-17, 2004)

Speaker on U.S. Supreme Court advocacy, David Prager Advanced Appellate Institute (Kansas City Metropolitan Bar Association) (Feb. 27, 2004)

Speaker on Class Actions, Institute of Continuing Legal Education in Georgia (Oct. 24, 2003)

Speaker on Class Actions, Practising Law Institute (July 31, 2003)

Speaker on Class Actions, Practising Law Institute (Aug. 5, 2002)

Speaker on Class Actions, Practising Law Institute (Aug. 16, 2001)

Speaker on many occasions throughout the country on "Sponsorship Strategy" (1990-present) and advocacy before the U.S. Supreme Court (1988-present)

OTHER PROFESSIONAL ACTIVITIES:

Member of American Bar Association Group Evaluating Qualifications of Merrick Garland to serve on the U.S. Supreme Court (reviewed Judge Garland's civil procedure opinions)

Member, Editorial Board of International Journal of Law in a Changing World (South Ural University, Chelyabinsk, Russia)

Board Member, The Judge John R. Brown Scholarship Foundation

Advisory Board, The Flawless Foundation (an organization that serves troubled children)

Member, Board of Directors, Citizens' Crime Commission (Portland, Oregon) (2007-2011)

Advisory Board Consulting Editor, *Class Action Litigation Report* (BNA)

Served on numerous UMKC School of Law committees, including Programs (Chair), Promotion and Tenure, Appointments, and Smith Chair Appointment

Chair of pro bono program for all 27 offices of Jones Day (2000-2004); also previously Chair of Washington office pro bono program (1992-2003)

Member, Board of Directors, Bread for the City (a D.C. public interest organization providing medical, legal, and social services) (2001-2003)

Master, Edward Coke Appellate Practice Inn of Court in Washington, D.C. (other participants include Ted Olson, Seth Waxman, Ken Starr, Walter Dellinger, and several sitting appellate judges) (2001-2003)

Member, Board of Directors, Washington Lawyers' Committee for Civil Rights and Urban Affairs (2000-2003); Advisory Board Member (2003-present)

Member, D.C. Court of Appeals Committee on Unauthorized Practice of Law (1997-2000)

Handled and supervised numerous pro bono matters (*e.g.*, death penalty and other criminal defense, civil rights, veterans' rights)

Played a major role in establishing a walk-in free legal clinic in Washington, D.C.'s Shaw neighborhood

VOLUNTEER WORK:

Numerous guest speaker appearances at public schools and retirement homes; volunteer at local soup kitchen; volunteer judge for Classroom Law Project.